Racial & Identity Profiling Advisory Board

ANNUAL REPORT 2022

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

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The Racial and Identity Profiling Advisory Board and Department of Justice RIPA team would like to honor the memory of George Whitby. George worked in the California Department of Justice Hawkins Data Center his entire career and was an integral part of the RIPA team. George is remembered for his welcoming personality, his work ethic, dedication to public service, and how much he cared for and supported his colleagues.

The RIPA Board thanks Leticia Martinez Carter from the California Department of Justice for serving as the travel coordinator to the Board.

Chief David Swing has served on the RIPA Board since 2018, representing the California Police Chief's Association. As Board Co-Chair and Co-Chair of the Stop Data Analysis subcommittee, he contributed greatly to this Report. The RIPA Board thanks him for his service to benefit the people of California.

Sahar Durali was a founding member of the RIPA Board, appointed by Attorney General Kamala D. Harris. She represented Neighborhood Legal Services of Los Angeles and California Rural Legal Assistance, Inc. Ms. Durali served as Board Co-Chair and Co-Chair of the Civilian Complaints subcommittee. The Board appreciates her leadership and work to support the public's engagement.

The RIPA Board thanks former Board members Sandra C. Brown, Felicia Espinosa, Nancy Frausto, Sheriff John McMahon, and Angela Sierra for their work on this year's report and their many contributions to the Racial and Identity Profiling Advisory Board. The Board also congratulates Sheriff McMahon on his retirement after 36 years of service as a peace officer.

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

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

The RIPA Board appreciates the participation of community members, advocates, members of law enforcement, researchers, and other stakeholders. Public participation is essential to this process, and the RIPA Board thanks all Californians who have attended meetings, submitted letters or email, and otherwise engaged with the work of the Board. We look forward to receiving the invaluable input from the public and welcome everyone to participate.

The RIPA Board acknowledges the many challenges facing our communities in 2021 and wishes everyone a happy and safe 2022!

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EXECUTIVE SUMMARY

California's Racial and Identity Profiling Advisory Board ("Board") is pleased to release the 2022 Annual Report ("Report"). The Report closely examines a wide range of issue areas related to racial and identity profiling, providing context and research to deepen the public's understanding of the stop data collected under the Racial and Identity Profiling Act ("RIPA"). In this Executive Summary, the Board provides a broad overview of the Report's contents. The Board is including as a supplement to the Report a list of Recommendations and Best Practices for all interested parties related to the issue areas in the Report. The Board encourages all stakeholders, including law enforcement agencies, policymakers, the California Commission on Peace Officer Standards and Training (POST), and community advocates and members, to use these recommendations as a platform for discussion and implementation of reforms that will not only improve public safety in California, but also strengthen law enforcement and community relations. The Board especially recognizes that community input is key to any reform process and community members should be consulted as agencies and municipalities prepare to effect change in their communities.

In this year's Report, the Board analyzes the RIPA stop data collected from 18 law enforcement agencies, including the 15 largest law enforcement agencies in California, from January 1, 2020 to December 31, 2020. The Report contextualizes the data collection within the larger circumstances of the unprecedented worldwide COVID-19 pandemic, which not only had a disproportionate effect on communities of color but also had profound impacts on policing. The Board discusses the substantial racial disparities in agency enforcement of stay-at-home and masking orders, while also documenting the alarming 107% increase in anti-Asian crimes in 2020 in California. The data collection also took place amidst a national reckoning with police violence and systemic racism that led to protests around the world and disparities in how protestors were treated by law enforcement in California and the country.

In addition to analysis of the stop data, the Report contains a new focus this year on data concerning disparities for individuals with disabilities and individuals perceived as transgender. The Report also examines the data and research on consent and supervision searches and pretext stops.

Findings Regarding RIPA Stop Data

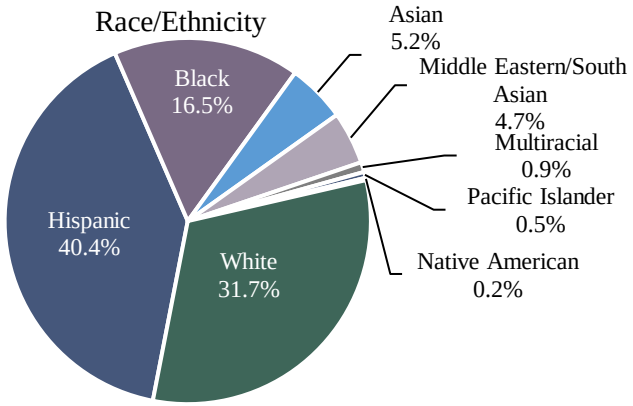
- Between January 1, 2020 to December 31, 2020, 18 law enforcement agencies ("reporting agencies") in California collected data on police detentions and searches of individuals, also referred to in this Report as stops, and submitted these data to the California Department of Justice.

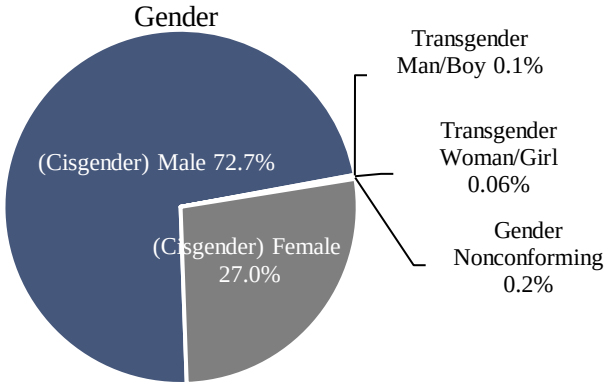
- Reporting agencies made over 2.9 million stops during the stop data collection period, with the California Highway Patrol conducting the most stops of any single agency (57.7%). Although three more agencies collected stop data in 2020, there were 26.5 percent fewer stops reported than in 2019. The COVID-19 pandemic and its effects on many aspects of

people's lives, as well as on the practices of law enforcement agencies, likely contributed to this difference in the number of stops reported in 2020 compared to the previous year.

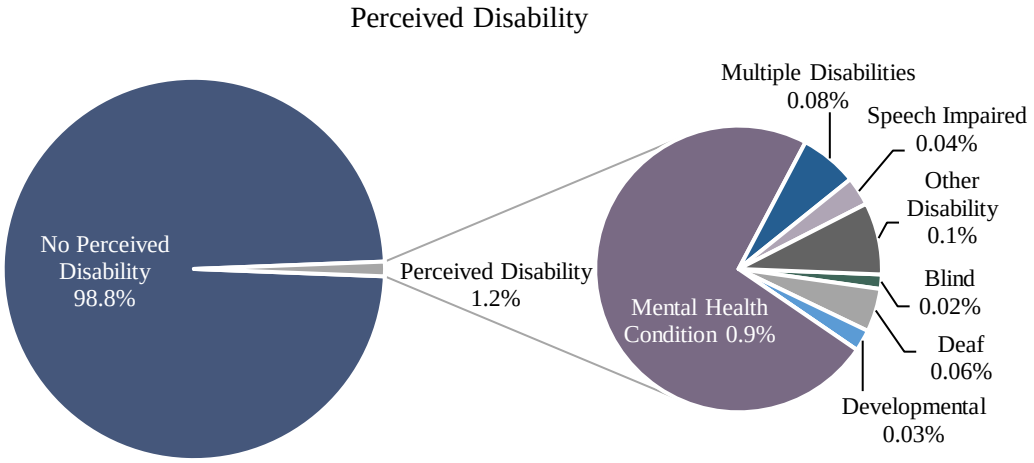
- Individuals perceived to be Hispanic (40.4%), White (31.7%), or Black (16.5%) comprised the majority of stopped individuals.

- The majority of stopped individuals were perceived as either (cisgender) male (72.7%) or (cisgender) female (27.0%), together accounting for 99.7 percent of individuals stopped.





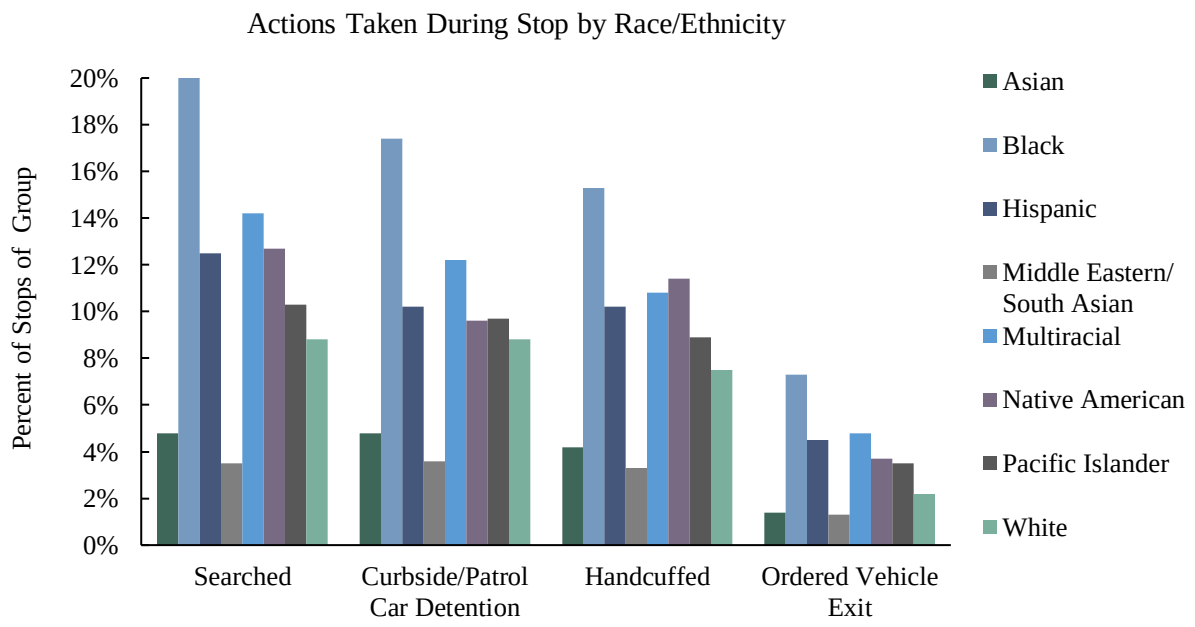
- Officers perceived 1.2 percent of the individuals they stopped to have one or more disabilities. Of those perceived to have a disability, the most common disability reported by officers was mental health disability (70.3%).



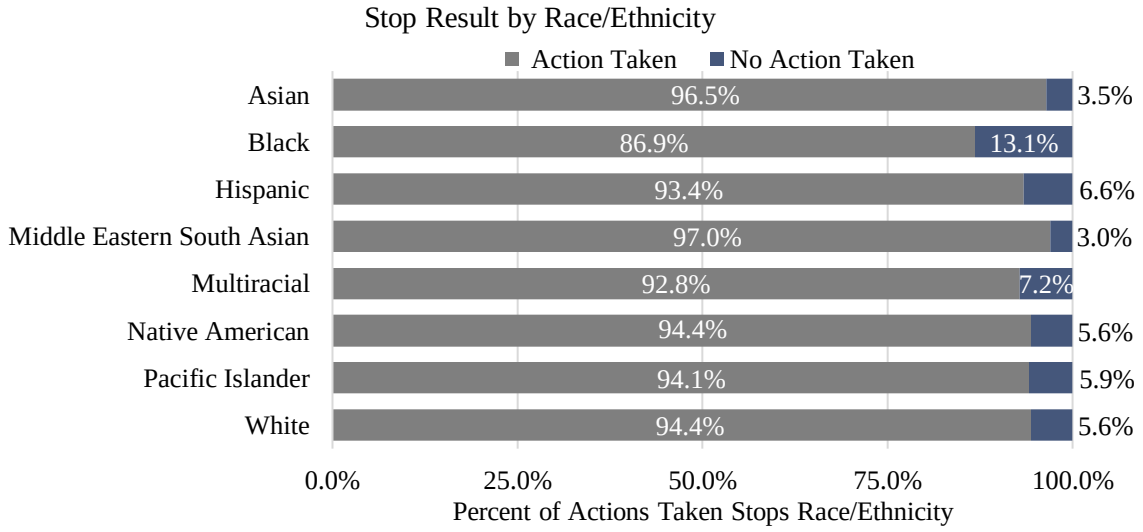
- The most commonly reported reason for a stop across all racial/ethnic groups was a traffic violation (86.1%), followed by reasonable suspicion that the person was engaged in criminal

activity (11.5%). A higher percentage of Black individuals were stopped for reasonable suspicion than any other racial identity group.

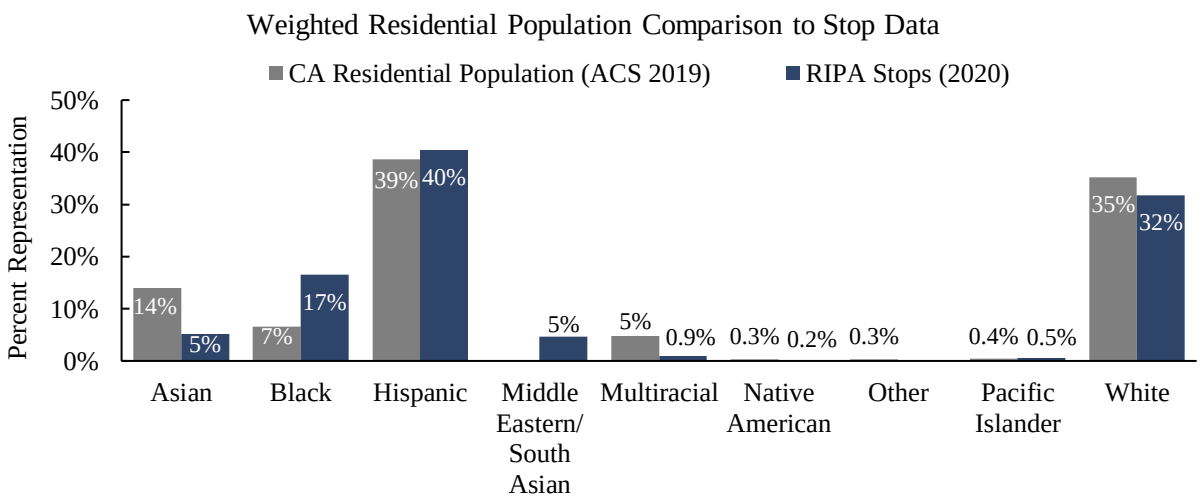
- Officers searched, detained on the curb or in a patrol car, handcuffed, and removed from vehicles more individuals perceived as Black than individuals perceived as White, even though they stopped more than double the number of individuals perceived as White than individuals perceived as Black.



- Officers reported taking no action as the result of stop most frequently during stops of individuals they perceived to be Black.



- To provide context for the racial distribution of stopped individuals, the Board compared the stop data distribution to benchmark data found in the American Community Survey (ACS) dataset. Black individuals represented a higher proportion of stopped individuals than their relative proportion of the population in the ACS dataset.



- The Veil of Darkness analysis showed that darkness decreased the rates at which Black and Hispanic individuals were stopped compared to White individuals.

- Black and Hispanic individuals were more likely to have force used against them compared to White individuals, while Asian and Other individuals were less likely. Specifically, the odds of having force used during a stop were 1.32 times and 1.16 times as high for Black and Hispanic individuals, respectively. Asian and Other individuals whom officers stopped had lower odds of having force used against them (0.80 and 0.82 respectively), relative to the odds for individuals officers perceived as White.

- Search discovery rate analyses showed that, when officers searched stopped individuals, individuals of all racial or ethnic groups of color, with the exception of Asian and Middle Eastern/South Asian individuals, had higher search rates despite having lower rates of discovering contraband compared to individuals perceived as White.

From Data to Policies Addressing the Profiling of Transgender People

The Board used RIPA stop data to gain a deeper understanding of profiling on the basis of gender. The Board takes an intersectional approach to identifying and examining disparities among race/ethnicity and gender stop data. This examination is timely given the onslaught of efforts nationwide to pass discriminatory laws against transgender people and other members of the LGBTQ+ community.

The Board provides context on this issue by first looking at data collected by the National Coalition of Antiviolence Programs (NCAVP), reports by UCLA Law's think tank The Williams Institute, social science research, and numerous reports that demonstrate that transgender women are at high risk of violence from private actors, particularly through homicide and domestic violence. Given this risk, advocates, including the National Center for Transgender Equality (NCTE) and legal scholars, conclude that transgender women and other transgender populations would benefit from improved relationships with law enforcement.

Following this review of research findings, the Board analyzes RIPA stop data across gender and identifies disparities in stops made by agencies that reported data during 2020. There were dramatic differences in the reasons for stops across perceived gender categories and substantial disparities with respect to gender and whether officers took action as a result of stop. A higher proportion of individuals perceived as transgender were searched in comparison to individuals perceived as cisgender. The completion of field interview cards was an additional result of stop where there was a large disparity between individuals perceived as cisgender and individuals perceived as transgender. Lastly, the Board reviewed the findings of NCTE's evaluation of existing policies in U.S. police departments and determined that additional work is needed to align policies with best practices. The Board makes best practices recommendations in the Report in several areas aimed at reducing disparities in law enforcement interactions with transgender people. Those recommendations are listed in the Recommendations and Best Practices 2022 RIPA Report.

Data Driven Approaches to Disability Justice

For the first time, the Board highlights in-depth research and data analyses concerning individuals with perceived disabilities, who are disproportionally subject to police searches and uses of force when compared to those with no perceived disability. As the report emphasizes, a mental health crisis is not a criminal matter, and agencies and municipalities should prioritize policies and practices that support alternative community-based responses and secure funding for those alternatives.

Search and discovery rate analysis shows that officers searched individuals perceived to have a mental health disability 4.8 times more often and individuals perceived to have other types of disabilities 2.7 times more often than for other types of disability than individuals perceived to have no disability, but discovered contraband or evidence at a lower rate during stops with searches of individuals with disabilities. Officers used force against individuals perceived to have mental health disabilities at 5.2 times the rate at which they used force against individuals they perceived to have no disabilities.

The Americans with Disabilities Act (ADA) and California state laws provide needed protections and accommodations for individuals with disabilities. Almost every aspect of law enforcement is affected by state and federal disability laws, including receiving civilian complaints, questioning witnesses, arresting or detaining a person, 911 dispatching, providing emergency medical services, and enforcing laws. However, given the disparities shown by the RIPA data, it appears that some accommodation requirements are not being met by municipalities and law

enforcement agencies. As such, the Board lays out several best practice recommendations for agencies regarding training and policies, as well as alternatives to police responses for municipalities to consider. Those recommendations are listed in the Recommendations and Best Practices 2022 RIPA Report. Law enforcement agencies must ensure – through policies and training – that they are not criminalizing behaviors resulting from disabilities.

Consent Searches

The Board closely examines consent searches, where an officer conducts a search of a person and/or their property after getting their permission. Officers have discretion to ask a person for consent to search and do not need to suspect any criminal wrongdoing to make that request. Given this wide discretion, implicit and explicit bias can play a role in when and whom officers ask for consent to search. Indeed, the Board's data analyses reflect significant disparities related to consent searches that call into question the fairness and utility of these types of searches.

The 2019 and 2020 RIPA data show that Black and Hispanic/Latine(x) individuals are asked for consent to search at higher rates than White individuals. While Black, Hispanic/Latine(x), and Multiracial individuals were searched at higher rates for consent only searches as compared to all other racial/ethnic groups, these consent only searches resulted in lower rates of discovery of contraband (8.5%, 11.3%, and 13.0% respectively) than searches of all other racial/ethnic groups.

The data also showed that for over half the stops where officers conducted a consent only search (consent being the only reason for the search) of Black, Hispanic/Latine(x), and Middle Eastern/South Asian individuals, the reason for the stop was a traffic violation. By contrast, less than 30 percent of consent only searches of White individuals occurred during stops for traffic violations.

Finally, consent only searches result in relatively low discovery rates compared to searches based on reasonable suspicion or probable cause. Black individuals' discovery rate was 9.2 percentage points less than the rate reported for White individuals for consent only searches.

Given the disparities in the data on consent searches, the Board questions whether consent searches are truly voluntary. While the data reflect that most people consent to a search when asked by an officer, research discussed in the Report reflects that this "consent" is not necessarily voluntarily because of the inherent power inequality between a law enforcement officer and a member of the public. The research shows that this inherent power inequality is particularly pronounced among vulnerable populations, such as people with mental health disabilities or youth, who may be more likely to succumb to authoritative pressure. Indeed, RIPA data reflects that for both people with mental health disabilities and youth, a larger proportion of their stops that began as consensual encounters resulted in searches, as compared to people without mental health disabilities or adults.

The Board looks at efforts by agencies to restrict or prohibit consent searches and found at least one agency where the prohibition on consent searches resulted in an *increase* in the likelihood of finding contraband. The Board believes that these types of policy changes can also have an impact on improving community-police relations.

Given the wide range of disparities and concerns with consent searches, and the potential benefits of prohibiting them, the Board recommends severely limiting or ending the practice of consent searches.

Known Supervision Stops and Searches

The Board also examines known supervision stops and searches, where a person is stopped or searched because they are under a form of court-ordered supervision, such as probation or parole, following the conviction of a crime.

This section of the Report first provides an overview of court-ordered supervision, including a discussion of the Fourth Amendment Waiver. The waiver is a common condition of supervision that allows an officer to search the person and their home, even if the officer does not have reasonable suspicion or probable cause that the person is engaged in criminal activity. The Board also describes how mass incarceration drives disparities related to supervision, noting as one example that Black individuals are substantially more likely than White individuals to be charged with parole violations, even when controlling for other factors.

Against this backdrop, the Board closely assesses data related to stops of individuals where the primary reason for the stop or the basis of a search was the stopped person's supervision status. The Board's analyses reveal large disparities that warrant further examination of law enforcement practices.

For example, officers performed supervision only searches (where supervision status is the only basis for the search) of individuals perceived to be Black at 2.8 times the rate at which they performed supervision only searches of individuals they perceived to be White. Similarly, officers also performed supervision plus searches (where the officer also had some other basis to search the person) of Black individuals at 3.3 times the rate they performed supervision plus searches of White individuals. The rates of discovering contraband for supervision only searches were lower for all racial/ethnic groups as compared to White individuals; Black individuals had the largest difference in their discovery rate (-11.4 percentage points) as compared to White individuals. Officers also reported a higher proportion of supervision only searches during stops for traffic violations (46.9%) than during reasonable suspicion stops (24.6%). These were just a few of the many disparities discussed in the Report.

Given the large disparities observed, the Board reviewed efforts by various law enforcement agencies to limit inquiries into supervision status as well as stops and searches on the basis of supervision status. The RIPA data further indicates that the practice of conducting supervision only searches shows racial disparities that result in low yield rates of contraband or evidence. As such, the Board recommends limiting or prohibiting (1) inquiries into a person's supervision

status and (2) detentions or searches just because an officer is aware of a person's supervision status, and instead requiring that an officer have, at a minimum, reasonable suspicion that a person is engaged in criminal activity.

Pretext Stops

This year's Report serves as a starting point for a longer-term discussion and analysis of pretext stops. A pretext stop occurs when an officer stops a person ostensibly for a traffic violation or minor infraction but with the actual intention of using the stop to investigate based on an officer's hunch that by itself would not amount to reasonable suspicion or probable cause. These types of stops can be influenced by an officer's implicit or explicit bias, as well as agency policies that may focus certain types of enforcement actions in different neighborhoods, which can cause disparities in who is the target of stops.

In this year's Report, the Board's primary focus is to understand data on stops for traffic violations that may form the basis of a pretext stop. The Report contains several analyses of the most frequently cited moving and non-moving violations that could be ripe for pretext if an officer was using minor traffic violations to take further, unrelated action against a stopped individual without having reasonable suspicion or probable cause to do so. As one example, the data reflects that, compared to White individuals (4.6%), officers reported nearly 2.5 times more stops based on window obstruction violations for Hispanic/Latine(x) individuals (11.4%) and 1.9 times more for Black individuals (8.7%) (when excluding the California Highway Patrol from the data analysis). In another example, Black and Hispanic/Latine(x) individuals were disproportionately stopped for two types of bicycle stops (lighting and biking equipment violations) as compared to White individuals.

The Report notes some efforts law enforcement agencies have made to address disparities in traffic stops, which have the added beneficial result of improving various public safety outcomes, such as lower crime rates, fewer traffic accidents, and an increase in DUI arrests.

Given that the Board's data analyses in this Report reflect disparities in traffic violation stops and the promising efforts some agencies have already made to address these types of disparities, the Board would like to delve deeper and analyze stops that may be pretextual in nature and evaluate the efficacy of this practice. To that end, the Board hopes to examine emerging models used by law enforcement agencies with an eye toward increasing unbiased policing practices. The Board also calls on policymakers and leaders to consider ways to eliminate pretextual stops and therefore reduce any potential for harm stemming from such stops.

Racial and Identity Profiling Policies and Accountability

The Report continues the Board's work from its 2021 Report with a review of bias-free policing policies for Wave 3 and some early adopting Wave 4 agencies, as well as a follow-up review of changes made by Wave 1 and Wave 2 agencies after the past two years' review. The Board identifies a few agencies who are currently out of compliance with state law to have their agency policies posted online and urges these agencies to post their policies online as soon as

possible to remedy this violation. The Board also notes the widespread use of Lexipol bias-free policing policies, and recommends that agencies review the policy along with community partners and make changes to meet best practice recommendations and any community-specific needs and values, rather than relying on Lexipol's form policy. These recommendations are listed in the Recommendations and Best Practices 2022 RIPA Report.

Accountability Models

The Board examines key components that comprise law enforcement agencies' accountability systems. First, the Board reviews auditing policies and practices and the use of data for policy change and staff supervision within agencies. As the Board's research shows, audits can enhance the integrity of stop data by assessing the level of accuracy and completeness of data reporting. Auditing can also help agencies identify the causes of outlier patterns or unexpected changes in the data and bring to the surface any policies, practices, or training that contribute to disparities across racial and other identity groups. From there, agencies can address any gaps or deficiencies in their policies, practices, and training.

The Board reviews the efforts of the Los Angeles, San Diego, and Oakland Police Departments and their respective oversight bodies to analyze RIPA stop data and body-worn camera footage to identify how their policies and practices led to disparities in policing and to develop targeted interventions. Following this review, the Board makes several recommendations to law enforcement agencies regarding stop data analysis for policy reform and staff supervision. Those recommendations are listed in the Recommendations and Best Practices 2022 RIPA Report.

The Board examines community participation in oversight, advisory, and disciplinary boards, another critical component of accountability systems. Community oversight bodies can help ensure that law enforcement agencies are accountable for their actions, operate with maximum transparency, and perform their duties in a manner that is informed by community needs. The Board reviews examples of community accountability efforts in San Francisco, Chicago, and Vallejo. The Report contains highlights to demonstrate how community accountability may look different in different places and how each community should determine what would be best for their needs. Following this review, the Board makes recommendations to law enforcement agencies regarding community participation in overseeing law enforcement agencies. Those recommendations are listed in the Recommendations and Best Practices 2022 RIPA Report.

Calls for Service and Bias by Proxy

The Board continues its examination of calls for service, a term that refers to dispatching the police, fire, ambulance, etc. to respond to a call for help, typically a 911 call. The Board examined the racial/ethnic distribution of individuals stopped compared to population. For calls for service, Black individuals were stopped 211.8 percent more frequently than expected based on their proportion of the residential population. Asian individuals were stopped 80.7

percent less frequently and Multi-racial individuals were stopped 78.8 percent less frequently than expected based on the population distribution.

In addition to examining the calls for service data, the Board considers the impact of bias by proxy – when a member of the community calls law enforcement and makes false or ill-informed claims against another person for biased reasons. A dispatcher is usually the first point of contact in any call for service. As such, dispatchers play a critical role in improving community relationships, especially when addressing bias by proxy calls for service. This year the Board reviews dispatcher trainings and policies from the Police Officer Standards and Training (POST) Commission, which sets the minimum guidelines and training for dispatchers. The Board notes that POST does not mandate any bias training for dispatchers, and no bias-related training is a part of the Public Safety Dispatcher Basic Course. The Board provides best practices and recommendations on how to mitigate bias in "suspicious person" calls; these recommendations involve improving communication between dispatchers and officers so that officers understand ahead of time that a call may be motivated by a caller's bias and respond appropriately. These recommendations are listed in the Recommendations and Best Practices 2022 RIPA Report.

The Board also looks at various approaches communities and law enforcement agencies have taken to address bias by proxy calls. First, the Board describes Bias Response Teams, which are used in various localities and take a restorative justice approach to address bias by proxy calls for service. Restorative justice is a theory that emphasizes repairing the harm caused by criminal behavior; in this context, the harm is caused by a biased call for service. These teams work independently from law enforcement and respond to alleged incidents of bias to provide education and support to the victim of bias, among other efforts to repair harm. Second, the Board looks at how dispatchers and officers can create "friction" by asking the caller various questions to determine whether their call is motivated by bias or an objective sign of criminal activity. Finally, the Board describes the efforts of law enforcement agencies to divert bias by proxy calls—where an officer may not be immediately necessary—to non-law enforcement personnel.

The Board also examines mental health calls for service, which involve a person experiencing a behavioral health crisis and who may require clinical intervention or care coordination from a health professional. Developing and funding comprehensive crisis response systems is a way to improve public safety and destigmatize mental health care. The Board lays out guiding principles for community-first responses to calls for service, including providing a response from mental health professionals that centers the individual and focuses on voluntary participation, peer intervention, trauma-informed and violence-free care, zero suicide aspiration, anti-bias training, short- and long-term connection to care and housing, and utilizing the least restrictive intervention.

The Board reviews crisis response models providing alternatives to armed police responses, with a focus on emerging programs that have started their pilot programs. The models take different forms, but the Board highlights lessons learned from each model that can guide local

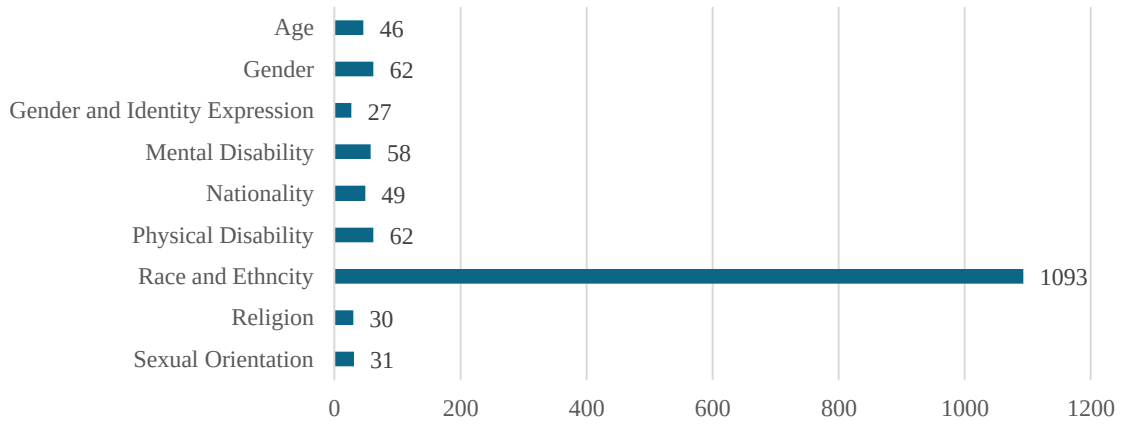
governments and law enforcement agencies on how to effectively implement such community-based models, which are more cost effective and can save lives.

Civilian Complaints Policies

The Report includes an analysis of civilian complaints received in 2020 by the 692 law enforcement agencies in California. Four hundred and forty-four of the 692 agencies were also subject to RIPA's stop data reporting requirements (hereafter, RIPA agencies). RIPA agencies reported 10,648 complaints in total, and 9,878 (92.8%) reached a disposition in the 2020 calendar year. Of the 9,878 complaints that reached a disposition, 933 (9.4%) were sustained, 3,313 (33.5%) were exonerated, 996 (10.1%) were not sustained, and 4,636 (46.9%) were unfounded.

RIPA agencies reported a total of 1,259 complaints alleging an element, or elements, of racial or identity profiling, constituting 11.8 percent of the total 10,648 civilian complaints reported by RIPA agencies in 2020. Within those 1,259 complaints, there were 1,458 identity profiling allegations. This is because some civilians alleged more than one type of identity profiling, such as profiling based on both their age and their gender. Complaints alleging race and ethnicity profiling constituted 75 percent of the 1,259 complaints alleging identity profiling. The figure below provides a breakdown of the allegations within those 1,259 complaints.

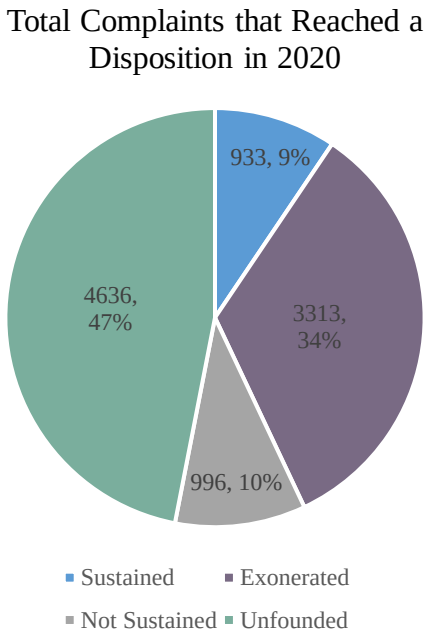
Total Racial and Identity Profiling Complaints Reported by RIPA Agencies

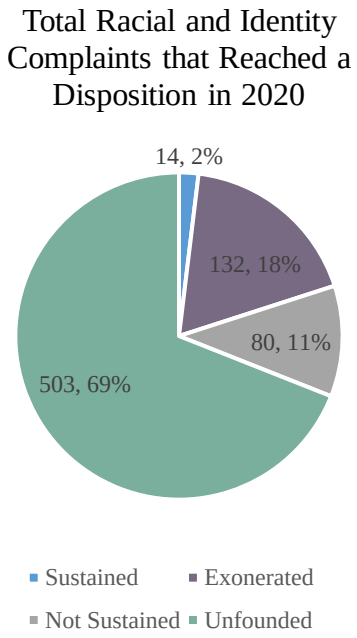


Of those 1,259 complaints alleging profiling, 729 reached disposition in 2020: 14 (1.9%) were sustained, 132 (18.1%) were exonerated, 80 (11%) were not sustained, and 503 (69%) were determined to be unfounded.

The next figure displays the distribution of disposition types within the 2020 data for (1) all complaints that reached disposition and (2) complaints of racial and identity profiling that reached disposition.

Disposition Distribution of 2020 Complaints





The Report contains more details and a breakdown of complaint numbers for Wave 1 and 2 agencies as well as Wave 3 and early reporting Wave 4 agencies. Notably, Wave 1 and 2 agencies experienced an increase in the total number of profiling complaints from 2019 to 2020, and, in 2020, both Wave 1 and 2 agencies reported the highest number of racial and identity profiling complaints since agencies first started collecting this information in 2016.

Finally, the Report contains a review of Wave 3 agencies' civilian complaint forms. This review builds off a review the Board conducted in the 2021 Report of Wave 1 and 2 agencies' forms and examines agencies' compliance with best practices developed by the Board in earlier reports.

The Board also made several recommendations to the Legislature which are discussed in more detail in the Report and also referenced in the Recommendations and Best Practices 2022 RIPA Report.

Addressing Biases in Peace Officers in the Hiring Phase

The Board explores how agencies can address officers' biases at the hiring stage and, to that end, takes a close look at Assembly Bill (AB) 846, which passed the Legislature and was signed into law in September 2020. AB 846 amends California Government Code 1031 and adds Section 1031.3 to the Government Code and Section 13561 to the Penal Code. It requires peace officers to be "free" of "bias against race or ethnicity, gender, nationality religion, disability, or sexual orientation" and requires background investigators and psychological evaluators assessing a peace officer candidate for employment to evaluate whether a person meets this standard. The Board also discusses the efforts POST has made thus far to meet its

directive under AB 846 to revise regulations related to background investigators and psychological evaluators' assessments of a peace officer candidate's biases. As the Board notes, they submitted recommendations on POST's proposed regulations that they believe will enable agencies to better identify officers' biases and, from there, make hiring decisions based on investigators' and evaluators' assessments. The Board recommended that the regulations specifically require background investigators and evaluators to search for and evaluate an applicant's social media profile when evaluating the applicant for bias. The Board also recommended that the regulations require background investigators and evaluators to provide specific findings with respect to every targeted construct utilized to assess a person for biases behavior, traits, or attributes, and that the findings clearly explain the assessment for each construct, including sources and evidence used. POST responded by letter indicating that it would not be able to incorporate the Board's recommendations in time for the regulations deadline. The Board discussed POST's letter at length during its last Board meeting and expressed its concerns with POST's response. POST subsequently advised the Board that it had postponed the publishing of the regulations to engage with Board members to evaluate and fully consider the Board's recommendations. The Board is committed to directly engaging with POST to share its previous analysis and reasoning driving the recommendations with the aim of effective implementation of AB 846.

The Board credits the Legislature for passing AB 846 and its ambitious and worthy goal of transforming the culture of law enforcement agencies and improving public safety by changing the makeup of peace officer candidates. However, the Board notes in the Report the absence of reliable tests to measure a person's implicit biases and lack of consensus on whether a person can be "free" of bias as intended by the Legislature. Given this, the Board recommends the Legislature consider additional legislation that would advance the goals of AB 846 by providing funding to academic researchers, community organizations, and other interested parties to study and experiment with other approaches to identifying and addressing biases within peace office officer candidates. The Board surveys at least some of those other approaches, which include evaluations of officers' social media for explicit biases, assessments of officers' motivations or internal drive not to police in a biased manner, long-term, multi-pronged interventions to reduce officers' biases, and trainings on implicit bias. All of these approaches show promise but require further study on their effectiveness, particularly in the law enforcement context.

The POST Commission and POST Law Enforcement Training Related to Racial and Identity Profiling

The Board worked more closely on evaluating and making recommendations on POST trainings this year. POST receives millions of dollars from the Legislature and is responsible for setting the minimum guidelines and training for over 84,400 entry-level cadets, seasoned officers, and supervisors at 652 law enforcement agencies throughout the state. The Board's work on POST trainings goes beyond those trainings solely dedicated to racial and identity profiling because issues of bias and racial and identity profiling overlap with many POST trainings. For example, the Board's data shows that force is disproportionately used on Black individuals, and therefore trainings related to use of force should include components on how to mitigate implicit and

explicit bias. The relationship between the Board and POST is critical because effective law enforcement training is an essential component of the Board's mandate to eliminate racial and identity profiling in California

This year, the Board addressed the composition of POST's governing body—the POST Commission— which is set by the Legislature. More than half of the Commission is comprised of individuals with a law enforcement background. Given its significant role in policing, which is a public service to the community, the Board recommends that the Legislature increase the number of community members in the POST Commission. Doing so would be in line with several other boards that regulate professions in the state that have a higher number of public representation on their governing bodies. A change in composition could lead to improved and modernized trainings by incorporating community perspectives as well as increased public trust and confidence in those trainings.

The Board also explores two bodies, the California Legislative Analysis Office and the Little Hoover Commission, that provide external oversight or review into POST's training program. With respect to the Board's own role in making recommendations to POST, the Board evaluated POST's academy level and in-service training courses aimed at preventing racial and identity profiling and teaching understanding and respect for racial, identity, and cultural differences. To that end, POST has identified 6 courses for the Board's review and the Board has already evaluated 3 of them: (1) the De-Escalation and Mindfulness modules of the Strategic Communications for In-Service Officers and Dispatchers course, (2) Beyond Bias: Racial and Identity Profiling Update online course for In-Service Officers course, and (3) Supervisory Support: Racial and Identity Profiling Self-Assessment course.

The Board's comments varied among the courses. Some common observations included the following: the reviewed courses do not effectively teach about explicit or implicit bias or profiling; the courses do not discuss in detail the impact of biased policing on the community; the courses do not adequately address circumstances where certain policing actions, such as consent searches, are applied in ways that create disparate outcomes; the courses do not include, where applicable, guidance for supervisors on how to monitor line officers for biased policing and an emphasis on disciplining officers for biased behavior; and finally, the course workbooks and references included references to widely criticized and outdated practices, such as "Broken Windows" policing, which encourage officers to treat communities in ways that produce disparate and racist outcomes and perpetuate community distrust. The Board's complete observations and recommendations regarding these POST trainings are detailed in the Report and in the Recommendations and Best Practices 2022 RIPA Report.

Relevant Legislation Enacted in 2021

The Report includes a section on recently enacted legislation related to RIPA that may require updated trainings for officers and revisions to agencies' policies and procedures. The legislation highlighted in the Report deals with such issues as decertification, the minimum age requirements for officers, the duty to intercede, and community-based alternatives to law enforcement, among others.

INTRODUCTION

The 2020 data analyzed in this year's report was marked by two epidemics: one of illness and disease, and the second of bias and hate. COVID-19 rapidly spread and had devastatingly disproportionate effects on communities of color. While the virus was ravaging communities and livelihoods, hate crimes in California were at their highest reported level in a decade – and particularly pronounced for Asian Americans. At the same time, Californians and the country were grappling with the racial reckoning provoked by the murder of George Floyd. Though bias-based crimes and killings of people of color have been occurring for centuries, they are finally gaining well-deserved widespread national attention due to video, social media, and greater awareness.

As COVID-19 upended all aspects of American life, it also had profound impacts on policing. In California, Governor Newsom declared a statewide emergency on March 4, 2020, and issued a shelter-in-place order on March 19, 2020.[1] With localities and the state implementing stay-at-home orders, overall arrests dropped significantly. For example, in the first half of March 2020, the Los Angeles Police Department experienced a 14% drop in arrests compared to the prior year,[2] and the Los Angeles Sheriff's Department's daily arrest average dropped from 300 to 60 in early March.[3] COVID-19 also prompted law enforcement agencies to alter their operations to respond to the crisis. For example, in Los Angeles County, law enforcement agencies increased the number of officers on daily patrol, released 600 people from jails, and instituted policies to cite and release individuals whenever possible.[4]

Although the overall number of arrests dropped in the early months of the pandemic, there were still significant racial disparities in agency enforcement. In cities across the country, including Los Angeles, New York, and Baltimore, White individuals experienced a larger drop in arrests compared to Black individuals.[5]

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[1] Governor's Proclamation of a State of Emergency (Mar. 4, 2020) <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf> [as of Dec. 2, 2021]; Lin, *Gov. Gavin Newsom orders all of California to shelter in place*, Cal Matters (Mar. 19, 2020) <https://calmatters.org/health/coronavirus/2020/03/california-coronavirus-half-of-californians-gavin-newsom-donald-trump/> [as of Dec. 2, 2021].

[2] Poston, *Arrests by LAPD and Sheriff's Department drop amid coronavirus outbreak*, L.A. Times (Mar. 18, 2020) <https://www.latimes.com/california/story/2020-03-18/lapd-arrests-crime-coronavirus-03182020> [as of Dec. 2, 2021].

[3] Ibid.

[4] Winton and Tchekmedyian, *Coronavirus has authorities putting more police on streets, releasing inmates from jails*, L.A. Times (Mar. 17, 2020) <https://www.latimes.com/california/story/2020-03-17/coronavirus-has-authorities-putting-more-police-on-streets-releasing-inmates-from-jails> [as of Dec. 2, 2021]; see also, e.g., Hernandez and Kucher, *Across San Diego County, police agencies pointed to safety measures taken to protect officers and the public against COVID-19* (Mar. 17, 2020) San Diego Tribune <https://www.sandiegouniontribune.com/news/public-safety/story/2020-03-17/police-response> [as of Dec. 2, 2021] (explaining early precautions taken by departments, including trying to limit face-to-face interactions with the public and encouraging those needing help to submit reports over the internet or by phone whenever possible).

[5] Li, *Police Arrested Fewer People During Coronavirus Shutdowns – Even Fewer Were White*, The Marshall Project (June 2, 2020) <https://www.themarshallproject.org/2020/06/02/police-arrested-fewer-people-during-coronavirus-shutdowns-even-fewer-were-white> [as of Dec. 2, 2021].

From March to May 2020, officers policed Black individuals 4.5 times more than White individuals for violating COVID-19 orders.[6] Arrests comprised the vast majority of documented enforcement actions.[7] In Brooklyn, New York, 35 of the 40 people arrested for social distancing violations from March 17 to May 4, 2020 were Black.[8] In San Diego, Black residents received 24 percent of all COVID-related citations even though they only make up 6.5 percent of the city's population.[9] During the same period, news outlets reported many instances of law enforcement agencies not taking any actions against individuals protesting the COVID-19 orders, many of whom were not social distancing or wearing masks; many law enforcement agencies also refused to enforce the mask and social distancing mandates.[10] For example, officers did not issue any citations to individuals protesting against stay-at-home orders at demonstrations in Encinitas or at the Capitol in Sacramento.[11] While COVID-19 may have altered some policing operations, law enforcement agencies continued to disproportionately police Black individuals.

Other structural inequities were inextricably linked with the racial disparities in the enforcement of COVID-19 orders. While some Americans were able to telework, frontline and essential workers continued to have to leave their homes, increasing potential encounters with police.[12] People of color are overrepresented in this essential workforce. Nationally, only 16.2 percent of Latine(x) workers and 19.7 percent of Black workers had the ability to telework.[13] In California, Latine(x) and Black workers have the highest rates of employment in essential frontline jobs.[14] The pandemic thrust into the spotlight the many ways in which race, class, health, and policing are inextricably intertwined.[15]

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[6] Emmer et al., COVID19 Policing Project, Unmasked: Impacts of Pandemic Policing (Oct. 2020) p. 30 <https://communityresourcehub.org/unmasked/> [as of Dec. 2, 2021].

[7] *Id.* at p. 31.

[8] Southall, *Scrutiny of Social-Distance Policing as 35 of 40 Arrested Are Black*, N.Y. Times (May 7, 2020) <https://www.nytimes.com/2020/05/07/nyregion/nypd-social-distancing-race-coronavirus.html> [as of Dec. 2, 2021].

[9] Nucci, *Black San Diegans Received a Quarter of All Coronavirus-Related Citations*, Voice of San Diego (July 13, 2020) <https://www.voiceofsandiego.org/topics/public-safety/black-san-diegans-received-a-quarter-of-all-coronavirus-related-citations/> [as of Dec. 2, 2021].

[10] Chan, *'It's Unenforceable.' The Problem with Trying to Police COVID-19 Restrictions*, Time (Dec. 21, 2020) <https://time.com/5921863/police-enforce-covid-restrictions/> [as of Dec. 2, 2021]; Emmer et al., *supra* note 6, at p. 70 (The principal policy demand identified by the COVID19 Policing Project was the "repeal [of] criminal penalties and delegation of authority to enforce public health orders to current or former law enforcement or private security.").

[11] Romero, *Critics Say Police Target Minorities More Than White Protesters over Social Distancing*, NBC News (Apr. 26, 2020) <https://www.nbcnews.com/news/us-news/critics-say-police-target-minorities-more-white-protesters-over-social-n1192696> [as of Dec. 2, 2021].

[12] Li, *Police Arrested Fewer People During Coronavirus Shutdowns – Even Fewer Were White*, The Marshall Project (June 2, 2020) <https://www.themarshallproject.org/2020/06/02/police-arrested-fewer-people-during-coronavirus-shutdowns-even-fewer-were-white> [as of Dec. 2, 2021].

[13] Gould and Shierholz, *Not everybody can work from home: Black and Hispanic workers are much less likely to be able to telework* (Mar. 19, 2020) Economic Policy Institute, Working Economics Blog <https://www.epi.org/blog/black-and-hispanic-workers-are-much-less-likely-to-be-able-to-work-from-home/> [as of Dec. 2, 2021].

[14] Thomason and Bernhardt, *Front-line Essential Jobs in California: A Profile of Job and Worker Characteristics* (May 14, 2020) UC Berkeley Labor Center Blog <https://laborcenter.berkeley.edu/front-line-essential-jobs-in-california-a-profile-of-job-and-worker-characteristics/> [as of Dec. 2, 2021].

[15] See, e.g., Chan, *supra* note 10; Emmer et al., *supra* note 6, at p. 70 (The principal policy demand identified by the COVID19 Policing Project was the "repeal [of] criminal penalties and delegation of authority to enforce public health orders to current or former law enforcement or private security.").

The pandemic also led to a significant increase in hate crime activity due to harmful discourse surrounding the Asian American and Pacific Islander (AAPI) community and COVID-19.[16] The California Attorney General issued a report documenting an alarming 107 percent increase in anti-Asian hate crimes in 2020 and a new information bulletin to law enforcement agencies across the state regarding laws and penalties related to hate crimes.[17] The U.S. DOJ worked with local law enforcement and community leaders around the country to build capacity to address and prevent hate crimes against AAPI community members.[18] Law enforcement agencies increased patrols and police visibility in their communities in an effort to combat hate crimes,[19] though some advocates from Asian American communities expressed concerns about distrust of law enforcement in those communities and the allocation of and access to resources..[20] California's spending bill included a $156 million investment in victim-centered and community-based solutions to combatting violence against the AAPI community, whereas the federal hate crimes legislation bolstered law enforcement response to anti-Asian violence.[21]

The year 2020 also saw an intense national reckoning with police violence and systemic racism in the wake of George Floyd's murder. The demands for police reform had a profound reach across American society, crossing racial and economic lines. Protests took place in communities where the median income is as low as $20,000 and as high as $220,000.[22] Protesters were more racially diverse than ever before.[23] In the wake of the protests, the Washington Post-ABC News poll reported – for the first time in its history – that a majority of White people believe the justice system is unfair to Black people.[24] While discussions about police brutality and systemic racism are not new, the widespread protests brought them to the forefront of the public agenda.

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[16] Rogin and Nawaz, *'We have been through this before.' Why anti-Asian hate crimes are rising amid coronavirus*, PBS News Hour (June 25, 2020) <https://www.pbs.org/newshour/nation/we-have-been-through-this-before-why-anti-asian-hate-crimes-are-rising-amid-coronavirus > [as of Dec. 2, 2021] ("Consistent with existing policing practices, enforcement has focused on communities hardest hit by both the pandemic and economic crisis it has caused – Black, Indigenous, and Brown communities, migrants, essential workers, low and no-income, unhoused, young, and disabled people…").

[17] See California Department of Justice, Office of the Attorney General, Press Release, Attorney General Bonta Unveils New Guidance, Reports to Help Public and Law Enforcement Better Understand and Address Hate Crimes (June 30, 2021) <oag.ca.gov/news/press-releases/attorney-general-bonta-unveils-new-guidance-reports-help-public-and-law> [as of Dec. 2, 2021].

[18] U.S. Dept. J., Community Relations Service *CRS Responds to Hate Crimes Against Asian Americans and Pacific Islanders* (June 4, 2021) <justice.gov/crs/highlights/AAPI-hate-crimes> [as of Dec. 2, 2021].

[19] Hosea-Small et al., *Police, communities across U.S. fight back against anti-Asian hate crimes*, Reuters (Apr. 5, 2021) < https://www.reuters.com/article/us-usa-race-policing-idUSKBN2BS0RR> [as of Dec. 2, 2021].

[20] See, e.g., Yam, *Critics fear NYPD Asian hate crime task force could have unintended consequences*, NBC News (Sept. 2, 2020) <https://www.nbcnews.com/news/asian-america/critics-fear-nypd-asian-hate-crime-task-force-could-have-n1239012> [as of Dec. 2, 2021]; Holder and Poon, *Asian-American Groups Grapple With Police Response to Violence*, Bloomberg (Mar. 19, 2021) <https://www.bloomberg.com/news/features/2021-03-19/asian-american-groups-don-t-just-send-more-police> [as of Dec. 2, 2021].

[21] Wang, *'Historic investment': California allocates millions to fight anti-Asian hate*, NBC News (July 13, 2021) <https://www.nbcnews.com/news/asian-america/historic-investment-california-allocates-millions-fight-anti-asian-hat-rcna1312> [as of Dec. 2, 2021].

[22] Burch et al., *How Black Lives Matter Reached Every Corner of America*, N.Y. Times (June 13, 2020) <https://www.nytimes.com/interactive/2020/06/13/us/george-floyd-protests-cities-photos.html> [as of Dec. 2, 2021].

[23] Payne, *White America: Awakened?*, Politico (May 25, 2021) <https://www.politico.com/news/2021/05/25/white-people-racial-justice-activism-george-floyd-490545?cid=gfl> [as of Dec. 2, 2021].

[24] Ibid.

The racial justice movement sparked an intense response in California, as protesters in cities and towns across the state demanded change to the criminal justice system. Protests ranged in size, including a group of 20 protesters in Elk Grove to 50,000 demonstrators in Hollywood.[25] Protesters shut down freeways and bridges, and some cities enacted overnight curfews.[26] During a public address, Governor Newsom affirmed and recognized demonstrators' rage, and in the aftermath of the protests, he conducted a listening tour in several cities to meet with activists, business owners, and local officials.[27] Law enforcement agencies and unions across the state also released public statements condemning the actions of the officers involved in the Floyd murder,[28] recognizing law enforcement's role in marginalizing Black Americans, and committing themselves to listening to the community and reforming their practices.[29]

Some law enforcement agencies also engaged in numerous instances of violence and use of force against protesters. At demonstrations in San Jose, Oakland, Los Angeles, and Sacramento, police fired rubber bullets and tear gas at peaceful protesters and at point-blank range.[30] In Los Angeles, police assaulted four journalists reporting on the events.[31] Protesters reported that officers were swinging batons with full force, hitting people in their ribs, and shooting projectiles chaotically.[32] Demonstrators sustained head and mouth injuries, broken teeth, and bruises, with some reporting they even required surgery.[33] In the months after the summer

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[25] See, e.g., Armstrong and Macdonald, *EG community reacts to George Floyd incident*, Elk Grove Citizen (June 5, 2020) < http://www.egcitizen.com/news/eg-community-reacts-to-george-floyd-incident/article_3789b488-a750-11ea-bdfd-9b28e719609d.html> [as of Dec. 2, 2021]; Suter et al., *Over 50K protest on streets of Hollywood for George Floyd*, ABC 7 (June 8, 2020) <https://abc7.com/george-floyd-protest-hollywood-yg-blm/6236686/> [as of Dec. 2, 2021].

[26] See, e.g., Lauer, *San Jose: Hundreds protest killing of George Floyd, stop traffic*, San José spotlight (May 29, 2020) < https://sanjosespotlight.com/san-jose-hundreds-protest-killing-of-george-floyd-stop-traffic/> [as of Dec. 2, 2021]; CBSN Bay Area, *Protest Over Death of George Floyd Shuts Down Upper Deck of Bay Bridge in San Francisco* (May 29, 2020) <https://sanfrancisco.cbslocal.com/2020/05/29/protest-over-death-of-george-floyd-shuts-down-upper-deck-of-bay-bridge-in-san-francisco/> [as of Dec. 2, 2021]; Hoeven, *Much of CA under curfew as unrest continues*, Cal Matters (June 1, 2020) <https://calmatters.org/newsletters/whatmatters/2020/06/california-george-floyd-protests-riots-police/> [as of Dec. 2, 2021].

[27] See, e.g., Wiley, *"Your rage is real," Gavin Newsom tells California protestors*, Sac. Bee (June 1, 2020) <https://www.sacbee.com/news/politics-government/capitol-alert/article243173056.html> [as of Dec. 2, 2021]; Luna, *Newsom's listening tour stops in Stockton amid protests and calls for action*, L.A. Times (June 4, 2020) <https://www.latimes.com/california/story/2020-06-04/gavin-newsom-listening-tour-stockton-amid-calls-for-action-after-protests> [as of Dec. 2, 2021].

[28] Rodriguez, *Bay Area law enforcement unions release joint statement regarding death of George Floyd*, KRON 4 (May 28, 2020) <https://www.kron4.com/news/bay-area/bay-area-law-enforcement-unions-release-joint-statement-regarding-death-of-george-floyd/> [as of Dec. 2, 2021].

[29] See, e.g., Luhnow, Santa Barbara Police Dept., *Message from Santa Barbara Police Chief Lori Luhnow Regarding the Death of George Floyd* (May 28, 2020) <https://www.santabarbaraca.gov/civicax/filebank/blobdload.aspx?BlobID=228037> [as of Dec. 2, 2021]; Los Angeles Police Department, *Demands for Law Enforcement Reform* (June 3, 2020) <https://www.lapdonline.org/newsroom/demands-for-law-enforcement-reform/> [as of Dec. 2, 2021].

[30] See, e.g., Brekke et al., *Bay Area's George Floyd Protests Ebb After Day and Night of Confrontations with Police*, KQED (May 30, 2020) <https://www.kqed.org/news/11821834/bay-area-protests-over-death-of-george-floyd> [as of Dec. 2, 2021]; Stanton et al., *Peaceful Sacramento protests drowned out by looting, vandalism that continued through night*, Sac. Bee (May 31, 2020) <https://www.sacbee.com/news/local/article243140876.html > [as of Dec. 2, 2021]; Rector et al., *LAPD's use of batons, other weapons appears to violate rules, significantly injuring protesters, Times review finds*, L.A. Times (June 11, 2020) <https://www.latimes.com/california/story/2020-06-11/lapd-violated-protocols-for-batons-and-less-lethal-bullets-injuring-many-protesters> [as of Dec. 2, 2021].

[31] U.S. Press Freedom Tracker, *Multiple Journalists Covering Protests in Los Angeles Assaulted*, Radio Free (June 2, 2020) <https://www.radiofree.org/2020/06/02/multiple-journalists-covering-protests-in-los-angeles-assaulted/> [as of Dec. 2, 2021].

[32] See Rector et al., *supra* note 30.

[33] *Ibid.*; see also Bogel-Burroughs et al, *L.A.P.D. Severely Mishandled George Floyd Protests, Report Finds*, N.Y. Times (Mar. 11, 2021) <https://www.nytimes.com/2021/03/11/us/lapd-george-floyd-protests.html> [as of Dec. 2, 2021].

protests, officials across the country and in California commissioned and released after-action reports detailing missteps in law enforcement agencies' response to the demonstrations. Report after report documented officers' lack of training and proper protocols on crowd control tactics, use of force, and de-escalation, lack of planning and command structure, and inadequate policies on community engagement and communications, as well as violations of law enforcement policies.[34]

Officers also arrested thousands of protesters for violating curfews implemented by localities. With 2,500 arrests, Los Angeles accounted for a quarter of national "failure to disperse" or curfew arrests during the protests,[35] though the LA District Attorney and City Attorney later dropped all of the charges.[36] Racial disparities in protest-related arrests were also significant. In Chicago, for example, even though Black individuals did not make up the majority of protesters, 70 percent of those arrested were Black, while only 10 percent were White.[37]

The protests also set off a wave of reforms and legislation across California, both at the state and local level. Sacramento, San Diego, and San Jose approved new measures for the investigation of police use of force and misconduct.[38] The Los Angeles Unified School District reduced police presence in schools and the Oakland Unified School District is in the process of fully eliminating its police department.[39] In July 2020, the Los Angeles City Council voted to cut the Los Angeles Police Department's operating budget by $150 million,[40] though many police budgets have been restored or even raised after initial cuts made in response to the nationwide protests.[41] In April 2021, Los Angeles increased the Police Department budget by $50 million,[42]

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[34] See, e.g., Hillard Heintze on behalf of the City of La Mesa, La Mesa Police Department: An Independent After-Action Report for the Civil Unrest on May 30, 2020 (Jan. 26, 2021) Key Findings, p. 20; Salonga, *In George Floyd protest report, San Jose police concede training gaps but stand by response*, The Mercury News (Sept. 14, 2020) <https://www.mercurynews.com/2020/09/14/in-george-floyd-protest-report-san-jose-police-concede-training-gaps-but-stand-by-response/> [as of Dec. 2, 2021]; Chaleff, An Independent Examination Of The Los Angeles Police Department 2020 Protest Response (Mar. 10, 2021) p. 57 <https://clkrep.lacity.org/onlinedocs/2020/20-0729_rpt_CLA_03-11-21.pdf> [as of Dec. 2, 2021].

[35] Snow, *AP tally: Arrests at widespread US protests hit 10,000*, AP News (June 4, 2020) <https://apnews.com/article/american-protests-us-news-arrests-minnesota-burglary-bb2404f9b13c8b53b94c73f818f6a0b7> [as of Dec. 2, 2021].

[36] Romo, *LA Protesters Arrested for Violating Curfew Won't Be Charged*, Nat. Pub. Radio (June 9, 2020) <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/09/872690122/l-a-protesters-arrested-for-violating-curfew-wont-be-charged> [as of Dec. 2, 2021].

[37] Misra, *Most of the people arrested at the protests were Black*, Chicago Reader (June 30, 2020) <https://www.chicagoreader.com/chicago/protest-arrests-racial-disparity/Content?oid=81018291> [as of Dec. 2, 2021].

[38] Lo, *Assessing the State of Police Reform*, Center for Am. Progress (July 16, 2020) <https://www.americanprogress.org/issues/criminal-justice/news/2020/07/16/487721/assessing-state-police-reform/> [as of Dec. 2, 2021].

[39] Burke, *Los Angeles Unified cuts school police budget by $25 million following weeks of protests*, EdSource (July 1, 2020) <https://edsource.org/2020/los-angeles-unified-cuts-school-police-budget-by-25-million-following-weeks-of-protests/635173> [as of Dec. 2, 2021]; Harrington, *Oakland school board unanimously agrees to eliminate its police force*, EdSource (June 25, 2020) <https://edsource.org/2020/oakland-school-board-unanimously-agrees-to-eliminate-its-police-force/634544> [as of Dec. 2, 2021].

[40] Zahniser et al., *Los Angeles cuts LAPD spending, taking police staffing to its lowest level in 12 years*, L.A. Times (July 1, 2020) <https://www.latimes.com/california/story/2020-07-01/lapd-budget-cuts-protesters-police-brutality> [as of Dec. 2, 2021].

[41] Goodman, *A Year After 'Defund,' Police Departments Get Their Money Back*, N.Y. Times (Oct. 10, 2021) <https://www.nytimes.com/2021/10/10/us/dallas-police-defund.html> [as of Dec. 2, 2021].

[42] Smith and Zahniser, *Garcetti's proposed city budget increases spending for LAPD by 3%*, L.A. Times (Apr. 20, 2021) <https://www.latimes.com/california/story/2021-04-20/garcetti-proposes-slight-increase-in-lapd-spending> [as of Dec. 2,

and in November 2021, the Los Angeles Police Commission recommended a $213 million budget increase for the Police Department. The mayor will release a proposed budget in April 2022.[43] In San Francisco and Berkeley, law enforcement agencies are redirecting certain duties, including traffic citations and non-criminal issues, to unarmed personnel.[44] Similar statewide reforms have taken effect. In September 2020, Governor Newsom signed a variety of bills into law aimed at reforming the criminal justice system. Among other reforms, the new legislation ends the use of carotid restraints, requires the Attorney General's Office to investigate fatal officer shootings of unarmed individuals, and emphasizes rehabilitation and education in the juvenile justice system.[45]

Even with these new reforms and the public's heightened consciousness about policing issues, there is more work to be done. Police killings of community members occurred at the same rate during the first four months of 2021 as they did in 2020.[46] The organization Mapping Police Violence collected data on 1,100 police killings in 2020 and as of November 2, 2021, collected data on 978 police killings during the current year.[47] As of November 2, 2021, there were only twelve days during the year when there were no police killings of civilians.[48] On April 19, 2021, 26-year-old Mario Arenales Gonzalez died after City of Alameda Police Department officers pinned him to the ground on his stomach for five minutes and he became unresponsive.[49] Officers were responding to calls that Gonzalez was in a park breaking store security tags off of alcohol bottles and talking to himself.[50] Gonzalez's death was recently ruled a homicide,[51] again highlighting the necessity and urgency of continued action to improve training and limit police use of force.

2021]; Rao, *Between defund and defend, L.A. tries new tactics , bigger budget for cops*, Frontline (Aug. 28, 2021) <https://www.pbs.org/wgbh/frontline/article/between-defund-and-defend-l-a-tries-new-tactics-bigger-budget-for-cops/> [as of Dec. 2, 2021].

[43] Smith, *Police Commission backs a 12% increase in LAPD budget for next year*, L.A. Times (Nov. 23, 2021) <https://www.latimes.com/california/story/2021-11-23/police-commission-backs-increase-in-lapd-budget-for-next-year> [as of Dec. 2, 2021].

[44] Westervelt, *Removing Cops From Behavioral Crisis Calls: 'We Need To Change The Model'*, Nat. Pub. Radio (Oct. 19, 2020) <https://www.npr.org/2020/10/19/924146486/removing-cops-from-behavioral-crisis-calls-we-need-to-change-the-model > [as of Dec. 2, 2021]; Kawamoto, *Berkeley cops to stop issuing traffic tickets under sweeping police changes*, East Bay Times (July 16, 2020) <https://www.eastbaytimes.com/2020/07/15/berkeley-city-council-oks-sweeping-changes-to-transform-police/> [as of Dec. 2, 2021].

[45] Off. of Governor Gavin Newsom, Governor Newsom Signs Critical Criminal Justice, Juvenile Justice and Policing Reform Package, Including Legislation Banning the Carotid Restraint, State of Cal. (Sept. 30, 2020) <https://www.gov.ca.gov/2020/09/30/governor-newsom-signs-critical-criminal-justice-juvenile-justice-and-policing-reform-package-including-legislation-banning-the-carotid-restraint/> [as of Dec. 2, 2021].

[46] McCaskill, *Police are still killing people at the same rate as before*, Politico (May 25, 2021) <https://www.politico.com/news/2021/05/25/police-brutality-statistics-shootings-george-floyd-489803> [as of Dec. 2, 2021].

[47] Mapping Police Violence, *Police Violence Map* (Nov. 2, 2021) <https://mappingpoliceviolence.org/> [as of Dec. 2, 2021]; Mapping Police Violence, *2020 Police Violence Report* (Nov. 2, 2021) <https://policeviolencereport.org/> [as of Dec. 2, 2021].

[48] Mapping Police Violence, *Police Violence Map*, *supra* note 47.

[49] Wright, *California Man Dies After Officers Pin Him to Ground for 5 Minutes* (Apr. 27, 2021) New York Times <https://www.nytimes.com/2021/04/27/us/mario-gonzalez-alameda-police.html> [as of Dec. 2, 2021].

[50] Ibid.

[51] Bay City News, *Mario Gonzalez's In-Custody Death Ruled a Homicide* (Dec. 10, 2021) <https://www.nbcbayarea.com/news/local/mario-gonzalezs-in-custody-death-ruled-a-homicide/2752974/> [as of Dec. 14, 2021].

The Racial and Identity Profiling Advisory (RIPA) Board recognizes the urgent need for real systemic change in our collective approaches to policing. In this year's report, the Board is exploring new ways to use the stop data collected by law enforcement agencies throughout the state to identify and evaluate disparities and examine evidence-based best practices to reduce and eventually eradicate the disparities. The Board's statutory mandate to eliminate racial and identity profiling and improve law enforcement and community relations requires a strong commitment from everyone involved to not only recognize the historical and present harm caused by unlawful and unequal treatment of individuals of color, but also to work together as a community to overcome these inequalities.

ANALYSIS OF 2020 STOP DATA

A. Introduction

In the third year of RIPA stop data reporting, 18 law enforcement agencies in California collected data on 2,937,662 pedestrian and vehicle stops conducted from January 1 to December 31, 2020.[52] The data were submitted by Wave 1 and Wave 2[53] agencies, as well as a few agencies from later waves that began collecting and submitting stop data early.[54] Although 3 more agencies reported stop data in 2020, there were fewer stops reported than in 2019. The COVID-19 pandemic and its effects on many aspects of people's lives – as well as the practices of law enforcement agencies across the state – likely contributed to this difference in the number of stop data records between previous years and 2020.

The numbers of stops reported decreased from 3,995,686 stops reported in 2019 to 2,937,662 stops reported in 2020, a 26.5 percent reduction. All agencies that collected stop data in 2019 and 2020 saw a reduction in stops across years. However, the size of the reduction varied by agency, ranging from a 71.6 percent (37,111 fewer stops) reduction from Fresno Police Department to a 3.5 percent (2,040 records) reduction from Riverside County Sheriff's Department.

Table 1. Stops by Agency (2019 and 2020)

Agency	# of Stops 2019	# of Stops 2020	Difference	% point difference from 2019
Bakersfield PD	-	12,170	-	-
CHP	2,175,618	1,696,390	-479,228	-22.0%
Davis PD	-	2,644	-	-
Fresno PD	51,849	14,738	-37,111	-71.6%
Los Angeles Unified School District	-	1,150	-	-
Long Beach PD	40,524	17,210	-23,314	-57.5%
Los Angeles SD	196,850	104,275	-92,575	-47.0%
Los Angeles PD	712,807	521,426	-191,381	-26.8%
Oakland PD	24,395	21,076	-3,319	-13.6%
Orange County SD	50,396	39,855	-10,541	-20.9%
Riverside County SD	58,379	56,339	-2,040	-3.5%

[52] Gov. Code, § 12525.5(g)(2) defines a "stop" as any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person's body or property in the person's possession or control.

[53] Gov. Code, § 12525.5(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 and Wave 2 agencies employ 667 or more but less than 1,000 peace officers.

[54] The Bakersfield Police Department, Los Angeles Unified School District Police Department, and Davis Police Department were required to start their data collection on January 1, 2021 but chose to start their data collection on January 1, 2020.

Agency	# of Stops 2019	# of Stops 2020	Difference	% point difference from 2019
Sacramento County SD	60,944	43,881	-17,063	-28.0%
Sacramento PD	68,012	51,446	-16,566	-24.4%
San Bernardino County SD	157,715	109,024	-48,691	-30.9%
San Diego County SD	65,029	38,824	-26,205	-40.3%
San Diego PD	187,231	150,611	-36,620	-19.6%
San Francisco PD	101,614	38,615	-62,999	-62.0%
San Jose PD	44,306	17,988	-26,318	-59.4%

The data collected include demographic information of stopped individuals, as perceived by the officer, as well as a range of 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 may perceive them. This distinction is critical 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 the Board with analyzing stop data based on how officers perceive individuals for the purpose of identifying and eliminating racial and identity profiling when it occurs. This is the context under which RIPA data should be analyzed and interpreted.

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

A. The first section provides a breakdown of each identity group followed by their rates of experiencing stop outcomes.

B. The second section attempts to create 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 of the stop. These outcome-based tests explore search outcomes, the impact of daylight (i.e., when it might be easier to see race or other identity characteristics) on who is stopped, and the rates of force used by law enforcement.

B. Stop Data Demographics

1. Identity Demographic 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. Thus, all demographic data in this report reflects the perceptions of officers and may differ from how some individuals self-identify.

Note Regarding Gender and LGBT Data

During the process of performing analyses, the Department discovered a systematic error within the data submitted by the California Highway Patrol (CHP) for stops where officers perceived the person stopped to be transgender. Although the CHP properly collected data for transgender individuals, it was later determined the data was inadvertently not being transmitted properly to DOJ through the automated data transmission process. RIPA regulations specify, "If an officer selects 'Transgender man/boy' or 'Transgender woman/girl' in response to the data element for 'Perceived Gender of Person Stopped,' [they] must also select 'Yes' in response to [the 'Person Stopped Perceived to be LGBT'] data element." However, the data transmitted to the Department for over 1,000 cases from the CHP did not adhere to this requirement, which prompted the Stop Data Collection System to return these records to the agency for correction. The records were not corrected prior to the end of the data submission period. This error prevented nearly all individuals perceived to be transgender from being included in the successfully submitted data from the CHP, but did not affect records for individuals perceived to be cisgender. If left unaddressed, the large proportion of data submitted by the CHP that only consists of individuals perceived to be cisgender or gender nonconforming could serve to skew distributions that display outcomes broken down by gender.

In an effort to reduce the effects of this error, data submitted by the CHP has been excluded from analyses that focus on the perceived gender of individuals stopped. Similarly, because this error also affected a sizeable portion of records for individuals perceived to be LGBT by CHP officers, analyses which focus on the LGBT data element also exclude CHP data in this year's report. Since submitting its 2020 data, the CHP has fixed the underlying issue that was causing this error, meaning that data collected in 2021 and moving forward will not contain this error.

Race/Ethnicity.[55] Officers perceived the highest proportion of individuals they stopped to be Hispanic (40.4%; 1,187,728), followed by White (31.7%; 929,776), Black (16.5%; 484,364), Asian (5.2%; 151,813), Middle Eastern/South Asian (4.7%; 136,806), Multiracial (0.9%; 25,777), Pacific Islander (0.5%; 15,292), and Native American (0.2%; 6,105).[56]

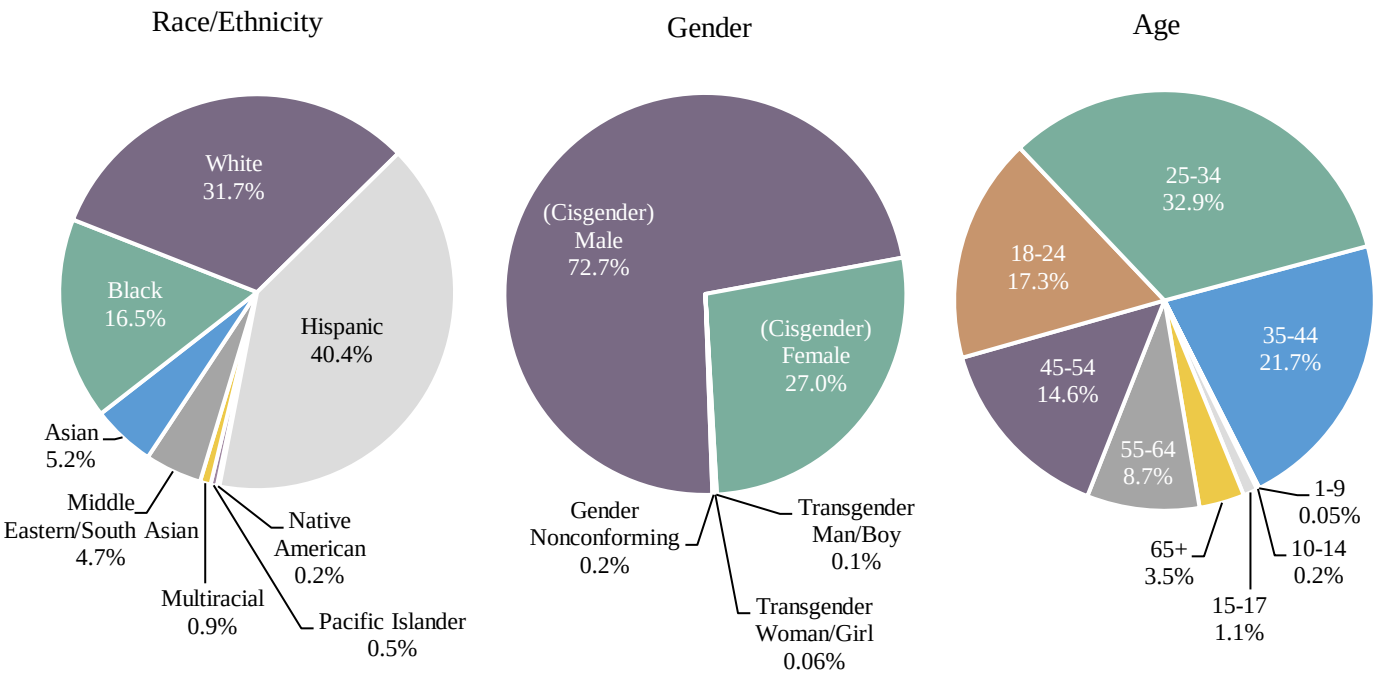
Gender.[57] RIPA regulations contain five gender categories, including male, female, transgender man/boy, transgender woman/girl, and gender nonconforming.[58] Overall, the majority of individuals were perceived as (cisgender) male (72.7%; 2,134,460) or (cisgender) female (27.0%;

[55] Due to a technical error, one record is missing information for the perceived race/ethnicity of the stopped individual.
[56] 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 (21.9%), Black (31.6%), Hispanic (71.5%), Middle Eastern/South Asian (27.8%), Native American (15.4%), Pacific Islander (17.0%), and White (65.8%).
[57] Due to a technical error, one record is missing information for the perceived gender of the stopped individual.
[58] These categories match those found in the regulations informing RIPA stop data collection. Currently, a proposed change to the RIPA regulations would change "male" and "female" to "cisgender man/boy" and "cisgender woman/girl." However, these proposed changes have not yet taken effect. Therefore, for the purposes of this report, "male" refers to cisgender males and "female" refers to cisgender females.

792, 343),[59] with all other groups collectively constituting less than one percent of stops.[60] The exclusion of CHP stop data records does not significantly change the overall gender distribution. Similarly, after excluding CHP data, the vast majority of stopped individuals were perceived as either (cisgender) male (72.6%; 901,150) or (cisgender) female (26.9%; 334,056), with all other groups collectively constituting less than 1 percent of the data.[61]

Age. Individuals perceived to be between the ages of 25 and 34 accounted for the largest proportion of individuals stopped within any one age group (32.9%; 966,823). Individuals perceived to be below the age of 10 accounted for the smallest proportion (<0.1%; 1,381) of individuals stopped.[62]

Figure 1. Race/Ethnicity, Gender and Age Distributions of 2020 RIPA Stop Data



[59] Cisgender is an adjective used to describe a person whose gender identity conforms with the sex they were assigned at birth.
[60] The other groups were transgender man/boy (0.1%; 3,175), transgender woman/girl (0.06%; 1,747), and gender non-conforming (0.2%; 5,936).
[61] The other groups were transgender man/boy (0.3%; 3,175), transgender woman/girl (0.1%; 1,747), and gender non-conforming (0.1%; 1,143).
[62] 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 Section 999.227 (b) of the RIPA regulations (i.e. recording data for young passengers not suspected of committing a violation whom also did not have reportable actions taken towards them).

LGBT. Overall, stops of individuals perceived to be LGBT comprised less than one percent of the data (0.8%; 23,908).[63] Stops of persons perceived to be LGBT constituted a slightly larger proportion of stops, when examining only stop data that was submitted by agencies other than the CHP (1.4%; 16,932).[64] For many individuals, LGBT identity is not a consistently visible characteristic; therefore, the ability of officers to perceive 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.[65] An individual's gender expression – how the person acts, dresses, behaves, 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.[66]

Limited English Fluency. Officers perceived approximately 3.9 percent (115,459) of individuals stopped to have limited or no English fluency.

Disability. Officers perceived 1.2 percent (35,708) of the individuals they stopped to have one or more disabilities.[67] Of those perceived to have a disability, the most common disability reported by officers was mental health disability (70.3%; 25,119).[68]

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[63] Of these 23,908 individuals, officers perceived 4,922 (20.6%) to be transgender. Officers that report the perceived gender of an individual to be transgender must also indicate they perceived the person to be LGBT. As explained in the note on page 29, CHP data contained an error that caused incorrect data for this field to be transmitted to the Department, which is why further analyses of the outcomes for LGBT individuals exclude records from CHP.

[64] Of these 16,932 individuals, officers perceived 4,922 (29.1%) to be transgender. Officers that report the perceived gender of an individual to be transgender must also indicate they perceived the person to be LGBT. Records submitted by CHP are excluded from this analysis due to errors outlined in the note on page 29.

[65] RIPA seeks to collect perceived data, and the implementing regulations prohibit an office from asking individuals about their sexual orientation (in addition to gender, age, ethnicity) in order to collect RIPA data. 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.

[66] 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 Dec. 2, 2021]; 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 Dec. 2, 2021].

[67] 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 (0.9%), other disability (0.1%), speech impaired (0.04%), and multiple disabilities (0.08%).

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

2. Calls for Service

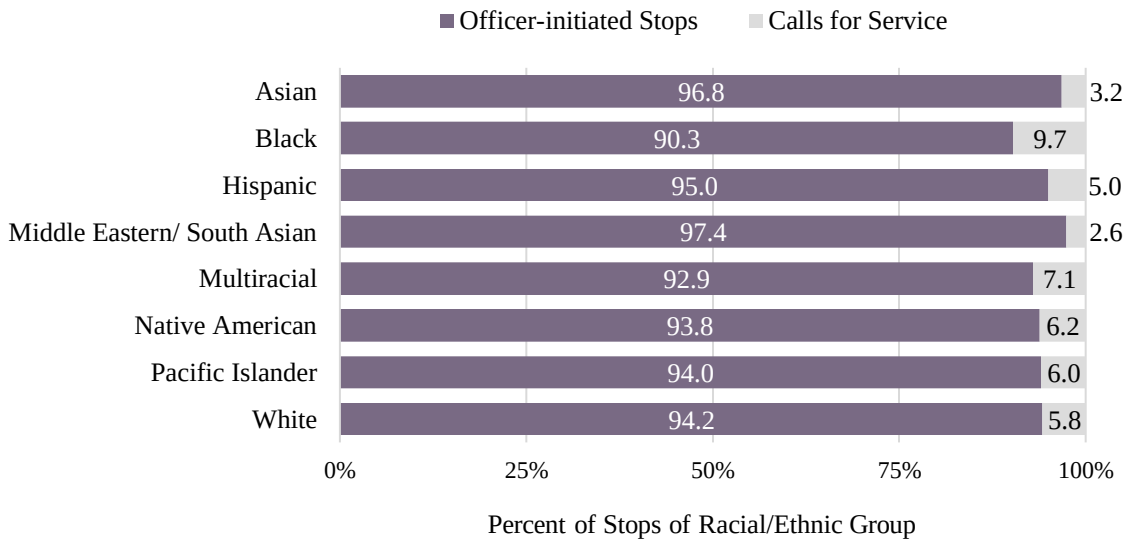
Officers must indicate whether they made each stop in response to a call for service.[69] Officers reported that 5.9 percent of stops were made in response to calls for service.[70]

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

Race/Ethnicity. The share of stops that were in response to calls for service was highest for Black individuals (9.7%) and lowest for Middle Eastern/South Asian individuals (2.6%).

Figure 2. Call for Service Status by Race/Ethnicity



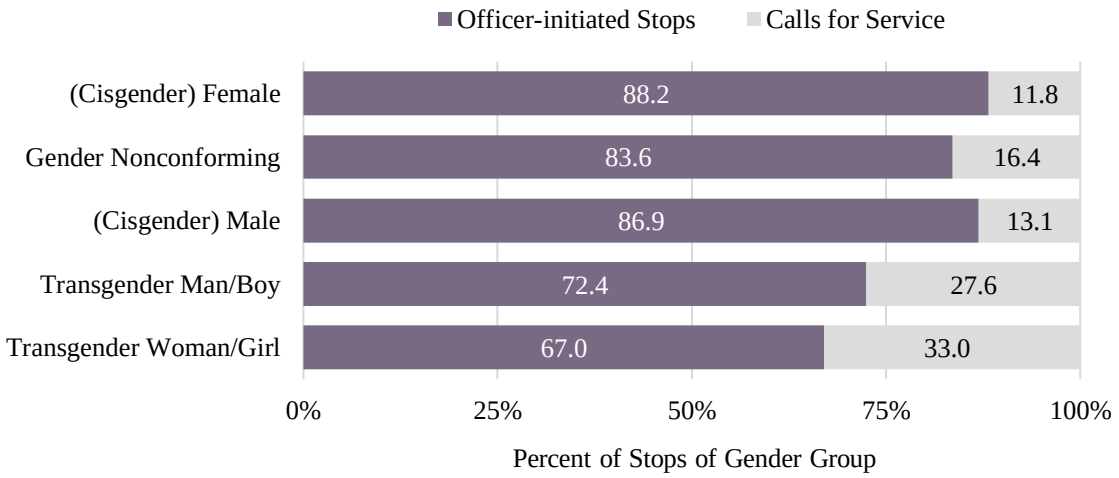
Gender. Stopped individuals perceived as transgender women/girls had the highest proportion of their stops initiated in response to a call for service (33.0%) while stopped individuals perceived as cisgender female had the lowest proportion (11.8%).[71]

[69] An interaction that occurs when an officer responds to a call for service is only reported if it meets the definition of a "stop" as set forth in section 999.224, subdivision (a)(14) of the RIPA regulations. A call for service is not a reason for stop value under the RIPA regulations. Rather, officers indicate whether or not a stop was made in response to a call for service in addition to providing a primary reason for stop. 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.

[70] 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 officers indicated that the primary reason for the stop was a traffic violation. Please see Appendix Table A.5 for all statistics.

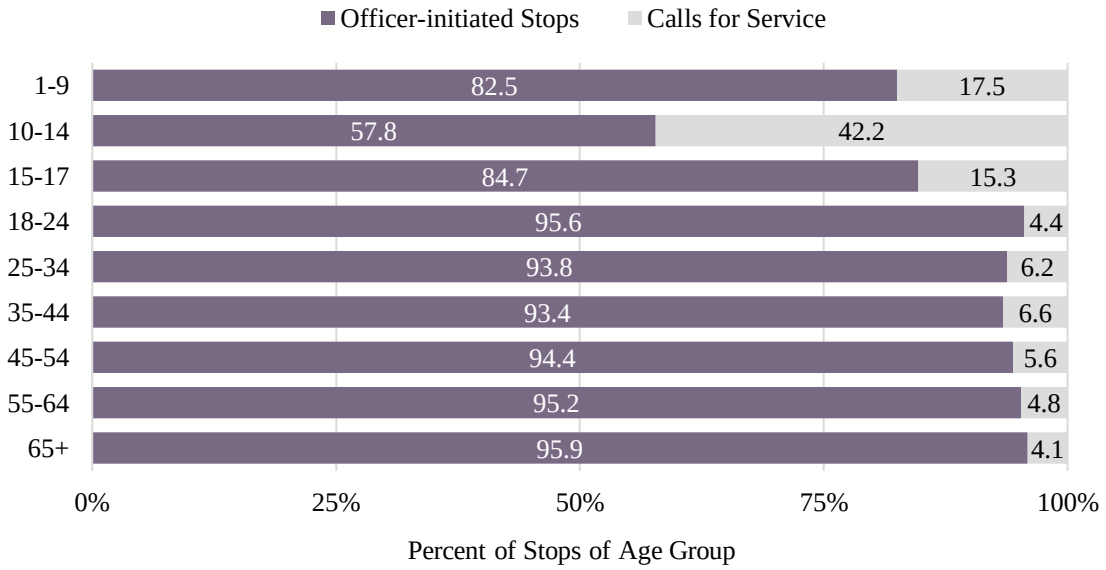
[71] Records submitted by CHP are excluded from this analysis due to errors outlined in the note on page 29.

Figure 3. Call for Service Status by Gender



Age. Individuals stopped whom officers perceived to be between the ages of 10 and 14 had the highest proportion of their stops initiated in response to a call for service (42.2%) whereas individuals aged 65 or higher had the lowest proportion (4.1%).

Figure 4. Call for Service Status by Age Group



LGBT. Individuals whom officers perceived as LGBT had a higher proportion (21.0%) of their stops reported as being in response to a call for service than individuals whom the officers did not perceive to be LGBT (12.7%).[72]

[72] Records submitted by CHP are excluded in this analysis due to errors outlined in the note on page 29.

Limited English Fluency. Stopped individuals whom officers perceived to have limited or no English fluency had a higher rate of being stopped in response to a call for service (8.5%) compared to English fluent individuals (5.7%).

Disability. Stopped individuals perceived as having a disability had a dramatically higher rate of being stopped in response to a call for service (57.5%) compared to those whom officers did not perceive to have a disability (5.2%).

3. Primary Reason for Stop

Stop data regulations require officers to report the primary reason why they initiate each stop. In instances where multiple reasons may apply, officers select only the primary reason that informed their decision to initiate a stop. Officers collect data for both pedestrian and vehicle stops.

Officers may select from eight different primary reasons for stop. The most common reason provided for a stop was a traffic violation (86.1%), followed by reasonable suspicion that the person was engaged in criminal activity (11.5%).[73] 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. 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.[74] 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.[75]

Race/Ethnicity. Middle Eastern/South Asian individuals had the highest proportion of their stops reported as traffic violations (95.4%) and the lowest proportion of their stops reported as reasonable suspicion (4.1%) and "Other" (0.6%). Relative to other groups, Black individuals had

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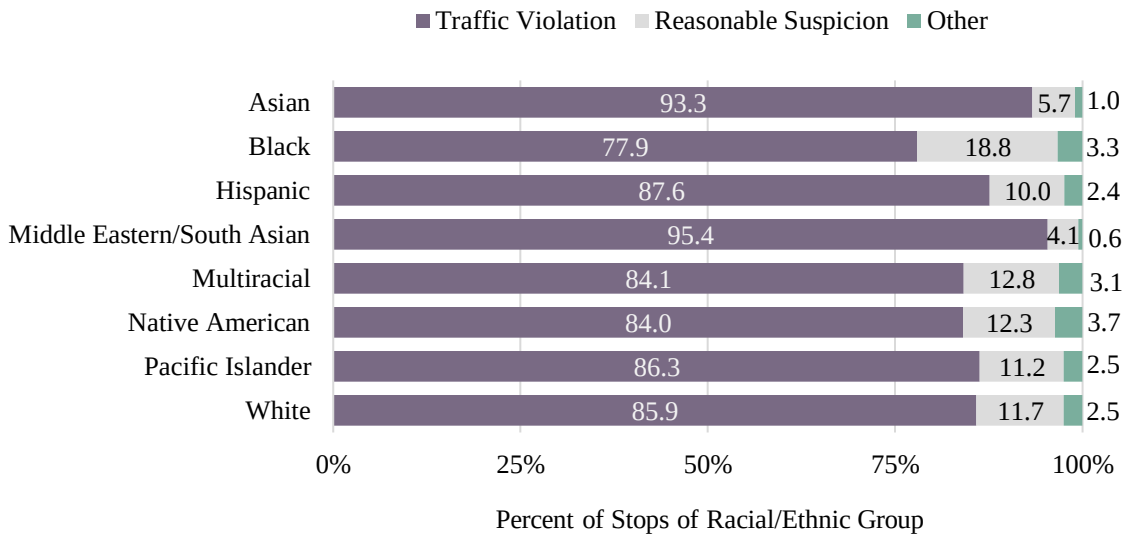
[73] Although officers may have reasonable suspicion when initiating stops for traffic violations, the regulations state that officers should not select the "reasonable suspicion" value when the reason for stop is a traffic violation. Instead, officers should select the "traffic violation" value as the primary reason for stop.

[74] Officers are currently selecting "Reasonable suspicion" as the reason for stop when an officer suspects criminal activity. "Reasonable suspicion" is also selected as the reason for stop where officers initiate contact for community caretaking purposes without suspecting an individual of criminal activity 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 then select "Community Caretaking" as the offense code that serves as the basis for their reasonable suspicion. This designation in the regulations was not intended to suggest that houselessness and people with mental health disabilities are engaging in criminal activity, but rather to fill a gap. Proposed amendments to the RIPA regulations seek to change how officers will be required to capture data on these stops in the future by creating a new category of information officers are required to report. Specifically, the proposed amendment would require officers to report if the stop arose during the course of performing a welfare check or an officer's community caretaking function. Additionally, the proposed change would also require officers to provided additional details about how a community caretaking contact also met the definition of a stop that must be reported. However, these proposed changes to the regulations have not yet gone into effect. See Calif. Dep. of J., Proposed Text of Modified Regulations (July 1, 2021) <https://oag.ca.gov/system/files/media/redlined-text-ripa-regs-oal.pdf> [as of Dec. 2, 2021].

[75] Other reasons for stop that the officer could report included consensual encounter resulting in a search (0.8%), mandatory supervision (0.7%), warrants/wanted person (0.6%), 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."

the lowest proportion of their stops reported as traffic violations (77.9%) and the highest proportion of their stops reported as reasonable suspicion (18.8%). Native American individuals had the highest proportion of any racial/ethnic group of their stops reported as "Other" (3.7%).

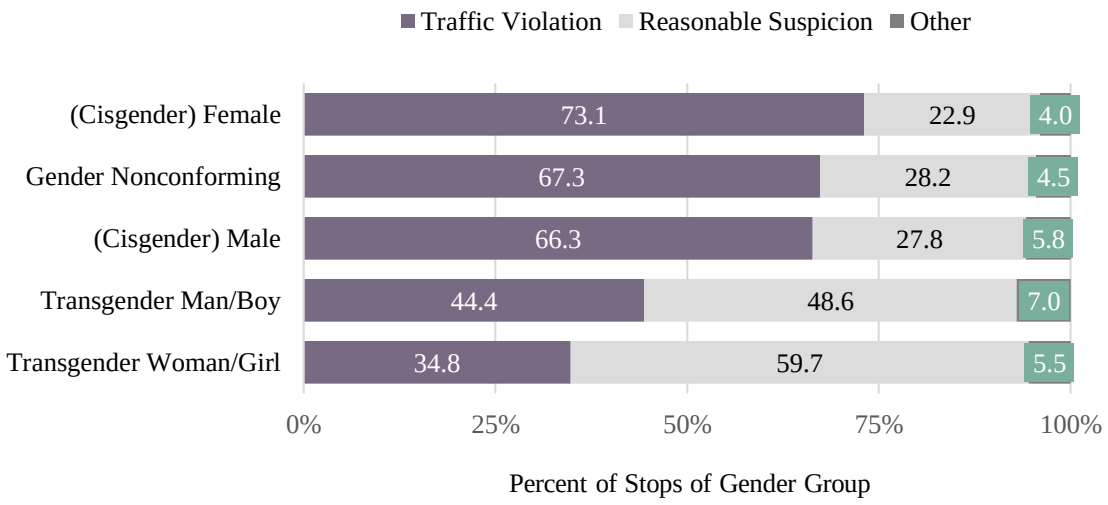
Figure 5. Primary Reason for Stop by Race/Ethnicity



***Gender*.** Of all gender groups, cisgender female individuals had the highest proportion of their stops reported as traffic violations (73.1%) and the lowest proportion of their stops reported as reasonable suspicion (22.9%) and "Other" (4.0%). Transgender women/girls had the lowest proportion of their stops reported as traffic violations (34.8%) and the highest proportion of their stops reported as reasonable suspicion (59.7%) while transgender men/boys had the highest proportion of their stops reported in the categories grouped together as "Other" (7.0%).[76]

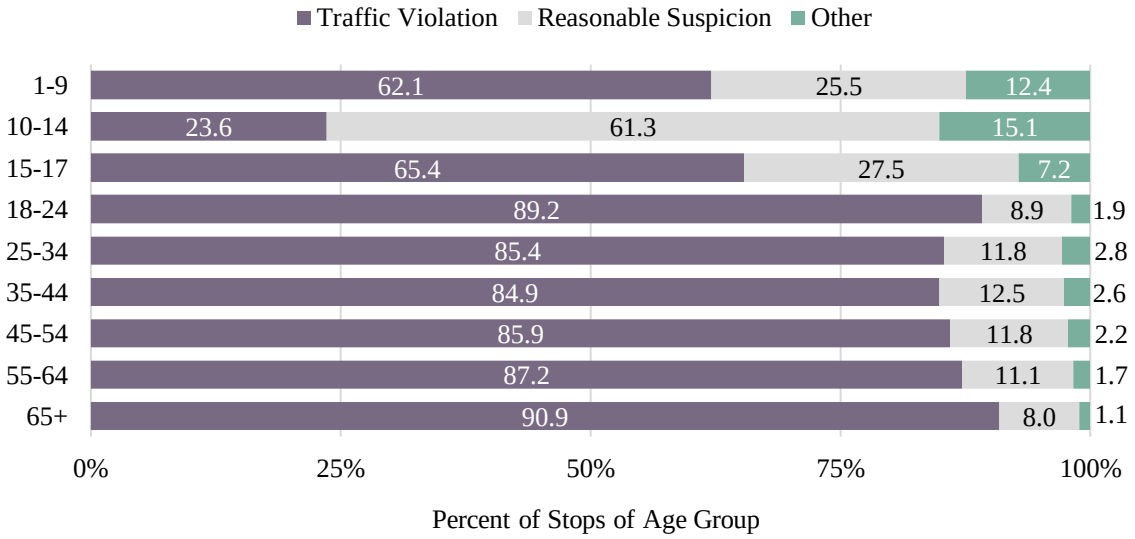
[76] Records submitted by CHP are excluded in this analysis due to errors outlined in the note on page 29.

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 (90.9%) and the lowest proportion of their stops reported as reasonable suspicion (8%) and in the categories grouped together as "Other" (1.1%). Individuals perceived to be between the ages of 10 and 14 had the lowest proportion of their stops reported as traffic violations (23.6%) and the highest proportion of their stops reported as reasonable suspicion (61.3%) and in the categories grouped together as "Other" (15.1%).[77]

Figure 7. Primary Reason for Stop by Age Group



[77] The data shows an unexpected number of reported traffic violations for people too young to hold a provisional permit or driver's license. This could partially be explained 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.

***LGBT*.** Individuals perceived to be LGBT had a lower proportion of their stops reported as traffic violations (47.6%) and a higher proportion of their stops reported as reasonable suspicion and in the categories grouped together as "Other" (46.0%; 6.4%) than individuals who officers did not perceive to be LGBT (68.3% traffic violations, 26.3% reasonable suspicion, and 5.4% other reasons).[78]

***Limited English Fluency*.** Individuals perceived to have limited English fluency had a lower proportion of their stops reported as traffic violations (84.3%) and in the categories grouped together as "Other" (1.8%) compared to individuals whom officers perceived to be fluent in English (86.1% traffic violations and 2.5% 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 (13.9% and 11.4%, respectively).

***Disability*.** Stopped individuals perceived as having a disability had a lower proportion of their stops reported as traffic violations (15.3%) and a higher proportion of their stops reported as reasonable suspicion (75.1%) and in the categories grouped together as "Other" (9.7%) than those not perceived to have a disability (86.9% traffic violations, 10.7% reasonable suspicion and 2.4% other reasons).[79]

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 and officers must report all actions taken towards an individual during a stop. Officers reported not taking reportable actions during 80.9% of stops and taking actions during 19.1% of stops. Overall, officers averaged less than one (0.5) reportable action per individual they stopped. Looking only at stops in which officers took one or more actions, the average number of actions taken by officers was 2.7. The average number of actions taken during stops for each identity group can be found in the Appendix.[80]

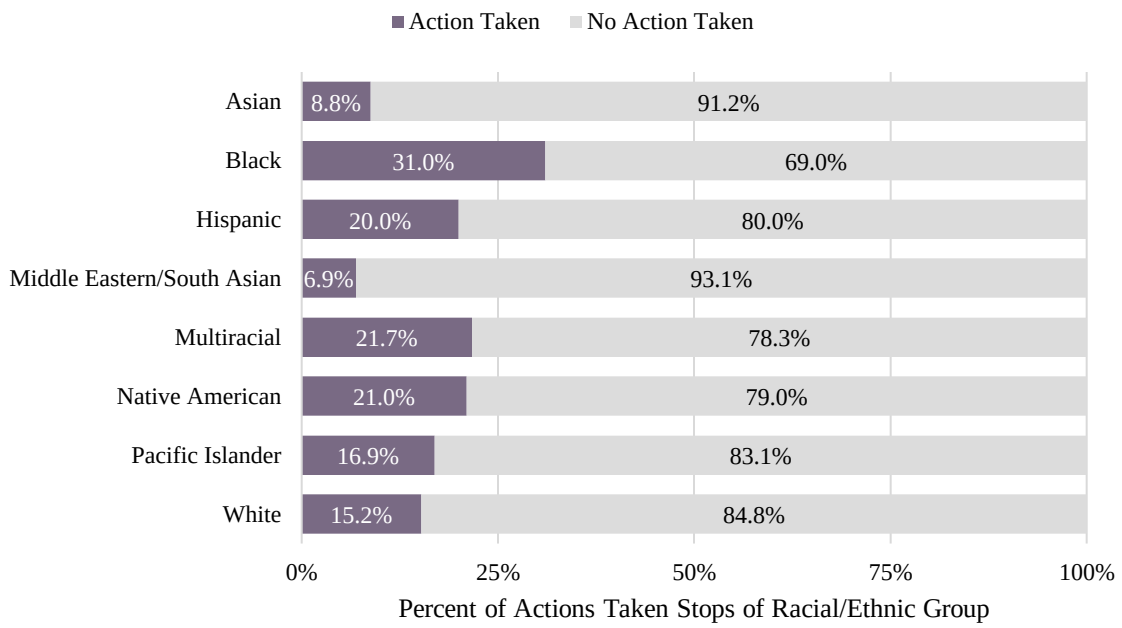
Across all stops, the most common actions taken by officers was a search of property or person (11.9%), followed by curbside or patrol car detention (10.4%), handcuffing (9.5%),[81] and

[78] Records submitted by CHP are excluded in this analysis due to errors outlined in the note on page 29.
[79] Part of the reason why individuals perceived to have a disability have a much higher proportion of their stops reported as reasonable suspicion stops than stopped individuals not perceived to have a disability is due to how community caretaking contacts are currently captured within the RIPA data. As mentioned previously, stops for "community caretaking" are captured in the reasonable suspicion data element.
[80] Please see Appendix Table A.6 for all descriptive statistics.
[81] A report of "handcuffing" an individual in this section does not mean that the officers arrested the individual. Section 1.1.5 of this chapter discusses arrests. Additionally, Appendix Table A.12 displays what percentage of individuals handcuffed had each of the following three stop results: arrested, no action taken, and result of stop other than an arrest or no action taken. Of the individuals handcuffed, officers arrested 55.3 percent, took some other form of action for 33.9 percent, and took no action towards 10.8 percent of individuals.

verbally ordered removal from a vehicle (3.9%).[82] Officers indicated taking each of the other reportable actions towards less than 3 percent of individuals they stopped.[83]

Race/Ethnicity. Stopped individuals perceived to be Black had the highest proportion, relative to other race/ethnicity groups, of their stops involving the officer taking one or more actions towards them (31%). Furthermore, although officers stopped 445,412 more individuals perceived to be White than individuals perceived to be Black, officers took actions towards 9,431 more Black individuals than White individuals. Stopped individuals perceived to be Middle Eastern/South Asian had the lowest proportion of their stops involving officers taking actions towards them (6.9%).

Figure 8. Actions Taken During Stop by Race/Ethnicity



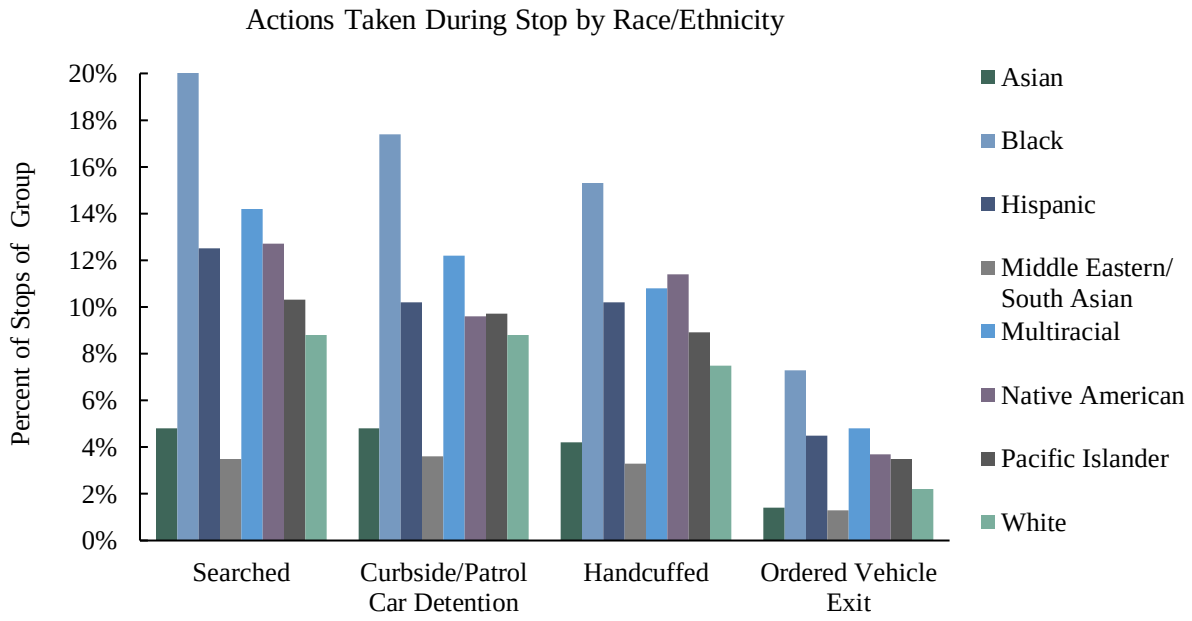
Of all the race/ethnicity groups, stopped individuals whom officers perceived to be Black had the highest rate of being searched (20.7%), detained on the curb or in a patrol car (17.4%), handcuffed (15.3%), and removed from a vehicle by order (7.3%). Similar to previous findings from the 2021 Report, officers took these actions towards more Black individuals than White individuals despite stopping nearly double the number of White individuals than Black

[82] 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.

[83] Other actions include: person removed from vehicle by physical contact (0.3%), field sobriety test (2.0%), 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 (0.4%), person photographed (0.6%), asked for consent to search person (2.2%), received consent to search person (95.3%), asked for consent to search property (1.5%), received consent to search property (93.7%), property seized (0.9%), vehicle impounded (1.5%), and written statement (<0.1%).

individuals.[84] Stopped individuals whom officers perceived to be Middle Eastern/South Asian had the lowest rate for each of these actions (ranging from 1.3 and 3.6%).

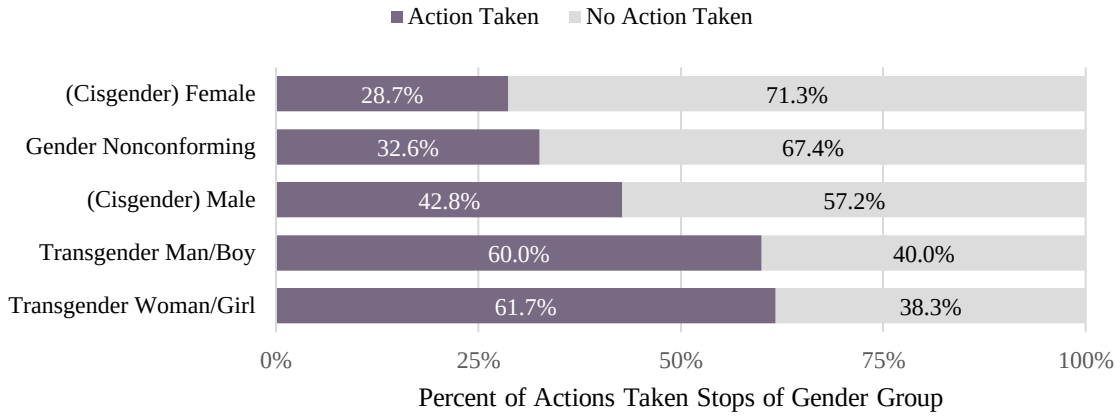
Figure 9. Actions Taken During Stop by Race/Ethnicity



Gender. Stopped individuals perceived to be transgender women/girls had the highest proportion of their stops involve the officer taking actions towards them (61.7%), and individuals perceived to be transgender men/boys also had actions taken toward them during more than half of their stops (60%). Individuals perceived to be cisgender female (28.7%) had the lowest proportion of stops with actions taken towards them.[85]

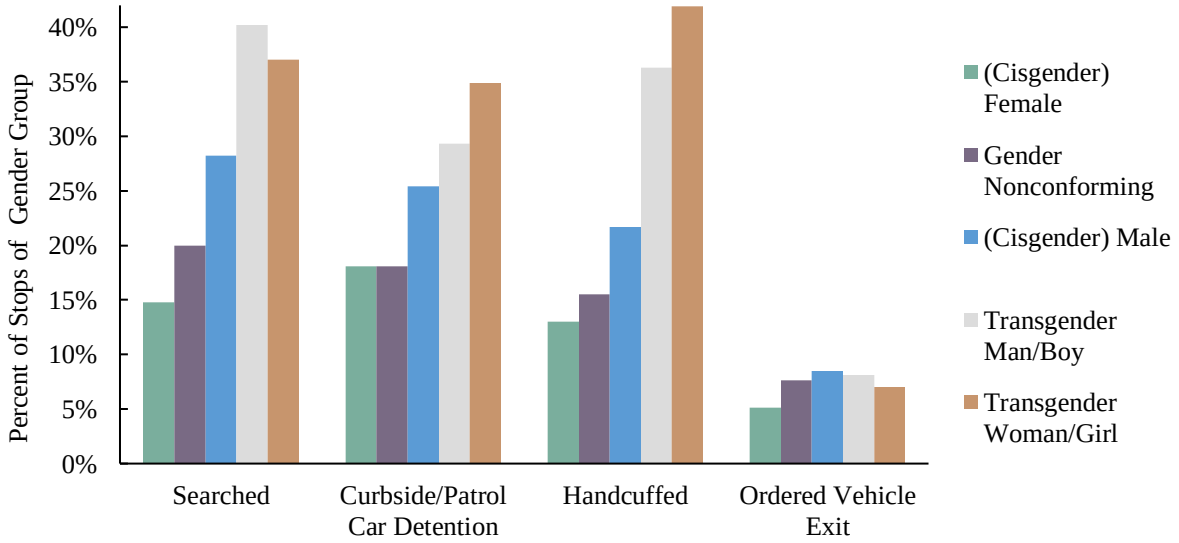
[84] See Appendix Table A.7 for a breakdown of actions taken toward stopped individuals by identity group.
[85] Records submitted by CHP are excluded in this analysis due to errors outlined in the note on page 29.

Figure 10. Actions Taken During Stop by Gender



Stopped individuals whom officers perceived as transgender men/boys had the highest rate of being searched (40.2%) while individuals perceived as transgender women/girls had the highest rates of being handcuffed (41.9%) and detained curbside or in a patrol car (34.9%). Individuals perceived as cisgender male had the highest rate of being removed by vehicle order (8.5%), whereas cisgender female had the lowest rate for each of these actions (ranging from 5.1 to 18.1%).[86]

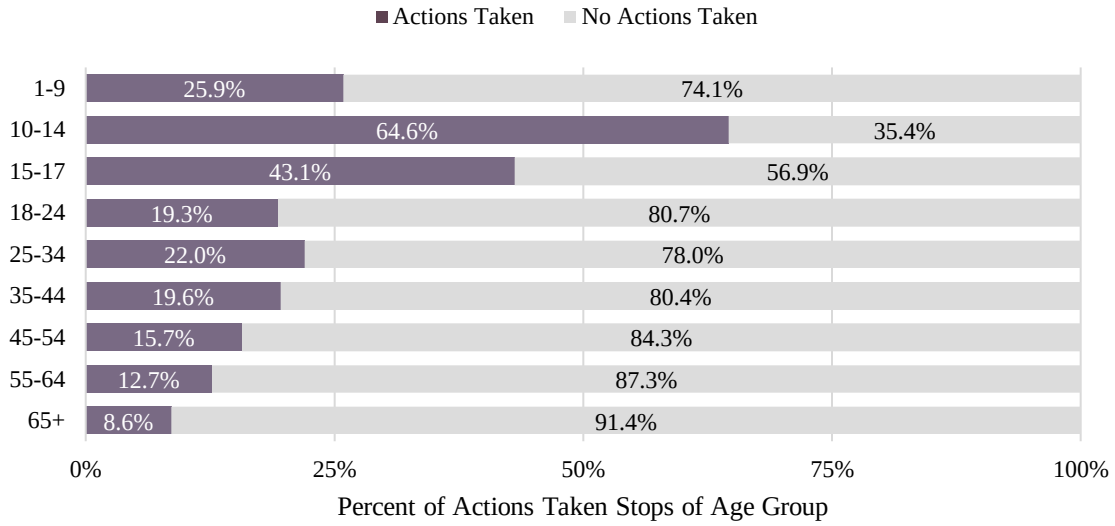
Figure 11. Actions Taken During Stop by Gender



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 (64.6%) while individuals perceived to be 65 or higher had the lowest proportion (8.6%).

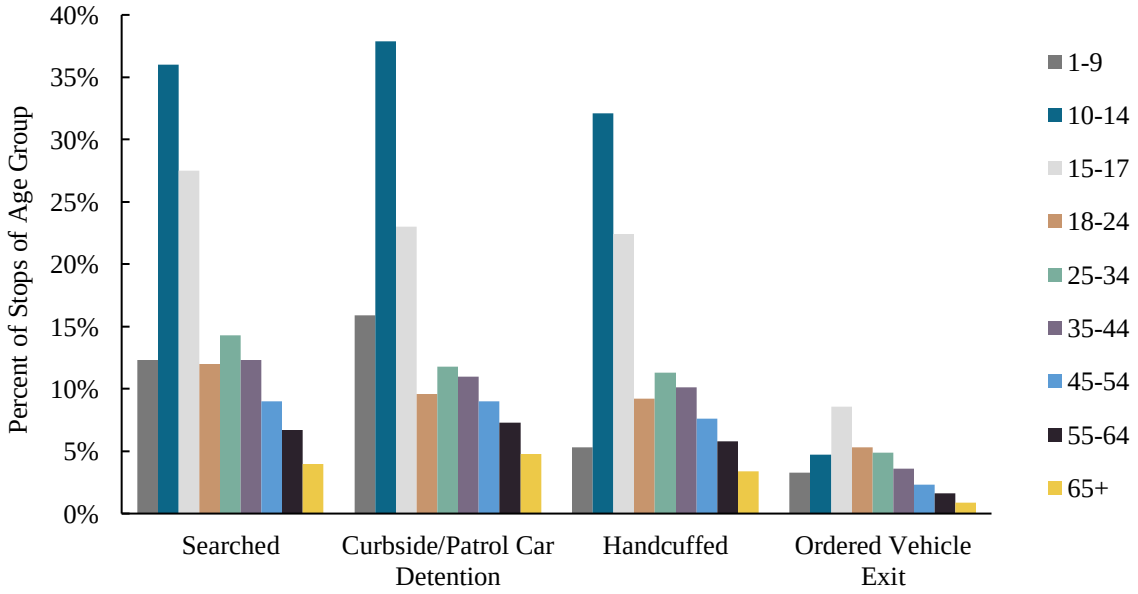
[86] Records submitted by CHP are excluded from this analysis due to errors outlined in the note on page 29.

Figure 12. Actions Taken During Stop by Age Group



Individuals whom officers stopped and perceived to be between the ages of 10 and 14 had the highest rate of being searched (36.0%), detained on the curb or in a patrol car (37.9%), and handcuffed (32.1%), while those perceived to be between 15 and 17 had the highest rates of being removed from a vehicle by order (8.6%). Those aged 65 or higher consistently had the lowest rate for each of these actions (ranging from 0.9 to 4.8%).

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 (48.7%) than individuals officers did not perceive to be LGBT (38.9%).[87]

Stopped individuals whom officers perceived to be LGBT had a higher rate of being searched (29.7%), detained on the curb or in a patrol car (28.9%), handcuffed (29%), and removed from a vehicle by order (6.2%) than individuals officers did not perceive to be LGBT (24.5% searched, 23.4% detained, 19.3% handcuffed, and 7.6% removed from 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 (24.6%) compared to individuals whom officers perceived to be fluent in English (18.9%).

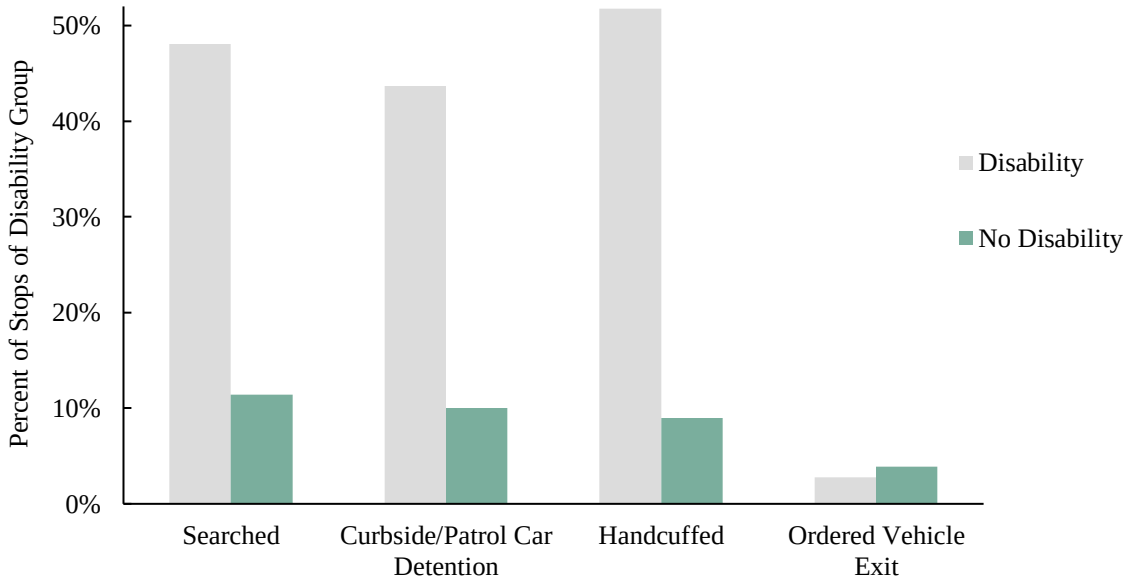
Stopped individuals whom officers perceived to have no or limited English fluency had a higher rate of being searched (14.3%), detained on the curb or in a patrol car (11.3%), handcuffed (12.6%), and removed from a vehicle by order (5.2%) than those perceived to speak English fluently (11.8% searched, 10.3% detained, 9.4% handcuffed, and 3.9% removed from vehicle by order).

Disability. Stopped individuals perceived as having a disability had a higher proportion of their stops involve officers taking actions towards them (74.4%) than those not perceived to have a disability (18.4%).

Stopped individuals whom officers perceived to have a disability were searched (48.1%), detained on the curb or in a patrol car (43.7%), and handcuffed (51.8%) at a much higher rate than those perceived not to have a disability (11.4% searched 11.4%, 10.0% detained, and 9.0% handcuffed). Individuals whom officers perceived to have a disability had a lower rate of being removed from a vehicle by order (2.8%) compared to those who were not perceived as having a disability (3.9%).

[87] In many instances, officers may not perceive a stopped person's LGBT identity. As discussed on page 31, 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. Records submitted by CHP are excluded in this analysis due to errors outlined in the note on page 29.

Figure 14. Actions Taken During Stop by Disability Group



5. Result of Stop

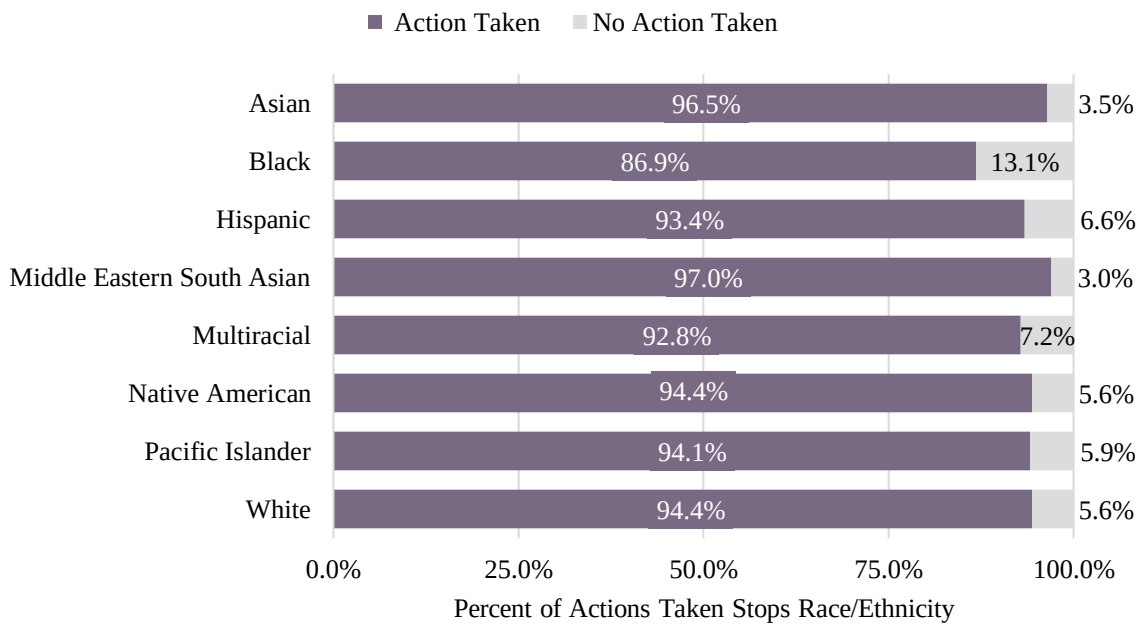
Officers can select up to 13 different stop disposition (or outcome) categories when recording stop data. Officers may select multiple dispositions per stop where necessary (e.g., an officer cited an individual for one offense and warned them about another). Individuals were most often issued a citation (52.7%), followed by a warning (27.6%), and then arrest (10.6%).[88] Officers indicated they took no reportable action towards 7 percent of stopped individuals. Each of the other results represented less than 7 percent of the data.[89]

Race/Ethnicity. Officers reported taking no action as the result of stop most frequently during stops of individuals they perceived to be Black (13.1%). The proportion of Black individuals with no action taken towards them as the result of stop was more than double (2.3 times) the proportion of stops of White individuals (5.6%) that resulted in no action. Officers tended to take no action as the result of stop least often (3%) during stops of individuals they perceived to be Middle Eastern/South Asian.

[88] Arrests here include three unique result types, including in-field cite and release (4.3% of stopped individuals), custodial arrest without a warrant (5.3% of stopped individuals), and custodial arrest with a warrant (1.3% of stopped individuals). It is possible for multiple arrest conditions to apply to the same individual in a single stop.

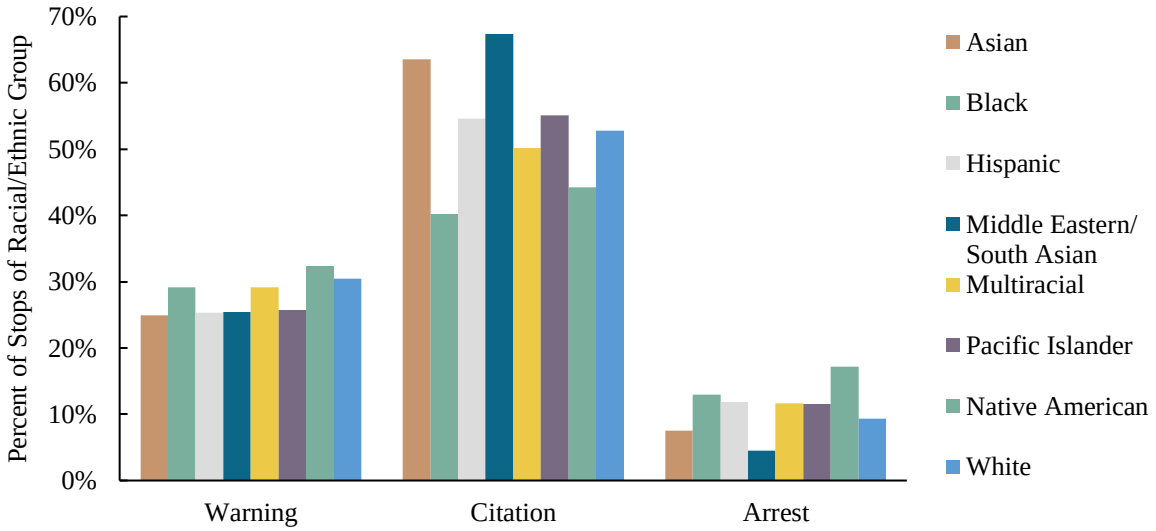
[89] Other result categories included field interview card completed (5.1%), noncriminal/caretaking transport (0.4%), contacted parent/legal guardian (0.1%), psychiatric hold (0.9%), contacted U.S. Department of Homeland Security (<0.1%), referred to a school administrator (<0.1%), or referred to a school counselor (<0.1%). 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.

Figure 15. Stop Result by Race/Ethnicity



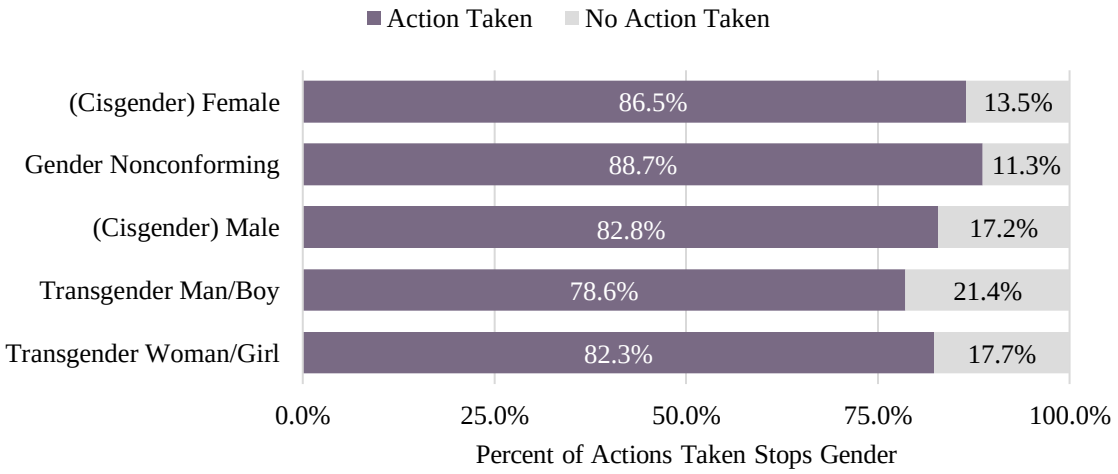
Compared to other races/ethnicities, stopped individuals perceived as Middle Eastern/South Asian had the highest rate of being cited (67.4%), while individuals perceived to be Black had the lowest rate of being cited (40.2%). Stopped individuals whom officers perceived to be Native American had the highest rate of being warned (32.4%) and Asian individuals had the lowest rate of being warned (24.9%). Officers arrested stopped individuals they perceived to be Native American at the highest rate (17.2%) and individuals they perceived as Middle Eastern/South Asian at the lowest rate (4.5%).

Figure 16. Stop Result by Race/Ethnicity



Gender. Officers took no action as the result of stop most often during stops of individuals they perceived to be transgender men/boys (21.4%); this rate exceeded the no action rate of cisgender males (17.2%). Similarly, stopped individuals whom officers perceived to be transgender women/girls had a result of stop no action rate (17.7%) that was greater than the rate for individuals whom officers perceived to be (cisgender) females (13.5%). Officers took no reportable action as the result of stop least frequently during stops of gender nonconforming individuals (11.3%).[90]

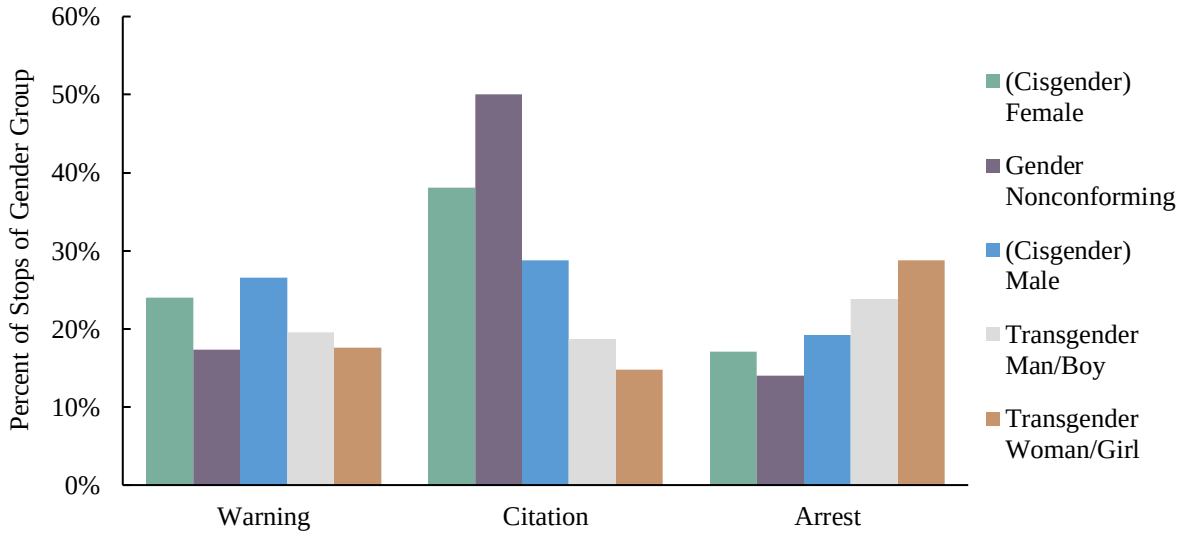
Figure 17. Stop Result by Gender



[90] Records submitted by CHP are excluded from this analysis due to errors outlined in the note on page 29.

Citation rates ranged from 14.8 percent of stopped individuals perceived as transgender women/girls to 50 percent of individuals whom officers stopped and perceived as gender nonconforming. Warning rates ranged from 17.3 percent of stopped individuals perceived as gender nonconforming to 26.6 percent of individuals whom officers perceived as (cisgender) males. Finally, compared to other genders, individuals whom officers perceived as transgender women/girls had the highest rate of being arrested (28.8%) while stopped individuals perceived as gender nonconforming had the lowest rate (14.0%).[91]

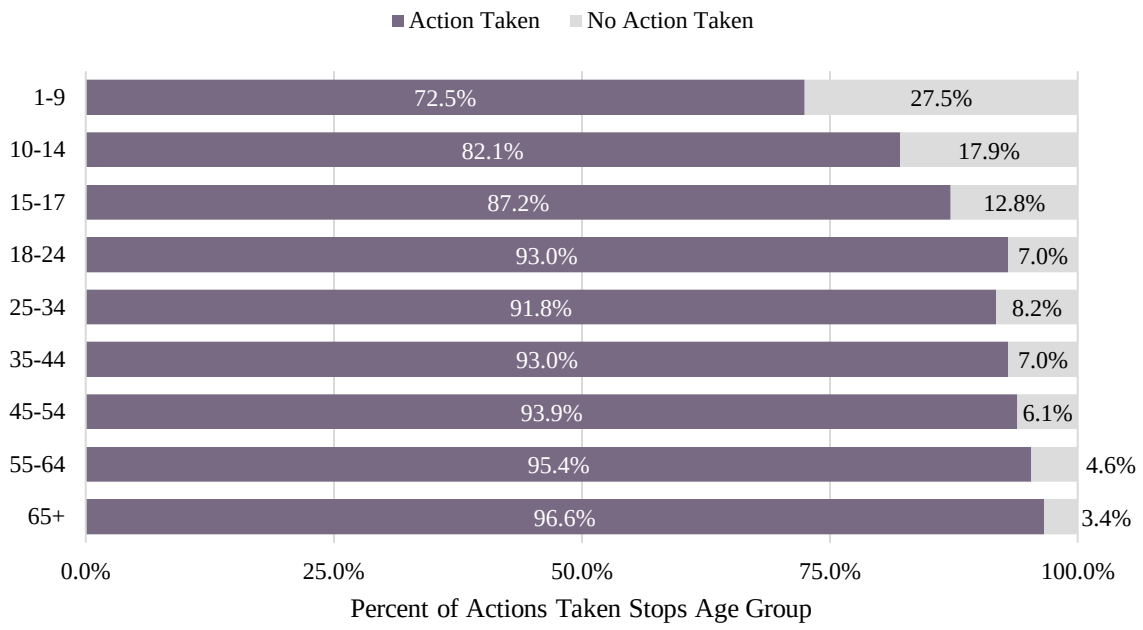
Figure 18. Stop Result by Gender



Age. The proportion of stopped individuals that had no action taken as the result of stop tended to decrease as age groups went up, with individuals perceived to be between the ages of one and nine having the highest no action rate (27.5%) and individuals perceived to be 65 or more years old having the lowest no action rate (3.4%).

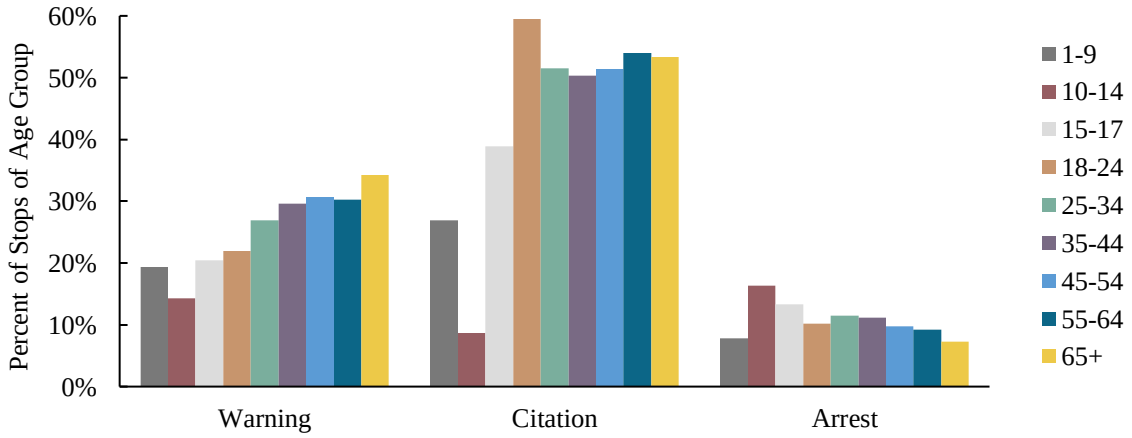
[91] Records submitted by CHP are excluded from this analysis due to errors outlined in the note on page 29.

Figure 19. Stop Result by Age Group



Citation rates ranged from 8.7 percent for stopped individuals perceived as 10 to 14 years old to 59.5 percent of individuals perceived as 18 to 24 years old. Individuals perceived as 10 to 14 years old had the lowest rate for being warned (14.3%) and the highest rate of being arrested (16.3%), whereas individuals perceived as 65 and older had the highest rate of being warned (34.2%) and lowest rate of being arrested (7.3%).

Figure 20. Stop Result by Age Group



LGBT. Officers tended to take no action as the result of stop at roughly the same rate between individuals they perceived to be LGBT and individuals whom they did not perceive to be LGBT (16.5% and 16.2%, respectively). Individuals whom officers perceived to be LGBT had a lower rate of being cited (20.4%) or warned (21.6%) while having a higher rate of being arrested

(25.2%) than individuals whom officers did not perceive to be LGBT (31.5% cited, 25.9% warned, and 18.5% arrested).[92]

***Limited English Fluency*.** Stopped individuals whom officers perceived to have limited or no English fluency had a lower result of stop no action rate (5.3%) than individuals whom officers perceived to be English fluent (7.1%). Individuals whom officers stopped and perceived to have no or limited English fluency had a lower rate of being cited (51.6%) or being warned (26.1%) while having a higher rate of being arrested (15.7%) when compared to individuals perceived to speak English fluently (52.7% cited, 27.7% warned, and 10.4% arrested).

***Disability*.** Officers tended to take no action as the result of the stop a higher proportion of the time during stops of people they perceived to have a disability (10.8%) than during stops of people they perceived not to have a disability (7.0%). Further, stopped individuals whom officers perceived as having a disability had much lower rates of being cited (6.8%) or warned (13.8%) and higher rates of being arrested (19.0%) than those perceived to not have a disability (53.3% cited, 27.8% warned, and 10.5% arrested).

C. 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 are best able to 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;
- an analysis of stop frequencies by time of day; and
- an analysis examining use of force rates.

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

1. Residential Population Comparison

Comparing stop data to residential population data is a common method. An assumption of this type of comparison is that the distribution of who is stopped would be similar to who resides within a comparable geographic region. 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). Residential population demographics from the United States Census Bureau's 2019 American Community Survey (ACS) were used to provide a benchmark for

[92] Records submitted by CHP are excluded from this analysis due to errors outlined in the note on page 29.

estimating the expected demographic breakdown of the 2020 stop data.[93] However, differences between stop population proportions and residential population proportions for each racial/ethnic group can be caused by several factors. These factors include, but are not limited to, potential differences in exposure to criminogenic[94] factors, where law enforcement resources are allocated, elements that draw large populations of non-residents to congregate in a jurisdiction (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. However, in 2020, 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 18 collecting agencies, the ACS estimates were weighted using a method intended to display a distribution more reflective of just the areas served by the agencies that collected RIPA data in 2020, rather than the state as a whole.[95] 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; therefore the current approach will no longer be relevant starting with the 2024 report. Figure 21 displays the racial/ethnic distribution from the 2020 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; these results can be found in Table D.1 of Appendix D.[96] Please note that race/ethnicity

ACS File Update

Since multiple smaller agencies began collecting RIPA data in 2020, it was necessary to start using the five year ACS estimates in order to capture residential population data for these smaller areas. Unlike the one year ACS estimates used in previous reports, five year ACS estimates provide population data for all areas, no matter the size of the population served. However, unlike the one year estimates, the five year ACS estimates do not provide racial and ethnicity categorizations that are specific enough to create a comparable grouping to serve as a benchmark for the Middle Eastern/South Asian racial/ethnic group captured in RIPA. For this reason, there is no Middle Eastern/South Asian ACS group in the analyses. Individuals from this group are mostly categorized as Asian in the five year estimates, with perhaps a small portion being categorized as White.

[93] At the time when these analyses were conducted, 2019 was the most recent year for which the 5 year ACS data/information was available.

[94] "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 Dec. 3, 2021].

[95] See section C.1 of the Disparity Tests Methods Appendix (Appendix C) for a detailed explanation of the weighting schema used for the overall comparison.

[96] The California Highway Patrol accounts for a large proportion of stop records from 2020 (57.7%). 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.

data reported in RIPA is based on officer perceptions while self-identification data is reported in 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 81.6 percent less frequently than expected, while Black individuals were stopped 151.5 percent more frequently than expected.[97] The proportion of stops corresponding to Hispanic individuals most closely matched estimates from residential population data (4.7% more frequent than expected). Compared to White individuals, who were stopped 10 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 0.2 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.[98] 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, Hispanic, and Pacific Islander.[99]

[97] 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 generally Iankilevitch et al., *How Do Multiracial and Monoracial People Categorize Multiracial Faces?* (2020) Social Psychological and Personality Science <https://doi.org/10.1177/1948550619884563> [as of Dec. 2, 2021]; see also Chen and Hamilton, *Natural ambiguities: Racial categorization of multiracial individuals* (2012) J. of Experimental Social Psychology <https://doi.org/10.1016/j.jesp.2011.10.005> [as of Dec. 2, 2021].
[98] See Appendix D Table D.1 for all disparity ratios and how the ratios are calculated.
[99] See Appendix D for results of the ACS comparison with CHP data excluded.

Figure 21. Weighted Residential Population Comparison to Stop Data[100]

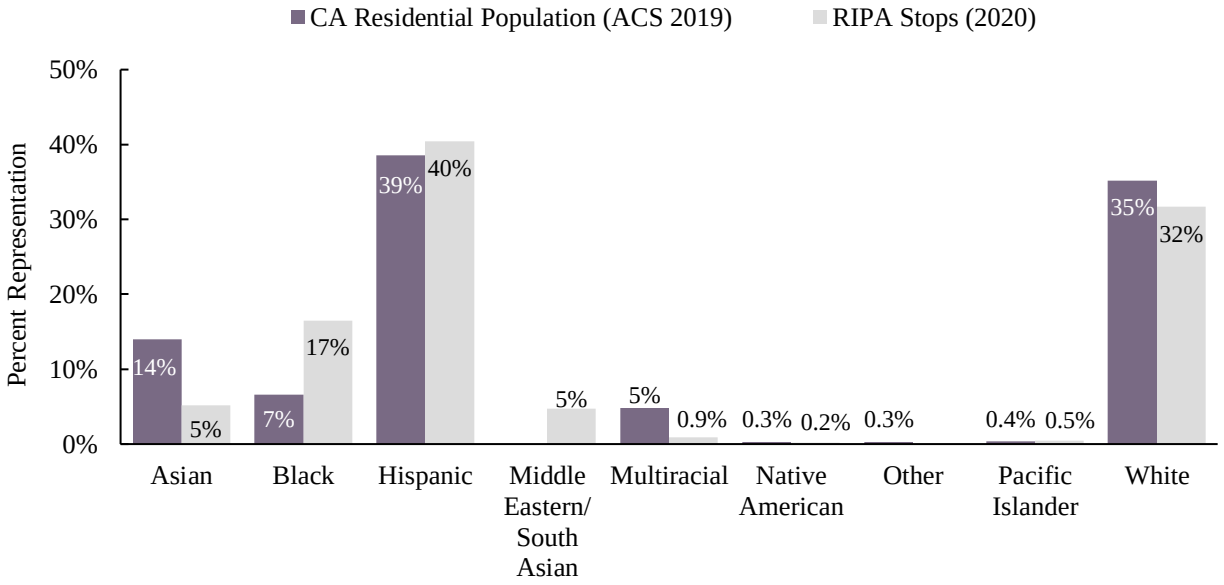


Figure 22 displays the racial/ethnic distribution from the 2020 RIPA Stop Data of individuals stopped by the California Highway Patrol, alongside the unweighted distribution of residents from the ACS. Overall, the disparity between the proportion of stops and the proportion of residential population was greatest for Multiracial and Black individuals. Multiracial individuals were stopped 83.6 percent less frequently than expected, while Black individuals were stopped 111.6 percent more frequently than expected.[101] The proportion of stops corresponding to White individuals most closely matched estimates from residential population data (6.6% less frequent than expected), followed closely by Hispanic individuals (8.6% more frequent than expected).

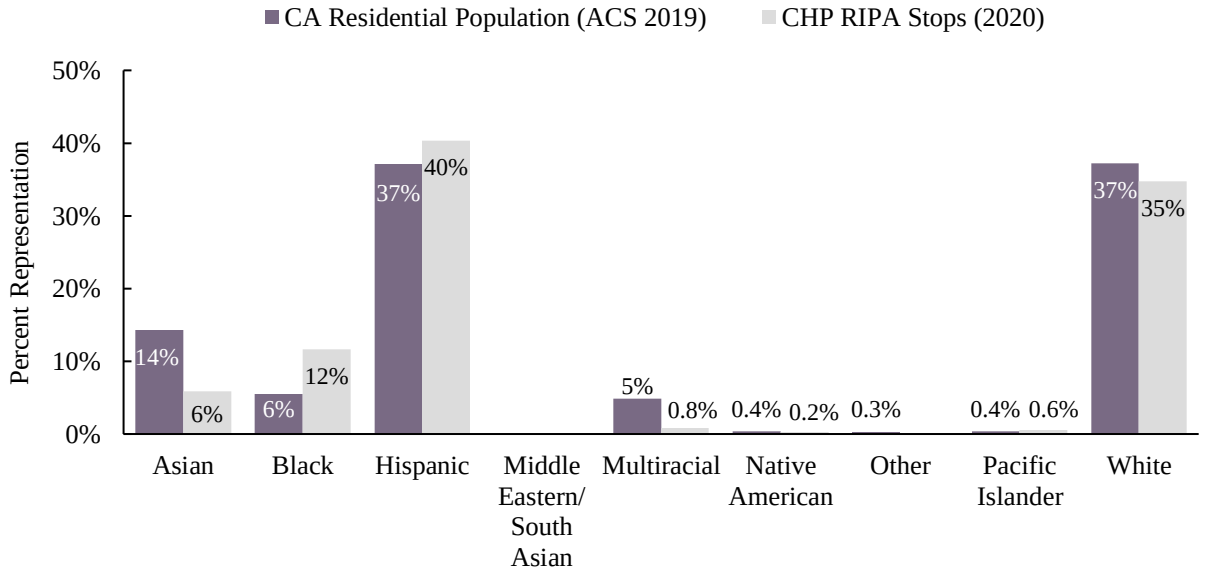
When examining the CHP distribution, the greatest disparities between stop data and residential population data estimates occurred for Black and Multiracial individuals when compared to White individuals, who were stopped 6.6 percent less frequently than expected based on their share of the residential population. The disparity for Black individuals was 2.3 times as great as the disparity for White individuals. For Multiracial individuals, the disparity was 0.2 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.[102]

[100] 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. This is why there is no residential population bar for this group in Figure 21. For more information about the ACS data used in this section, see Appendix C.

[101] 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 97; see also Chen and Hamilton, *supra* note 97.

[102] Please see Appendix D Table D.1 for all disparity ratios and how the ratios are calculated.

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



2. Discovery Rate Analysis

Researchers have developed an empirical test that examines the rate at which officers discover contraband or evidence across the racial/ethnic groups of individuals they search. One assumption of the test is 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.[103] Using this framework, we tested for differential treatment by conducting comparisons of search and discovery rates across identity groups.[104]

Discovery Rates

These analyses measure the rates at which contraband or evidence is discovered in stops where a search was performed. Research literature often refers to these rates as "hit rates." However, the Board believes that calling these rates "discovery rates" helps speak more directly to the data being analyzed, given that these analyses make use of data element referred to as "Contraband or Evidence Discovered" in the RIPA regulations.

Descriptive Analysis. Overall, officers searched 11.9 percent of individuals they stopped. Officers discovered contraband or evidence from 22.4 percent of individuals they searched. Search and discovery rates varied between racial/ethnic groups. Out of all racial/ethnic groups, stopped individuals perceived as Black had the highest search rates (20.7%), while stopped individuals perceived as Middle Eastern/South Asian had the lowest search rate (3.5%). Individuals perceived as White were searched 8.8 percent of the time. This means that the search rate of Black individuals was 2.4 times the search rate of White individuals, which had the following impact: although officers stopped 445,412 more individuals perceived to be White than individuals perceived to be Black, officers searched 18,777 more

[103] See Appendix C for a discussion of the limitations of this type of analysis.
[104] See Knowles et al., Racial Bias in Motor Vehicle Searches: Theory and Evidence (2001) J. Political Econ. 109(1).

Black individuals than White individuals.[105] 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 between racial/ethnic groups as did search rates. Discovery rates ranged from 20.9 percent of individuals officers searched and perceived as Hispanic to 24.8 percent of individuals officers perceived as Asian. The discovery rate for individuals perceived as White was 24.2 percent.

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

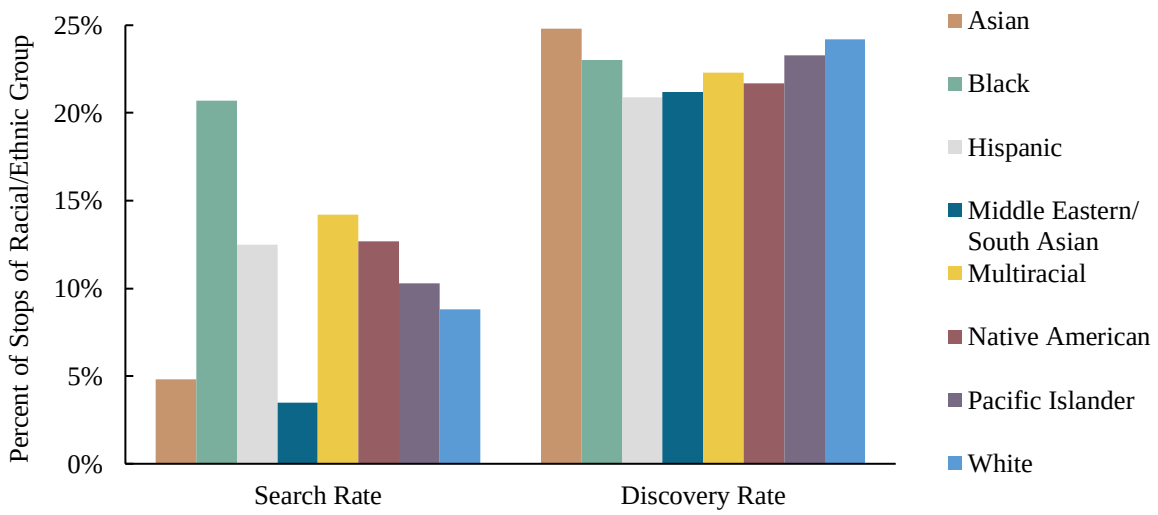
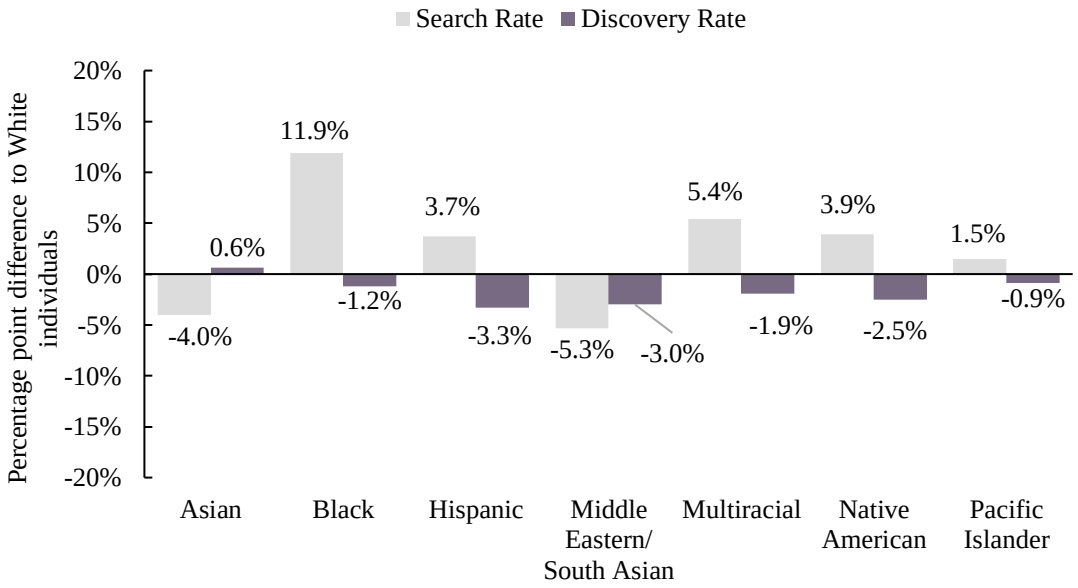


Figure 24 displays the difference in search and discovery rates for each racial/ethnic group of color from the search and discovery rates for individuals perceived as White (8.8% and 24.2%, respectively). All racial/ethnic groups of color had higher search rates than individuals perceived as White, except for individuals perceived as Asian and Middle Eastern/South Asian. Search rate disparities were largest for individuals perceived to be Black, whom officers search 11.9 percent more often than individuals they perceived as White (20.7% vs. 8.8%). Officers also searched individuals perceived to be Multiracial (+5.4 %), Native American (+3.9%), and Hispanic (+3.7%) more often than stopped individuals perceived to be White. Discovery rates were lower for most groups compared to individuals perceived as White, with the exception of Asian individuals, who had the highest discovery rate out of all racial/ethnic groups. The search discovery rate for searches of Asian individuals was 0.6 percent higher when compared to the discovery rate during searches of White individuals (24.8% vs. 24.2%). Relative to the discovery rate of searches of persons officers perceived to be White, discovery rates were lower during stops with searches of all other racial or ethnic groups of color: Hispanic (-3.3%), Middle

[105] Officers also searched more individuals whom they perceived to be Hispanic (148,506) than they did individuals whom they perceived to be White (81,556). However, officers also stopped more Hispanic individuals (1,187,728) than White individuals (929,776), which was not the case for Black individuals (484,364).

Eastern/South Asian (-3%), Native American (-2.5%), Multiracial (-1.9%), Black (-1.2%), and Pacific Islander (-0.9%).

Figure 24. Racial/Ethnic Disparities in Search and Discovery Rates



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.[106] 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.[107] 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 has shown that individuals of certain racial/ethnic groups of color have a greater chance of being subjected to discretionary searches, and that when there is discretion

[106] Please see Appendix C for a full description of the methodology.

[107] 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.

or subjectivity, bias can play a role.[108] As such, the multivariate analysis was applied to (1) search rates overall, (2) discovery rates during discretionary searches, and (3) discovery rates during administrative searches.

The results showed multiple statistically significant differences in search and discovery rates across race/ethnicity groups, especially when comparing individuals perceived as Black or Hispanic to individuals perceived as White (see Table 2). Compared to White individuals, it was more probable for Black (+1.0 percentage points) and Hispanic (+0.6 percentage points) individuals to be searched despite being less likely to be found in possession of contraband or evidence in stops with discretionary searches (-1.6 and -1.4 percentage points, respectively).[109] 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 (-2.0 percentage points) and those from other racial/ethnic groups that were combined together[110] (-1.8 percentage points) were less likely to be searched compared to White individuals, but only those from the combined racial/ethnic groups had a significant difference in the rate of contraband or evidence discovered during stops with discretionary searches (-2.0% points).[111] Both Hispanic individuals (-1.3% points) and those from the combined group (-2.5% 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 the Appendix.[112]

Statistical Significance Testing

These tests provide a common framework for evaluating evidence provided by data against a specific hypothesis. For example, the hypothesis tested by the discovery-rate analysis is: "Searches of stopped individuals from racial/ethnic groups of color and White individuals are equally likely to reveal contraband." But, if the test provides strong enough evidence that disparities between groups are larger than can reasonably be explained by chance alone, then we can say that our findings are *statistically significant*. In other words, the evidence provided by the data shows a very low likelihood that chance explains the resulting disparity.

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[108] See generally Ridgeway, *Assessing the Effect of Race Bias in Post-Traffic Stop Outcomes Using Propensity Scores* (2006) J. Quant. Criminol. 22(1) 1, 9 <https://www.rand.org/pubs/reprints/RP1252.html> [as of Dec. 2, 2021]; Greenwald and Krieger, *Implicit Bias: Scientific Foundations* (2006) 94 Calif. L. Rev. 945; Hart, *Subjective Decisionmaking and Unconscious Discrimination* (2005) 56 Ala. L. Rev. 741, 769-771 <https://ssrn.com/abstract+788066> [as of Dec. 2, 2021]; Greenwald and Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes* (1995) Psych. Review, 102(1) 4, 4-6; Eberhardt and 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/Data%20for%20Change%20%28June%2023%29.pdf> [as of Dec. 2, 2021].

[109] Please see Appendix Table D.2.2 for model statistics.

[110] 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.

[111] Please see Appendix Table D.2.2 for model statistics.

[112] Please see Appendix Table D.2.3 for model statistics.

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

Group	Search Rates	Discovery Rates	
		Discretionary Searches	Administrative Searches
Asian	*** ↓ 2.0%	↓ 0.3%	↓ 1.5%
Black	*** ↑ 1.0%	*** ↓ 1.6%	↓ 0.3%
Hispanic	*** ↑ 0.6%	*** ↓ 1.4%	*** ↓ 1.3%
Other	*** ↓ 1.8%	** ↓ 2.0%	** ↓ 2.5%

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; *** $p < 0.001$; ** $p < 0.01$; * $p < 0.05$.

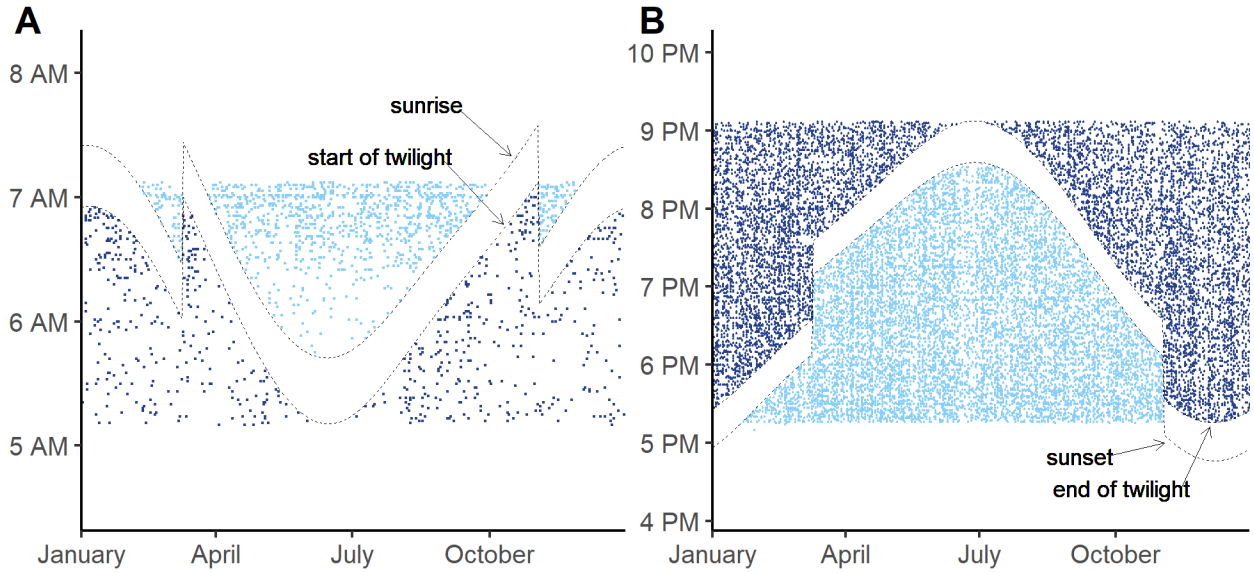
3. Veil of Darkness Analysis

A key problem in exploring racial disparities is establishing the proper benchmark against which to compare the racial/ethnic distribution of individuals stopped by law enforcement. One approach presumes that it may be more difficult for police to perceive the race/ethnicity of an individual prior to stopping them after dark than during daylight. In other words, to the extent that it is harder to identify someone at night, we would expect darkness to decrease the likelihood that individuals of racial/ethnic groups of color are disproportionately stopped relative to White individuals. This hypothesis is called the veil of darkness (VOD), and it has been used by researchers to test for racial/ethnic disparities in law enforcement encounters.

The Intertwilight Period. The most conventional version of the VOD approach, followed here, is to only examine vehicle stops that occur during the intertwilight period. The reason for this is that the intertwilight period spans the hours of the day that are light during one part of the year and dark during the other because of daylight savings time; this period occurs twice on any given day, once around dawn and once around dusk. Stops made during the lighter portion of this period (i.e., after sunrise but before sunset) are compared to stops made during the darker portion of this period.[113] Figure 25 shows an example of both morning and evening intertwilight periods for a sample of vehicle stops made in California.

[113] Civil twilight is defined as the illumination level sufficient for most ordinary outdoor activities to be done without artificial lighting before sunrise or after sunset. Therefore, it is dark outside when civil twilight ends; civil twilight ends when the sun is six degrees below the horizon.

Figure 25. Morning and Evening Intertwilight Periods Example



Notes: Each dot represents a single stop made by law enforcement on a given day and time. Light blue dots represent stops made during daylight. Dark blue dots represent stops made after dark. Only stops made within the morning (A) and evening (B) intertwilight periods are included in the analysis. Stops made between the start of civil twilight and sunrise (white band) were excluded from the morning intertwilight period. Stops made between sunset and the end of civil twilight (white band) were excluded from the evening intertwilight period. Stops that occurred within the white-banded area were excluded because the lighting conditions during this period of time are more difficult to classify as either dark or light. Discontinuities in the curves in March and November reflect Daylight Saving Time adjustments.

Multivariate Analysis. These analyses take into account how multiple variables (e.g., time of day, location) may contribute to disparities in stops made in the dark compared to those in the light.[114] As mentioned previously, this analysis only includes data for individuals stopped for traffic violations during the morning and evening intertwilight periods.[115] Stops made in response to a call for service were also excluded from this analysis because officers utilized information from a third party (e.g., dispatcher or caller) when making the decision to stop the individuals in these cases; the VOD test is best applied to stops where officers are making stops solely based on their own judgment. These filtering criteria were applied to the data in order to approximate the conditions under which the VOD hypothesis would be most accurate. Finally, the four racial/ethnic groups who were least frequently stopped were combined into a single group to increase statistical power for the test; these groups included individuals perceived to be Middle Eastern/South Asian, Multiracial, Native American, and Pacific Islander.

The results showed that some racial/ethnic groups were stopped at different rates, relative to White individuals, depending on visibility conditions. Darkness decreased the rates at which Black (-2.1 percentage points) and Hispanic (-2.3 percentage points) individuals were stopped

[114] Please see Appendix C for a full description of the methodology.
[115] Traffic Violations include all categories of "Reason for Stop" defined under Section 999.226, subd. (a)(10)(A)(1) of the RIPA Regulations.

compared to White individuals.[116] Given the large number of stops submitted by California Highway Patrol as compared to the municipal agencies, the analyses were repeated while excluding CHP data. This analysis continued to show darkness decreasing the probability of being stopped during the intertwilight period for Black (-2.1 percentage points) and Hispanic (-1.8 percentage points) individuals.[117] These results suggest that individuals of certain racial/ethnic groups of color may be more likely to be stopped when it is easier to perceive their race/ethnicity. These disparities could reflect biased police behavior or the effect of some factor that is not yet being considered by this test.[118]

4. Use of Force Analysis

Law enforcement agencies have policies regarding the use of force by their officers. These policies generally present a series of escalating actions (i.e., continuum) that officers may take to resolve a situation. The policies may additionally require that officers use de-escalation tactics. However, these policies vary across agencies since there is no universally accepted standard, with the exception of the limits that state laws place on use of force.

The Board offers two approaches for examining use of force across racial/ethnic groups.[119] The first uses a modified version of a use-of-force continuum from the National Institute of Justice to compare escalating levels of force between race/ethnicity groups.[120] 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 that use of force is generally rare, occurring in about one percent of reported stops. However, the Board recognizes that, despite the low occurrence rate relative to other actions that officers take during stops, the gravity of the outcomes of many incidents that involve 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, at least nine constitute types of force.[121] 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.[122] Officers reported using lethal force against

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[116] Please see Appendix Table D.3 for model statistics.
[117] Please see Appendix Table D.3 for model statistics.
[118] Please see Appendix Section C for a discussion of the limitations surrounding VOD.
[119] The California Department of Justice issues a Use of Force Incident Reporting Annual Report, also known as the URSUS Report. However, the types of use of force incidents included in the URSUS Report are more narrowly defined than the incidents collected for RIPA stop data reporting. See *Use of Force Incident Reporting* (2020) Cal. Dept. Justice <https://data-openjustice.doj.ca.gov/sites/default/files/2021-06/USE%20OF%20FORCE%202020.pdf> [as of Dec. 2, 2021].
[120] See *The Use-of-Force Continuum* (2009) Nat. Inst. of Justice <https://nij.ojp.gov/topics/articles/use-force-continuum> [as of Dec. 2, 2021].
[121] 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.
[122] Section 999.226(a)(12)(A)(15) of the RIPA regulations define the "Other physical or vehicle contact" data element within the Action Taken by Officer During Stop variable. Officers are instructed to select this data element when they use a number of different types of force, such as hard hand controls or forcing someone to the ground. This data element is also what officers are instructed to select in cases where they utilize a carotid restraint. The Department has previously noted that carotid restraints often involve a needlessly high risk of causing unnecessary and accidental serious bodily injury. See *Sacramento*

0.005 percent (146) of individuals they stopped. Officers reported using less-lethal force against 0.5 percent (15,673) of individuals they stopped. Lastly, officers reported taking actions constituting limited force towards 0.6 percent (16,760) of individuals they stopped.

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

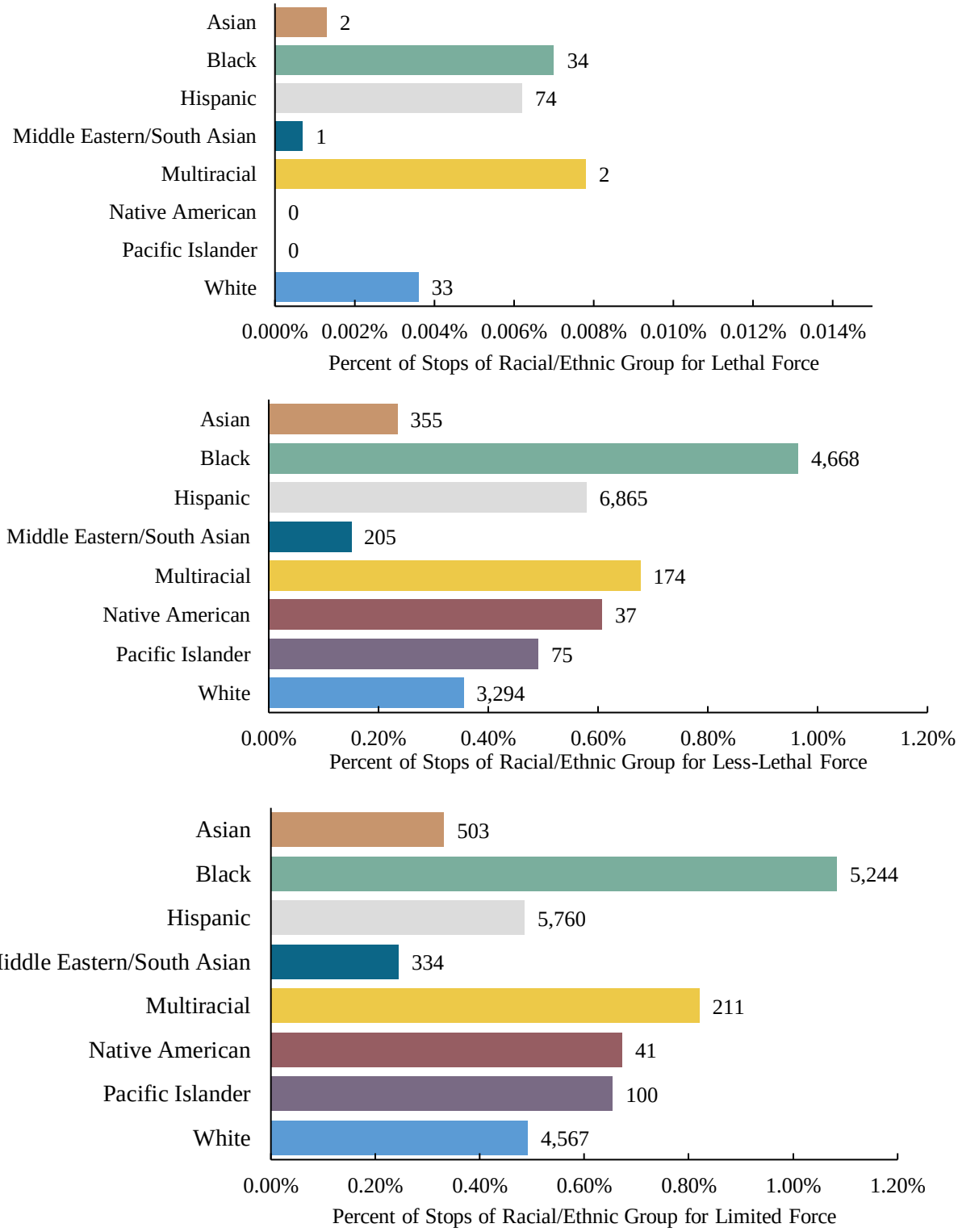
Lethal Force	Less-Lethal Force	Limited Force (Other Physical or Vehicle Contact)
A. Firearm discharged or used	• Electronic control device used • Impact projectile discharged or used • Canine bit or held person • Baton or other impact weapon used • Firearm pointed at person[123] • Chemical spray used	• 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 of such contact is to restrict movement or control a person's resistance: any physical strike by the officer; instrumental contact with a person by an officer; or the use of significant physical contact by the officer.

Less than 0.1 percent of stopped individuals from each racial/ethnic group had lethal force used against them. The total number of individuals who had lethal force used against them by racial/ethnic group included 2 Asian, 34 Black, 74 Hispanic, 1 Middle Eastern/South Asian, 33 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 (1.0%) and other physical or vehicle force (1.1%) used by officers against them during a stop, while Middle Eastern/South Asian individuals had the lowest rates (0.2% limited force, 0.1% less-lethal force).

Police Department, Report & Recommendations (2019) Cal. Dept. Justice <https://oag.ca.gov/system/files/attachments/press-docs/spd-report.pdf> [as of Dec. 2, 2021]. In September 2020, the California legislature also recognized the dangerous nature of carotid restraints through its passage of Assembly Bill (AB) 1196, which restricted law enforcement agencies from authorizing their officers to use carotid restraints or choke holds. However, given that AB 1196 did not take effect until late in 2020 and carotid restraints are not distinguished from the other types of force captured under the "Other physical or vehicle contact" data element, it is possible that some instances when officers used this type of force are categorized under the other physical or vehicle force category in these analyses. (See Assem. Bill No. 1196 (2019-2020 Reg. Sess.).) This categorization is a reflection of how the data are collected under the RIPA regulations and not a reflection of the Department's view on the use of carotid restraints.

[123] 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 Gov. Code, § 12525.2; see also *Use of Force Incident Reporting*, *supra* note 119.

Figure 26. Use of Force Rates by Race/Ethnicity



Multivariate Analysis. 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, these data were also analyzed using multivariate statistical models.[124] 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 individuals were more likely to have force used against them compared to White individuals, while Asian and other individuals were less likely. Specifically, compared to Whites, the odds of officers using force during a stop were 1.32 times and 1.16 times as high for Black and Hispanic individuals, respectively. Asian and Other individuals whom officers stopped had lower odds of having force used against them (0.80 and 0.82 respectively), relative to the odds for individuals officers perceived as White.[125] Excluding the data from California Highway Patrol, which contributed a majority of the stop data records, had little impact on these disparities.[126]

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

Asian	Black	Hispanic	Other
*** ↓ 0.80	*** ↑ 1.32	*** ↑ 1.16	*** ↓ 0.82

Note. Values represent the use of force rate for the listed race/ethnicity 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; *** $p < 0.001$; ** $p < 0.01$; * $p < 0.05$.

[124] Please see Appendix C for a full description of the methodology.
[125] Please see Appendix Table D.4 for model statistics.
[126] Please see Appendix Table D.4 for model statistics.

POLICY FOCUSED DATA ANALYSIS

A. From Data to Policies Addressing the Profiling of Transgender People

Law enforcement-generated data is a key resource for understanding the role of gender in profiling. RIPA stop data is precisely this type of resource. In 2021, the RIPA Board took an intersectional approach to examine race/ethnicity and gender data for potential disparities with respect to outcomes. The data showed that regardless of race or ethnicity, there were large disparities in the search and discovery rates for transgender individuals when compared to cisgender individuals. The Board is focused on using this stop data to aid in developing best practices aimed at eliminating these disparities. While California law prohibits gender identity discrimination in government services, employment, public accommodations, housing, and education,[127] this work is critical as states across the country are enacting discriminatory laws banning transgender youth from playing sports, blocking access to healthcare, and otherwise limiting the rights of LGBTQ+ people.[128] Thanks to the decades of work by transgender advocates and researchers to reform the policing of transgender people, the Board is able to present its recommendations for best practices.

We begin this section by reviewing the findings of national and grassroots organizations, social science researchers, and legal scholars regarding the experiences of transgender people in interactions with law enforcement. We then present analyses of the 2020 RIPA stop data across gender before reviewing examples of existing policies in three law enforcement agencies and recommending best practices in twelve areas aimed at reducing disparities in law enforcement interactions with transgender people.

The Board reviewed the 2015 U.S. Transgender Survey (USTS or Survey) findings to gain a broader understanding of the experiences of transgender people in interactions with law enforcement. The USTS is the largest survey examining the experiences of transgender people in the U.S.[129] The findings demonstrated the high levels of harassment and violence private actors committed against transgender individuals and high levels of violence and harassment

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[127] See, e.g., California's Gender Nondiscrimination Act, Assem. Bill No. 887 (2011-2012 Reg. Sess.); Civ. Code, § 51, subds. (b), (e)(5) (public accommodations); Ed. Code, §§ 220 (education), 221.5, subd. (f) (education and school athletic participation); Gov. Code, §§ 11135, 11136, 11139 (government services), 12926, subds. (o), (r)(2), 12940, subd. (a), 12944, 12949 (employment), 12955 (housing); Pen. Code, §§ 2605 (corrections), 422.55, 422.56, subd. (c) (hate crimes).

[128] See Atty. Gen. Bonta to Add Five States to Travel Restrictions List as a Result of Wave of New Anti-LGBTQ+ Legislation (June 28, 2021) Cal. Dept. J. <https://oag.ca.gov/news/press-releases/attorney-general-bonta-add-five-states-travel-restrictions-list-result-wave-new> [as of Dec. 2, 2021] (Under the provisions of Assembly Bill 1887, effective January 1, 2017, California restricts state-funded travel to states that, after June 26, 2015, enact laws authorizing, or repealing existing protections against, discrimination on the basis of sexual orientation, gender identity, or gender expression. In 2021, five states were added to California's state-funded travel restrictions list, for a total of 18 states); see also, e.g., Krishnakumar, *This record-breaking year for anti-transgender legislation would affect minors the most,* (Apr. 15, 2021) CNN Politics <https://www.cnn.com/2021/04/15/politics/anti-transgender-legislation-2021/index.html> [as of Dec. 2, 2021]; Ronan, *Ten Anti-LGBTQ Bills it on Governors' Desk, Poised to Undermine Rights Across the Country* (Apr. 16, 2021) Human Rights Campaign <https://www.hrc.org/press-releases/ten-anti-lgbtq-bills-sit-on-governors-desks-poised-to-undermine-rights-across-the-country> [as of Dec. 2, 2021].

[129] James et al., Nat. Center for Transgender Equality, The Rep. of the 2015 U.S. Transgender Survey (Dec. 2016) p. 4 <http://www. transequality.org/sites/default/files/docs/USTS-FullReport-FINAL.PDF> [as of Dec. 2, 2021]. (The Survey included 27,715 respondents from all fifty states.)

transgender people experienced in interactions with law enforcement, coupled with high levels of discomfort in asking for help from the police. The findings additionally indicated that other forms of discrimination – racism, ableism, and xenophobia – can have a compounding impact.[130]

In surveying individuals about the year prior, the USTS found that over half (58 percent) of the respondents who interacted with law enforcement officers who knew they were transgender reported mistreatment, such as being repeatedly misgendered, verbally harassed, or physically or sexually assaulted during the interaction.[131] Of all USTS respondents, nearly half (46 percent) reported that in the past year they were verbally harassed and 9 percent reported that they were physically attacked.[132] However, more than half (57 percent) of the respondents reported that they would be somewhat or very uncomfortable asking for help from the police if they needed it.[133]

Data collected by the National Coalition of Antiviolence Programs (NCAVP), social science research, and numerous reports demonstrate that transgender women are at high risk of violence from private actors, particularly through homicide and domestic violence.[134] Given this risk, advocates, including the National Center for Transgender Equality (NCTE), and legal scholars conclude that transgender women and other transgender populations would benefit from improved relationships with law enforcement.[135] Heightened surveillance and victimization of transgender people by law enforcement, which is commonly described as "walking while trans,"[136] erodes the relationship between transgender individuals and law enforcement. Erika Haub wrote about her experience of being profiled for a news media article.

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[130] *Id*. at p. 6.
[131] *Id.* at p. 186.
[132] *Id*. at p. 198.
[133] *Id.* at p. 188.
[134] See, e.g., Tiller et al., Nat. Coalition of Antiviolence Programs (NCAVP), Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate and Intimate Partner Violence in 2017 (2018) p. 7 <http://avp.org/wp-content/uploads/2019/01/NCAVP-HV-IPV-2017-report.pdf> [as of Dec. 2, 2021] (documenting an increase in recorded homicides of transgender women of color over five years); Carpenter and Marshall, *Walking While Trans: Profiling of Transgender Women by Law Enforcement, and the Problem of Proof* (2017) 24 Wm. & Mary J. Women & L. 5, 9 <https://scholarship.law.wm.edu/wmjowl/vol24/iss1/3> [as of Dec. 2, 2021].
[135] See, e.g., National Center for Transgender Equality (NCTE), *Failing to Protect and Serve: Police Department Policies Towards Transgender People ("Failing to Protect and Serve")* (May 2019) p. 5 <https://transequality.org/issues/resources/failing-to-protect-and-serve-police-department-policies-towards-transgender-people> [as of Dec. 2, 2021]; Carpenter and Marshall, *supra* note 134, at p. 7.
[136] Carpenter and Marshall, *supra* note 134, at p. 6, fn. 4 (quoting Mogul, et al., Queer (In)Justice: The Criminalization of LGBT People in the U.S. (2011) p. 61 ["Transgender women, particularly transgender women of color are so frequently perceived to be sex workers by the police that the term *walking while trans*, derivative of the more commonly known term *driving while Black*, was coined to reflect the reality that transgender women often cannot walk down the street without being stopped, harassed, verbally, sexually and physically abused, and arrested regardless of what they are doing at the time"]); Shaw, *Violence and Law Enforcement Interactions with LGBT People in the US* (Mar. 2020) The Williams Inst., p. 1 <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Violence-Law-Enforce-Mar-2020.pdf> [as of Dec. 2. 2021].

"As I retraced my path home, I was suddenly aware of a man coming up behind me close, and he began propositioning me in Spanish, a language I happen to speak fluently. I became scared by his words and presence, and I felt a giant relief wash over me when I saw the white of a police cruiser heading toward us. I began to waive both arms at the car as it approached, and when it slowed to a stop I quickly ran across the street to what I assumed to be protection and safety. The two officers stepped out of the car, demanded to see my ID. 'Oh, it's out of state, isn't THAT convenient.' While the man who actually engaged in criminal activity walked freely past us on the other side of the street, I was put into the back of a police car for engaging in prostitution. "

-Erika Haub quoted in *The Atlantic.* Stories of Fearing the Cops. [137]

In their 2014 report, the New Orleans-based organization BreakOUT! described how gender norms relate to the profiling of transgender people.

"Police are trained to look for things that go against the norm. Things that might be unusual or 'suspicious.' Things that might cause problems. Transgender people, by our very nature, are seen as being against the norm. But really, it all comes down to gender norms. When you're transgender, you're pushing against gender norms. Whether police realize they're doing that [profiling] or not, we think that's one reason why we get stopped a lot – especially gender non-conforming youth of color."

-Lhundyn Fernandez and Kaya Williams. We Deserve Better: A report by the members of BreakOUT! [138]

[137] Bodenner, *Stories of Fearing the Cops* (July 14, 2016) The Atlantic <https://www.theatlantic.com/notes/2016/07/stories-of-fearing-the-cops/491354/> [as of Dec. 2, 2021].
[138] Fernandez and Williams, *supra* note 66, at p. 11.

BreakOUT! members addressed readers directly in the report, highlighting how their experiences with law enforcement may differ from other communities' experiences.

> *"Have you ever been walking up the street and a police officer stops you and asks you what you're doing? And you tell them you're walking and they respond, 'You're in a known prostitution area.' Then they ask you to do something sexual for them and they say that if you don't they're gonna lock you up! I'm pretty sure that for most people the answer is no, but for us young ladies, it's everyday life."*
>
> -Lhundyn Fernandez and Kaya Williams. We Deserve Better: A report by the members of BreakOUT! [139]

In addition to reviewing these research and survey findings, the Board analyzed RIPA stop data across gender to identify disparities in stops made by agencies that reported data during 2020.

1. RIPA Stop Data Relevant to Best Practices Recommendations

This section includes analyses of RIPA stop data that have informed the Board's best practices recommendations regarding law enforcement interaction with transgender people. These analyses were performed using the perceived gender data that officers reported using data values defined in the RIPA regulations.

Note Regarding Gender Data
As discussed in more detail in a previous note on page 29, the Department discovered a systematic error within the data submitted by the California Highway Patrol (CHP) for stops in which officers perceived the person stopped to be transgender. Although the CHP properly collected data for transgender individuals, it was later determined that the data was inadvertently not being transmitted properly to DOJ through the automated data transmission process. This error prevented nearly all records for individuals perceived to be transgender from being included in the successfully submitted data from the CHP, but did not affect records for individuals perceived to be cisgender. In an effort to reduce the effects of this error, data submitted by the CHP has been excluded from analyses in this section. Since submitting its 2020 data, the CHP has fixed the underlying issue that caused this error, meaning that data collected in 2021 and moving forward will not contain this error.

[139] Ibid.

RIPA regulations include five perceived gender categories – male, female, transgender man/boy, transgender woman/girl, and gender nonconforming.[140] To provide clarity in this report, "male" refers to cisgender men/boys and "female" refers to cisgender women/girls. In 2017, the Williams Institute estimated that 0.76 percent of adults (218,400 individuals) and 0.85 percent of youth ages 13-17 years (22,200 individuals) in California are transgender.[141]

Key Term

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

In 2020, officers perceived the majority of stopped individuals as (cisgender) male (72.6%; 901,105) or (cisgender) female (26.9%; 334,056). Other gender groups collectively constituted less than one percent of the data. Officers reported 3,175 stops of people perceived as transgender men/boys (0.3%), 1,747 stops of people perceived as transgender women/girls (0.1%), and 1,143 stops of people perceived as gender non-conforming (0.1%).

i. Primary Reason for Stop by Gender

There were dramatic differences in the reasons for stops across the perceived gender categories. Of all gender groups, cisgender females had the highest proportion of stops reported as traffic violations (73.1%) and the lowest proportion of stops reported as reasonable suspicion that the person was engaged in criminal activity (22.9%), followed by individuals perceived as gender nonconforming (67.3 percent and 28.2 percent, respectively) and cisgender males (66.3% and 27.8%, respectively). For individuals perceived to be transgender, officers reported a higher proportion of stops as reasonable suspicion and a lower proportion of stops as traffic violations. For transgender men/boys, officers reported 48.6 percent of stops as reasonable suspicion stops and 44.4 percent as traffic violation stops. Transgender women/girls had the highest proportion of stops out of all gender groups reported as reasonable suspicion (59.7%) and the lowest proportion reported as traffic violations (34.8%).

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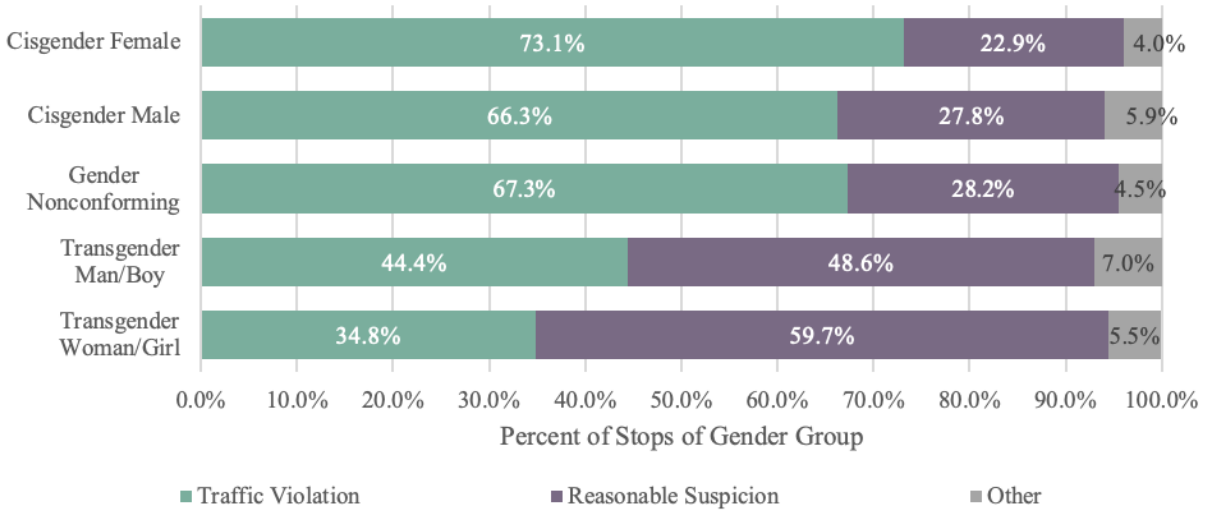
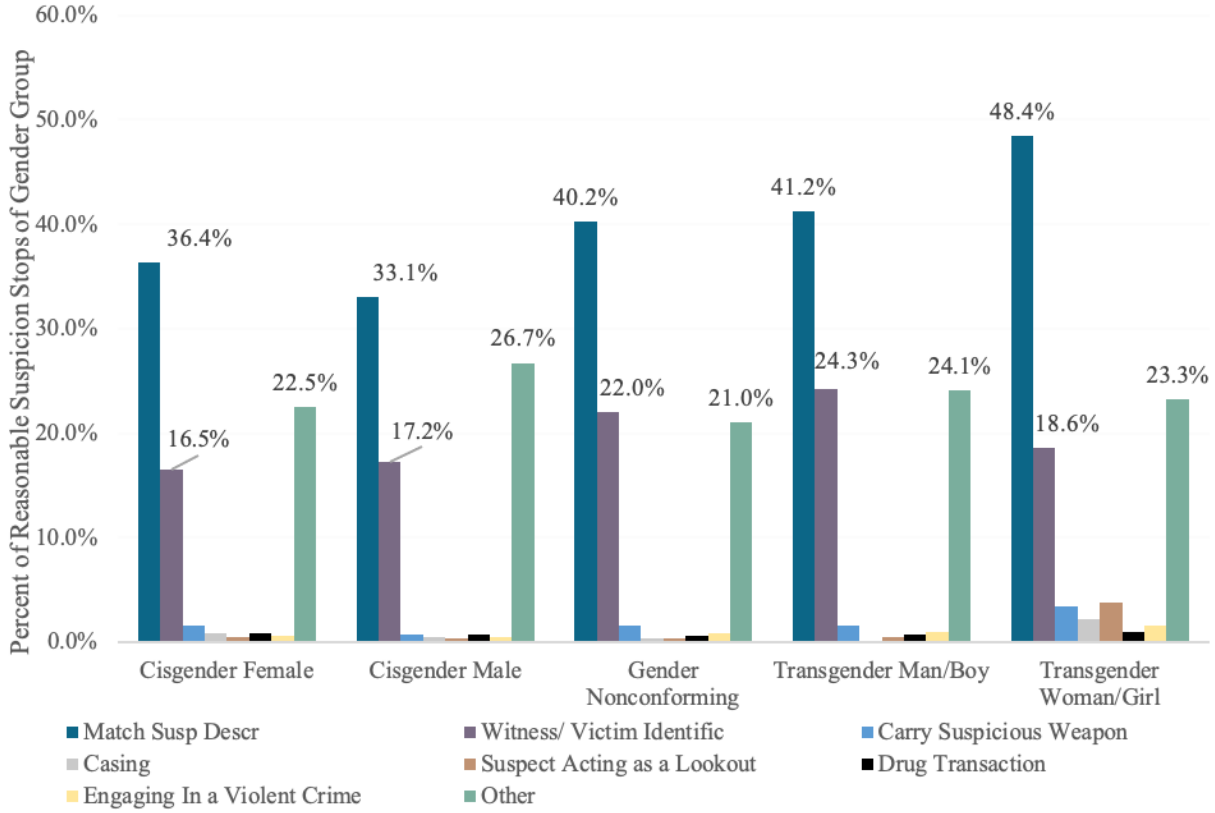
[140] See Cal. Code Regs., tit. 11, § 999.226, subd. (a)(5)(A)(1-5); Cal. Dept. of J., Initial Statement of Reasons: tit. 11. Law. Div. 1. Atty. Gen. ch. 19. Racial and Identity Profiling Act of 2015 (2021) p. 8 <https://oag.ca.gov/system/files/media/isor-ripa-regs-rev-oal.pdf> [as of Dec. 2, 2021]. In July 2021, the Department published proposed revisions to the Perceived Gender of the Person stopped data element, which would revise "Female" and "Male" to "Cisgender woman/girl" and "Cisgender man/boy," respectively, to more accurately reflect the gender of individuals whose gender identity aligns with the sex they were assigned at birth. The proposed revisions would also replace "Gender nonconforming" with "Nonbinary person" to describe a person whose gender falls outside of the binary structure of girl/woman and boy/man. See Calif. Dept. of J., Proposed Text of Modified Regulations, *supra* note 74.

[141] Herman, et al., *Age of Individuals who Identify as Transgender in the U.S.* (Jan. 2017) The Williams Inst., p. 4 <http://thewilliamsins.wpengine.com/wp-content/uploads/Age-Trans-Individuals-Jan-2017.pdf> [as of Dec. 2, 2021].

Figure 27. Reason for Stop by Gender[142]



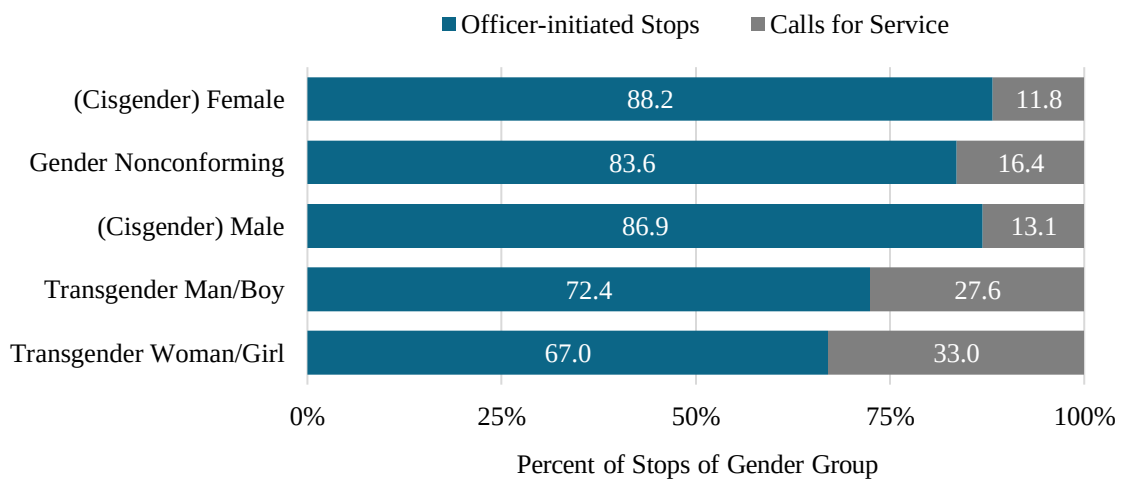


[142] The following reasons for stops have been grouped together to create the reason for stop category of "Other": Parole/Probation/PRCS/Mandatory Supervision, Knowledge of Outstanding Warrant/Wanted Person, Investigation to Determine Whether Person was Truant, Consensual Encounter Resulting in a Search, Possible Conduct Under Education Code, Determine Whether Student Violated School Policy.

ii. Calls for Service by Gender

Stopped individuals perceived as transgender women/girls had the highest proportion of stops initiated in response to a call for service (33.0%) – approximately one out of every three stops – while stopped individuals perceived as cisgender female had the lowest proportion (11.8%) – roughly one in every eight stops.

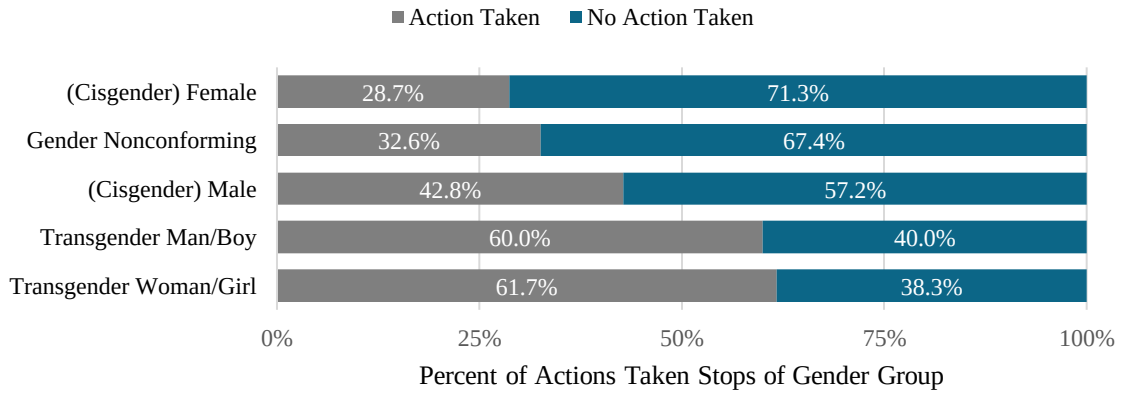
Figure 28. Call for Service Status by Gender



iii. Actions Taken by Officers during Stops by Gender

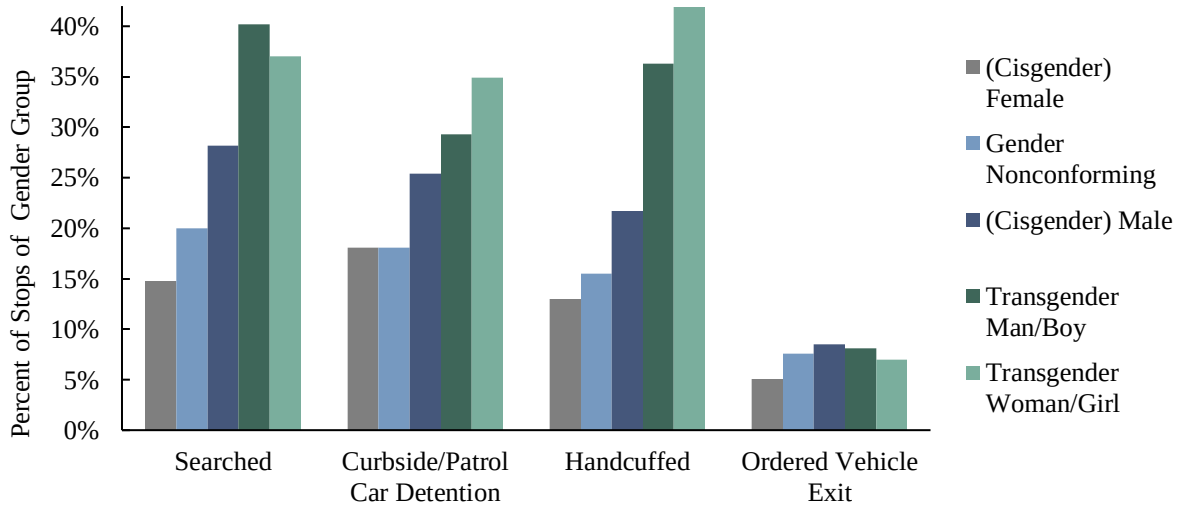
Stopped individuals perceived as transgender women/girls had the highest proportion of stops involve the officer taking actions toward them (61.7%), and individuals perceived as transgender men/boys also had actions taken toward them during more than half of their stops (60.0%). Cisgender female individuals (28.7%) had the lowest proportion of stops with actions taken towards them.

Figure 29. Actions Taken during Stops by Gender



Stopped individuals whom officers perceived as transgender men/boys had the highest rate of being searched (40.2%), while individuals perceived as transgender women/girls had the highest rate of being handcuffed (41.9%) and detained curbside or in a patrol car (34.9%). Officers removed cisgender male individuals from vehicles by order at the highest rate (8.5%). Cisgender female individuals had the lowest rate for each of these actions (ranging from 5.1 to 18.1%).

Figure 30. Actions Taken during Stops by Gender

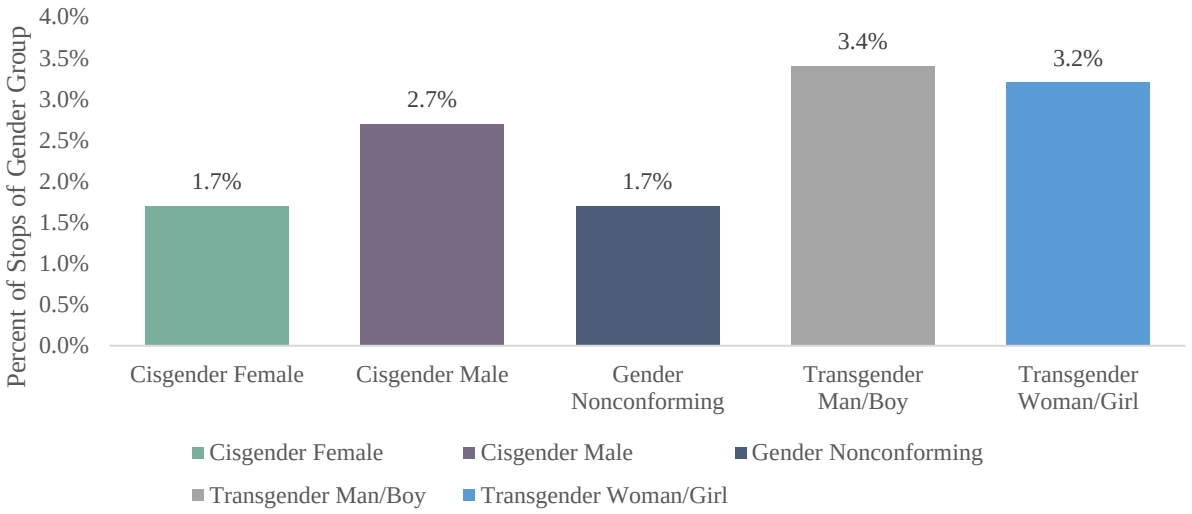


As illustrated in the above charts, individuals perceived as transgender women/girls were handcuffed in nearly one out of every two stops. In comparison, (cisgender) female individuals were handcuffed in one in every eight stops.

Gender and Use of Force Rates

Nine of the 23 actions taken by officers during stops that are reported under RIPA constitute uses of force. The nine action types (baton or other impact weapon used, canine bit or held person, chemical spray used, electronic control device used, firearm discharge/use, firearm pointed at person, impact projectile discharged/used, person removed from vehicle by physical contact, and other physical or vehicle contact) were combined to create the binary variable of use of force to identify if officers used force against stopped individuals. Overall, officers used force against 29,712 (2.4%) individuals who were stopped. Officers used force against a higher proportion of individuals perceived as transgender men/boys (3.4%) or transgender women/girls (3.2%) in comparison with the individuals perceived as cisgender males (2.7%) or females (1.7%).

Figure 31. Use of Force Rates by Gender



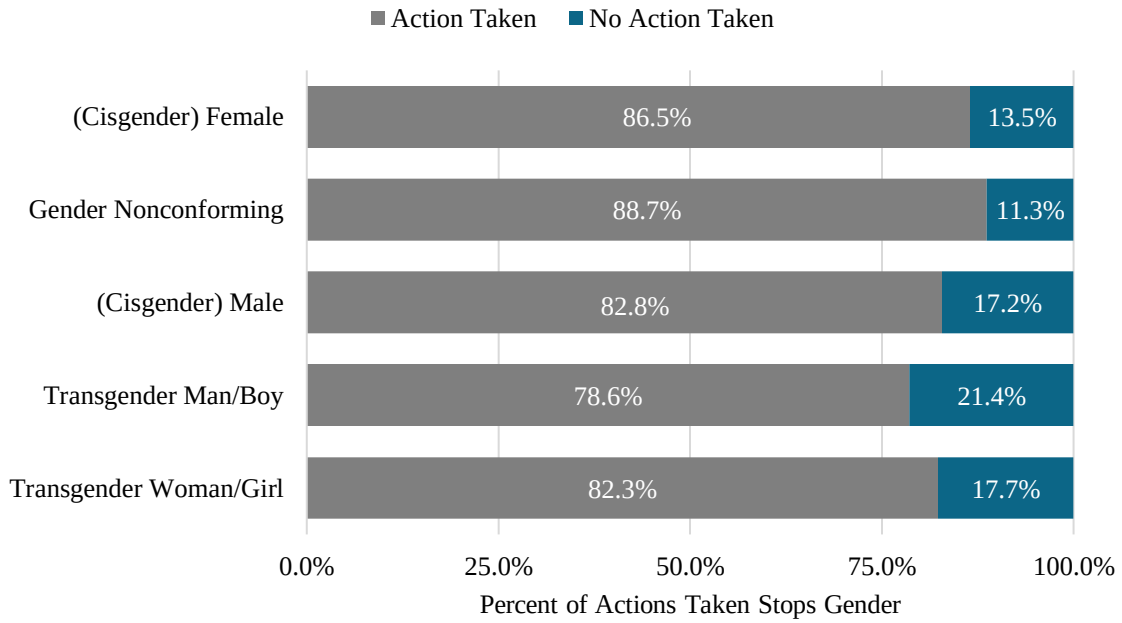
iv. What Was the Result of the Stops?

Officers can select up to 13 different stop disposition (or outcome) categories.[143] Officers may select multiple dispositions per stop where necessary (e.g., an officer cited an individual for one offense and warned them about another).[144]

There were significant disparities in officers taking no action as a result of stops across gender groups. Officers most often took no action as the result stops of individuals they perceived to be transgender men/boys (21.4%); this rate exceeded the rate of no action being taken as a result of stops of cisgender males (17.2%). Similarly, stopped individuals whom officers perceived to be transgender women/girls had a result of stop no action rate (17.7%) that was greater than the rate for individuals whom officers perceived to be (cisgender) females (13.5%). Officers took no reportable action as the result of stop least frequently during stops of gender nonconforming individuals (11.3%). Disparities in stops that result in officers taking no action should be carefully evaluated to identify the reasons for these stops to determine whether the initial stop was sufficiently supported by reasonable suspicion.

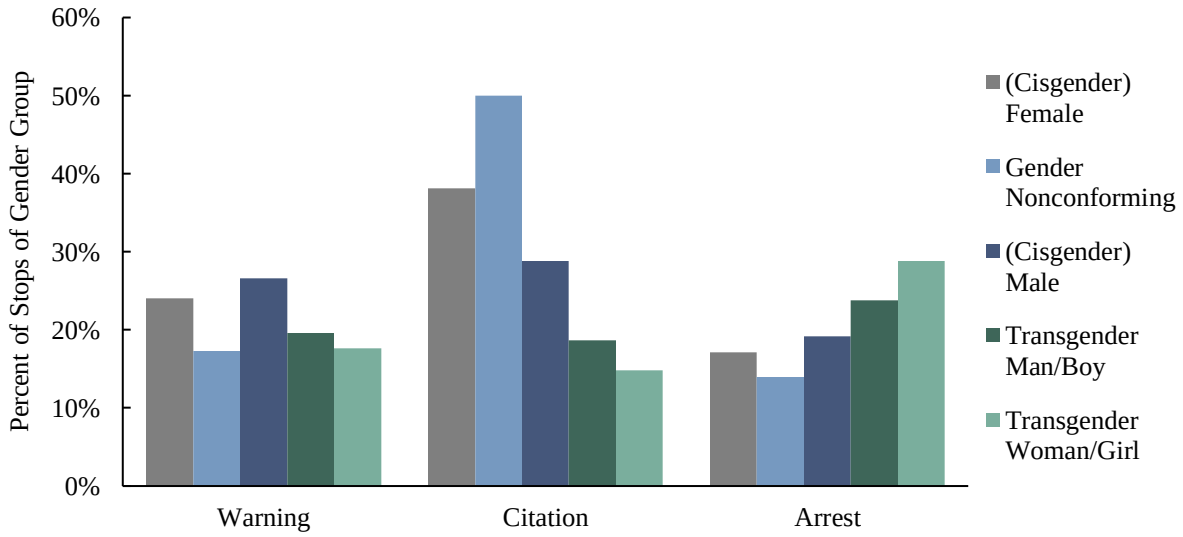
[143] The result of stop options are "No action," "Custodial arrest without warrant," "Custodial arrest pursuant to outstanding warrant," "In-field cite and release," "Citation for infraction," "Warning (verbal or written)," "Field interview card completed," "Psychiatric hold (pursuant to Welfare & Institutions Code sections 5150 and/or 5585.20)," "Noncriminal transport or caretaking transport," "Contacted U.S. Department of Homeland Security," "Contacted parent/legal guardian or other person responsible for the minor," "Referral to school administrator," and "Referral to school counselor or other support staff."
[144] If "No Action" is selected, no additional option may be selected. The options "Referral to school administrator" and "Referral to school counselor or other support staff" may only be selected in stops of students on K-12 public school campuses.

Figure 32. Result of Stop Action Rates by Gender



There were substantial disparities in citation rates across gender, which ranged from 14.8 percent of stopped individuals perceived as transgender women/girls to 50 percent of stopped individuals perceived as gender nonconforming. Warning rates ranged from 17.3 percent of stopped individuals perceived as gender nonconforming to 26.6 percent of (cisgender) male individuals. Compared to other genders, individuals perceived as transgender women/girls had the highest rate of being arrested (28.8%), while stopped individuals perceived as gender nonconforming had the lowest rate (14.0%).

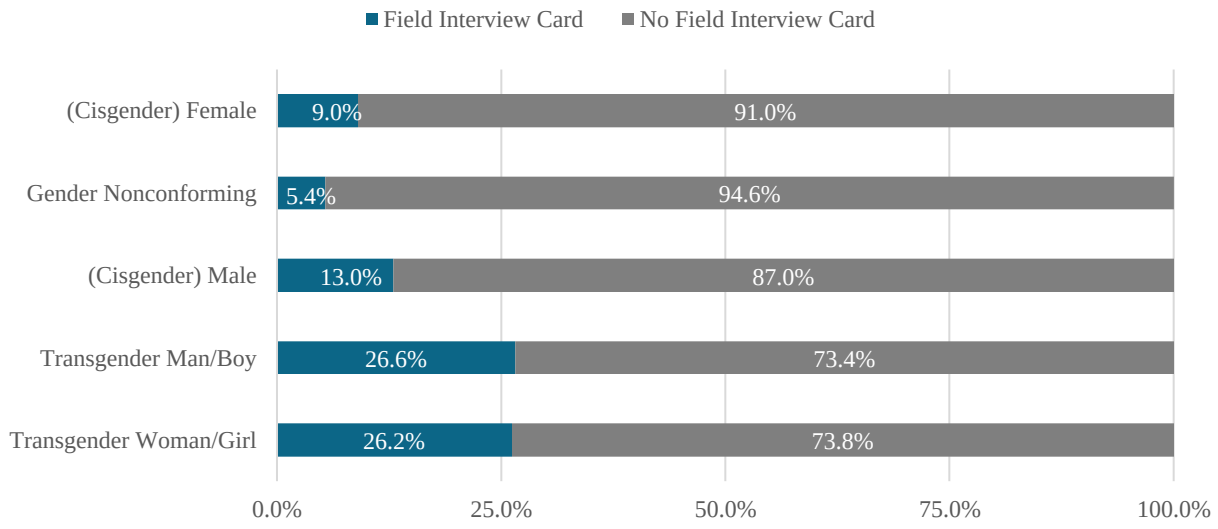
Figure 33. Stop Results by Gender



Field interview cards are an additional result of stop where the data reveal a large disparity between individuals perceived as cisgender and individuals perceived as transgender. The Los Angeles Police Commission Office of the Inspector General describes the completion of field interview cards as a practice used to track contacts made during stops and investigations, as well as arrests, that is generally entered into a searchable database.[145] In the Los Angeles Police Department, for example, field interview cards allow officers to collect information about a person or the circumstances associated with a stop, including location of the interview, race, gender, height, weight, clothing, identifiers such as tattoos, occupation, social security number, gang membership, school affiliation, and other individuals present during the interview.[146] Many agencies enter field interview card information into the statewide CalGang database.[147]

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.

Figure 34. Result of Stop - Field Interview Card by Gender



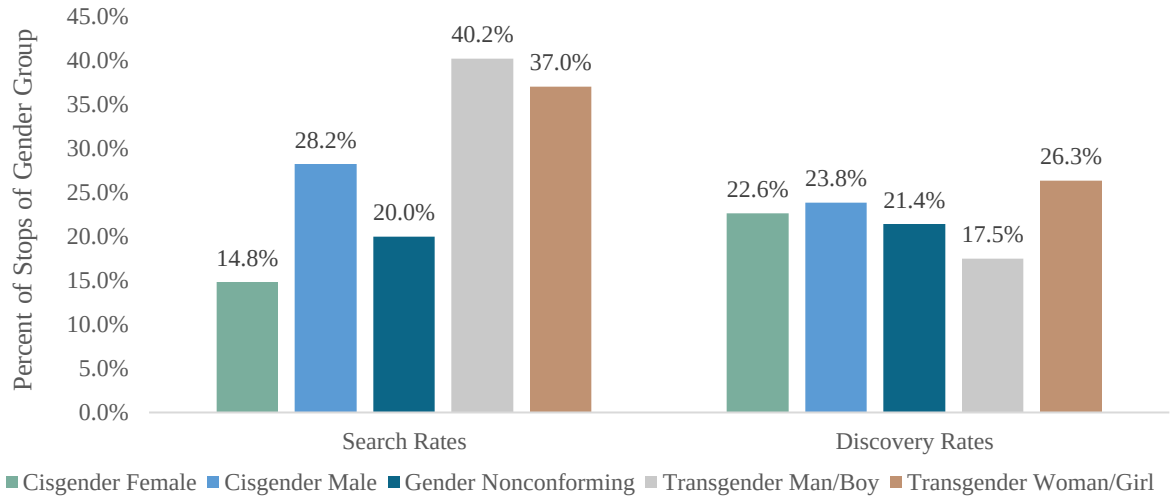
[145] Office of the Inspector General, Los Angeles Police Com., Review of Stops Conducted by the Los Angeles Police Department in 2019 (Oct. 2020) p. 39 <https://a27e0481-a3d0-44b8-8142-1376cfbb6e32.filesusr.com/ugd/b2dd23_d3e88738022547acb55f3ad9dd7a1dcb.pdf> [as of Dec. 2, 2021].
[146] *Id.* at p. 40.
[147] Field interview cards and entries into the CalGang database proved to be so problematic that the Police Department notified the Commission on July 10, 2020 that it would be withdrawing from the database, "given the extent of the inaccurate information found, including instances of false information." See Walker, *CA Attorney General Blocks Law Enforcement Access to Quarter of State Gang Database Entries Amid Investigation Into LAPD Misconduct* (July 16, 2020) Witness LA <https://witnessla.com/ca-attorney-general-blocks-law-enforcement-access-to-quarter-of-state-gang-database-entries-after-investigating-lapd-misconduct/> [as of Dec. 2, 2021].

v. Search and Discovery Rates by Gender

Overall, officers searched 305,337 (24.6%) of stopped individuals and discovered contraband or evidence in 23.5 percent (71,901) of these stops. Breaking these results down by gender, officers searched a higher proportion of individuals perceived as transgender (37.0% transgender women/girls – 40.2% transgender men/boys) in comparison to individuals perceived as cisgender male or female (28.2% and 14.8%, respectively). In relative terms, officers searched individuals perceived as transgender women/girls at 2.5 times the rate at which they searched individuals perceived as cisgender females, and searched individuals perceived as transgender men/boys at 1.4 times the rate at which they searched individuals perceived as cisgender males. Officers also searched a higher proportion of individuals perceived as gender nonconforming (20%) in comparison to perceived cisgender females (14.8%) but less frequently than they searched cisgender males (28.2%).

Individuals perceived as transgender men/boys (17.5%) had the lowest proportion of all perceived gender groups to have contraband or evidence discovered. Searched individuals perceived as transgender women, followed by cisgender males had the two highest discovery rates out of all gender groups (26.3% and 23.8%, respectively). Officers discovered contraband or evidence on a lower proportion of searched individuals perceived as gender nonconforming (21.4%) in comparison to cisgender individuals.

Figure 35. Search and Discovery Rates by Gender



2. Best Practice Recommendations

The Board conducted research and received input from the National Center for Transgender Equality (NCTE) and the ACLU of Southern California's Gender & Reproductive Justice Project regarding best practices aimed at reducing disparities for transgender individuals. The Board hopes to do additional outreach and encourages continued input from advocacy groups.

Many of the Board's recommendations this year align with national recommendations published by NCTE in 2019. In the Failing to Protect and Serve report, NCTE evaluated the policies of the 25 largest U.S. police departments on 17 criteria reflecting areas of interaction between law enforcement and transgender people. NCTE emphasizes that their review focused on evaluating specific policies and did not evaluate the implementation of the agencies' policies. The review included three California police departments: Los Angeles, San Diego, and San Francisco Police Departments. Of all the Departments that NCTE reviewed, the San Francisco Police Department's policies met the greatest number of criteria (10 of 17). No Department met all the criteria, and none of the departments reviewed fully met the criteria regarding department forms, transportation, sexual misconduct, or training.148

The policies of each of the three California LEAs met some of the criteria and did not address or contradicted other criteria.

San Francisco Police Department (SFPD)[149]

NCTE found that SFPD policies met the criteria for availability of policies on transgender interactions, non-discrimination based on gender identity and sexual orientation, non-binary recognition, use of respectful communication, removal of appearance-related items, and use of condoms as evidence of sex work. SFPD was the only agency that NCTE identified as meeting the criteria of non-binary recognition; SFPD policies explicitly mentioned non-binary gender identities and provided guidelines on how their policies apply to interactions with non-binary individuals. SFPD was one of the two Departments that NCTE reviewed that met criteria regarding removal of appearance-related items; SFPD policy allowed for transgender individuals who were arrested to maintain appearance-related items used to convey gender identity, "unless such items present a safety hazard, impede the administration of medical attention, or are needed for evidentiary reasons." SFPD was also the only agency that NCTE identified as meeting the criteria regarding the use of condoms as evidence of sex work; SFPD policy prohibited the confiscation, photographing, or documentation of the possession of open and unopened condoms.

NCTE found that SFPD policies partially met recommendations regarding department forms. The SFPD policy required officers to record a transgender person's name as an "AKA", if different from their legal name, and record gender as stated in legal documentation, including "X" gender markers. SFPD forms included sections for documenting "preferred pronoun" and "preferred title" as expressed by the individual. NCTE also found that SFPD policies partially met recommendations regarding transportation; SFPD required officers to follow procedures for transporting females when transporting transgender people who are arrested, but failed to set guidelines generally on how to transport transgender individuals.

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[148] See NCTE, *Failing to Protect and Serve*, *supra* note 135, at pp. 7-9.
[149] See *id.* at pp. 94-96.

NCTE found that the SFPD policy regarding search procedures did not explicitly prohibit searches for gender determination, failed to address officer sexual misconduct, and did not require officer training on interactions with transgender people.

Los Angeles Police Department (LAPD)[150]

NCTE found that LAPD policies met the criteria for availability of policy on transgender interactions, non-discrimination based on sexual orientation, use of respectful communication, and search procedures.

NCTE found that LAPD policies partially met recommendations regarding non-discrimination based on gender identity. LAPD policy explicitly prohibited the use of gender identity or expression as a basis to stop, question, search, or arrest any individual, as a basis for initiating contact, or as evidence of a crime. LAPD policies also prohibited the use of language that is demeaning or derogatory. The LAPD policies did not state that transgender people are not to be asked invasive questions that are not relevant to an investigation. NCTE identified inconsistencies in LAPD policies regarding department forms. Policies instruct officers to record an individual's currently used name as an "AKA" and "alias" or "nickname." NCTE found that LAPD policies partially met recommendations regarding appearance-related items. LAPD policy stated, "requests to remove appearance-related items such as prosthetics, clothing that conveys gender identity, wigs, and cosmetics, shall be consistent with requirements for the removal of similar items for non-transgender individuals."

NCTE found that LAPD policies did not mention individuals with non-binary gender identities or how search or other policies apply to non-binary individuals and the LAPD's suspect description policy only allowed for "male" and "female" classification. NCTE found that LAPD policies failed to prohibit officer sexual misconduct and establish prevention or accountability mechanisms for officer sexual misconduct. NCTE additionally found that LAPD policies did not require officer training on interactions with transgender people.

San Diego Police Department (SDPD)

In 2019, when NCTE reviewed SDPD policies, they found that they only met criteria regarding non-discrimination based on sexual orientation and partially met criteria regarding non-discrimination based on gender identity.[151] On June 1, 2021, SDPD adopted new procedures establishing guidelines for interacting with transgender and gender non-binary individuals that apply to all members of the Department.[152]

The Board makes the following observations of SDPD's new policy. The new procedures appear to meet NCTE's criteria for policy availability and use of respectful communication. The new procedures appear to partially meet NCTE criteria regarding non-discrimination and profiling

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[150] *Id.* at pp. 64-67.
[151] See NCTE, *Failing to Protect and Serve*, *supra* note 135, at pp. 91-93.
[152] See San Diego Police Department, Procedure, DP 6.34 - Police Interaction with Transgender and Gender Non-Binary Individuals (June 1, 2021) <https://evawintl.org/wp-content/uploads/634-Police-Interaction-with-Transgender-and-Gender-Non-Binary-Individuals.pdf> [as of Dec. 2, 2021].

based on gender identity. The policy states that "non-traditional gender identities and gender expressions" do not constitute reasonable suspicion or prima facie evidence that an individual is attempting to conceal their identity or is engaging in or has engaged in prostitution, trespassing, loitering, or any other crime. The new procedures appear to partially meet NCTE's criteria regarding training. The policy states that members will receive training consistent with AB 2504 (codified at Penal Code section 13519.41), which requires law enforcement and dispatcher basic training to include specific aspects regarding sexual orientation and gender identity. AB 2504 also permits law enforcement officers, administrators, executives, and dispatchers to participate in supplemental training that includes the topics that are required in basic training.[153] However, SDPD's policy does not appear to address the incorporation of transgender, intersex, and non-binary gender issues throughout all officer trainings, including during search and seizure training and periodic roll-call and in-service trainings. The new SDPD procedures appear to partially meet the criteria regarding departmental forms. The SDPD policy requires that members document an individual's "preferred name" and pronoun to ensure continuity of appropriate treatment. The procedures indicate that these should be documented in report narratives and specify that individuals' "preferred name" and gender should be used throughout report narratives. NCTE criteria recommend that all departmental forms include a field for "Name Currently Used (if different from legal name)" and "Legal Name", in addition to and field for "Alias."

NCTE's criteria and evaluation of existing policies may help agencies evaluate their own relevant policies and identify examples of other policies that meet best practices. The findings of NCTE's evaluation demonstrate the need for additional work to align policies with best practices. The Board presents the following recommendations for advocates, law enforcement agencies and their oversight bodies, and POST to use to update policies, practices, and training. These recommendations are grouped thematically into twelve areas.

Data Analysis Recommendations to Law Enforcement Agencies and Their Oversight Bodies:

- Analyze stop data by gender, including all data values for perceived gender of the person stopped, as defined in the RIPA regulations. The Board notes that combining data regarding stops of people perceived as cisgender and transgender would be ineffective in efforts to identify disparities and develop targeted interventions.

- Analyze stops that result in officers taking no action by identity groups. When disparities exist across identity groups in these stops, carefully evaluate the reasons for these stops to

[153] Pen. Code, § 13519.41, Sexual orientation and gender identity training, added by Stats. 2018, ch. 969 (A.B. 2504), § 1. California Legislative Information (2018) <https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2504> [as of Dec. 2, 2021]. AB 2504 requires that a course be incorporated in basic training that addresses sexual orientation and gender identity terminology, how to create an inclusive workplace within law enforcement for sexual orientation and gender identity minorities, important moments in history related to sexual orientation and gender minorities and law enforcement, and how law enforcement can respond effectively to domestic violence and hate crimes involving sexual orientation and gender identity minorities.

assess how the enforcement strategies promote public safety and community trust and conform to constitutional standards.[154]

- Analyze data for stops in which reasonable suspicion related to Quality of Life Offenses[155] was the reason for stop to evaluate enforcement priorities and identify patterns in how officers, shifts, units, and districts enforce Quality of Life offenses and develop interventions to address disparities.[156]

- Analyze stop data regarding search frequencies and rates at which officers find contraband or evidence across identity groups to evaluate search strategies, the burden that the searches may cause to the individuals searched, and the effect of search disparities on law enforcement's relationship with communities.[157]

Community-based Accountability Recommendations to Law Enforcement Agencies

- Work in close partnership with local transgender advocacy organizations knowledgeable about local struggles related to police practices, both when developing policies and the training that supports policy implementation.[158] Engaging with advocacy groups in the communities the LEA serves can increase accountability.

Recommendations Regarding Non-Vehicle Investigatory Stops

- Law enforcement agencies and their oversight bodies shall ensure consistent documentation of specific, individualized description of the facts that, prior to the investigatory stop being made, establish reasonable suspicion to make an investigatory stop.[159]

- Law enforcement agencies should require officers to provide a written record of encounters to stopped individuals, identifying the officer and the basis for the stop in a summary way, and include an identification number corresponding to other documentation of the stop.[160]

- Agencies must have a policy that prohibits using an individual's geographic location –such as presence in a high crime area or proximity to the scene of suspected or reported crimes – without any other reasonable articulable facts that an individual is, has, or is about to be

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[154] See U.S. Dept. of J., Civil Rights Div., Investigation of the Baltimore City Police Department (Aug. 10, 2016) pp. 5-6 <https://www.justice.gov/crt/file/883296/download> [as of Dec. 2, 2021].
[155] See, e.g., Consent Decree, *U.S. v. Police Dept. of Baltimore City*, No. 1:17-cv-00099 (D.Md. Jan. 12, 2017) pp. 202-203 (defining "Quality of Life" to include infractions of statutes and ordinances regarding loitering, trespassing, public urination/defecation, disorderly conduct, failure to obey, disturbing the peace, hindering, open container, littering) <https://www.baltimorepolice.org/sites/default/files/General%20Website%20PDFs/Baltimore_Police_Consent_Decree_3.pdf> [as of Dec. 2, 2021].
[156] See *id*. at p. 28.
[157] See Consent Decree, *U.S. v. Police Dept. of Baltimore City*, *supra* note 155, at p. 173.
[158] S.F. Police Dept., Community Engagement Div., SFPD Community Policing Strategic Plan: U.S. DOJ Recommendation 40.1 (Oct. 2018) p. 10 <https://www.sanfranciscopolice.org/sites/default/files/2019-12/SFPDCommunityPolicingStrategicPlan.pdf> [as of Dec. 2, 2021].
[159] See Consent Decree, *U.S. v. Police Dept. of Baltimore City*, *supra* note 155, at p. 14.
[160] See *id.* at p. 15.

engaged in criminal activity as a basis for an investigatory stop.[161] Law enforcement agencies and POST shall include examples and scenario-based training on this requirement.

- Agencies shall prohibit basing investigatory stops solely on an individual's response to the presence of police officers, such as an individual's attempt to avoid contact with an officer.[162]

Recommendation to Law Enforcement Agencies regarding Quality of Life Offenses

- Require that a permanent rank supervisor approve or disapprove an officer's request to make an arrest for a Quality of Life offense.[163]

Training Recommendations to POST and Law Enforcement Agencies

- Require multiple hours of LGBT-specific training for all personnel and include LGBT advocacy organizations in training development and facilitation.[164]

- Implement training regarding Penal Code Sec. 647.3(b), which states that possession of condoms in any amount shall not provide a basis for probable cause for arrest for specified sex work crimes.[165]

- Include information in training that the presence of needles may be indicative of prescribed hormone therapy and is not necessarily indicative of illegal drug possession, use, or paraphernalia.[166]

Non-discrimination based on Gender Identity and Sexual Orientation Recommendations to Law Enforcement Agencies

- Ensure that policies recognize the existence of individuals with non-binary gender identities and describe how gender-specific policies (for example, forms and records, search procedures, and transportation) apply to non-binary people.[167]

- Require officers to record an individual's gender based on that individual's gender identity as expressed or clarified by the individual, regardless of anatomy, surgical status, or whether their identity is reflected in identification documents.[168] All forms and records should include values for "male", "female", a gender neutral designation (such as "non-

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[161] See *id.* at p. 16.
[162] Ibid.
[163] See *id.* at p. 23.
[164] See NCTE, *Failing to Protect and Serve*, *supra* note 135, at p. 24; Consent Decree, *U.S. v. Police Dept. of Baltimore City*, *supra* note 155, at pp. 37-38; S.F. Police Dept., Community Engagement Div., SFPD Community Policing Strategic Plan: U.S. DOJ Recommendation 40.1, *supra* note 158, at p. 7.
[165] See California passed the legislation which prohibited the use of condoms as a basis for probable cause for sex work-related crimes, SB 233, in 2019. California-based advocates indicate that training is needed to ensure the implementation of SB 233.
[166] See NCTE, *Failing to Protect and Serve*, *supra* note 135, at p. 11.
[167] See *id.* at pp. 12-13. People whose gender is not male or female use many different terms to describe themselves, and "non-binary" is one of the most common. Different non-binary people may use different pronouns. Many non-binary people use "they," and others use "he" or "she" or other pronouns.
[168] See Consent Decree, *U.S. v. Police Dept. of Baltimore City*, *supra* note 155, at p. 31.

binary" or the abbreviation "X"), and "unknown."[169] Agencies policies should prohibit inquiring about an individual's anatomy or medical history or conducting a search to determine a person's anatomy or assign gender.[170]

- Explicitly prohibit requesting identification or otherwise initiating contact solely based on the actual or perceived gender identity or expression of any individual.[171]

- Prohibit considering an individual's gender identity, gender expression, or actual or perceived sexual orientation as evidence of any crime, including prostitution-related offenses.[172]

- Prohibit members from disclosing an individual's transgender, intersex, or non-binary identity to members of the public or others interacting with the agency, absent a legitimate law enforcement objective. Agencies' policies should also prohibit members from disclosing a juvenile's transgender, intersex, or non-binary identity to the juvenile's parents or legal guardians, absent a legitimate law enforcement objective.

Respectful Communications and Forms Recommendations to Law Enforcement Agencies

- Prohibit use of demeaning or derogatory language aimed at a person's actual or perceived gender identity, gender expression, or sexual orientation.[173]

- Require officers to address members of the public with the names and pronouns they currently use. Agencies' policies should additionally detail how officers should record an individual's current name, if different from a legal name, in records, forms, and other official documents, and indicate that a current name that is not also the individual's legal name should not be recorded under "alias" or "nicknames." All of the agencies forms and records should include a field for "Name currently used (if different from legal name)," and "Legal Name," in addition to any field designated for "Alias." Pronouns should be recorded as stated by the individual along with name currently used. [174]

- Prohibit officers from inquiring about intimate details of an individual's sexual practices, anatomy, or gender-related medical history, except as necessary to serve valid, nondiscriminatory law enforcement objectives.[175]

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[169] See NCTE, *Failing to Protect and Serve*, *supra* note 135, at pp. 14-15.
[170] See *id*. at p. 11.
[171] See *id.* at pp. 10-11.
[172] *Ibid*.
[173] Ibid.
[174] *Id.* at pp. 13-14.
[175] See Consent Decree, *U.S. v. Police Dept. of Baltimore City*, *supra* note 155, at p. 32.

- Adopt policies indicating that officers may not prolong a stop in order to complete a field interview card and that members of the public are not obligated to answer questions or display tattoos in order to facilitate the completion of field interview cards.[176]

- During supervisory review of records, include review to identify and address instances where individuals were misgendered.

Search Procedures Recommendations to Law Enforcement Agencies and POST

The Board emphasizes the importance of policies regarding search procedures because of how dehumanizing and intrusive searches can be and the frequency with which searches occur.

- Law enforcement agencies shall clearly prohibit searching or frisking individuals for the purpose of viewing or assigning gender based on the individual's anatomy or subjecting transgender people to more invasive searches than cisgender people.[177]

- Law enforcement agencies shall include scenarios in training that prohibit officers from conducting a frisk for weapons or pat down during an investigatory stop except where officers have reasonable suspicion, based on specific articulable facts, that a person is armed with a dangerous and deadly weapon.[178] POST and law enforcement agencies shall provide scenario-based training regarding *Terry v. Ohio* frisks/pat searches.

- Law enforcement agencies shall require that when an officer must conduct a search of a transgender individual, the officer shall ask the individual their preference with regard to the gender of the officer they feel safer conducting a search of their person. For example, "What gender officer would you prefer to search you?" These requests shall be honored absent exigent circumstances. If no such officer is available, or the individual's request is not honored for any other reason, the preference and the reason it could not be honored shall be documented.[179]

Transportation Recommendations to Law Enforcement Agencies

- Require that officers, absent exigent circumstances, transport transgender individuals who are arrested with other individuals of the same self-identified gender, unless the individual has expressed a safety concern and wishes to be transported alone or with people of a different gender. Non-binary individuals shall be transported with individuals of the gender they express to be safest for them.[180]

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[176] See Off. of the Inspector Gen., L.A. Police Com., Review of Stops Conducted by the L.A. Police Dept. in 2019 (Oct. 2020) pp. 40-41 <https://a27e0481-a3d0-44b8-8142-1376cfbb6e32.filesusr.com/ugd/b2dd23_d3e88738022547acb55f3ad9dd7a1dcb.pdf> [as of Dec. 2, 2021].
[177] See NCTE, *Failing to Protect and Serve*, *supra* note 135, at p. 16; Consent Decree, U.S. v. Police Dept. of Baltimore City, *supra* note 155, at p. 20.
[178] See Consent Decree, *U.S. v. Police Dept. of Baltimore City*, *supra* note 155, at p. 19.
[179] See *id.* at pp. 25-26.
[180] See NCTE, *Failing to Protect and Serve*, *supra* note 135, at p. 7; Pen. Code, § 2605.

Sexual Misconduct Recommendations to Law Enforcement Agencies

- Clearly and completely prohibit any on-duty sexual activity[181] by officers; any on- or off-duty sexual activity using agency or government property; using official position to coerce, persuade, or force sexual contact; and failure to report sexual misconduct.[182]

Appearance-related Items Recommendations to Law Enforcement Agencies

- Adopt policies stating that transgender individuals shall not be asked to remove appearance-related items (such as prosthetics, bras, clothes, undergarments, wigs, chest binders, or cosmetic items) if cisgender individuals of the same gender identity are not also required to do so. Non-binary individuals shall not be asked to remove appearance-related items if individuals of any gender identity are not required to do so.[183]

Civilian Complaint Procedures Recommendations to Law Enforcement Agencies and Their Oversight Bodies

- Provide training to investigators and adjudicators on civilian complaint review boards to address the types of police profiling and stigmatization experienced by transgender people.[184]

The Board encourages advocates, LEAs and their oversight bodies, and POST to use the Board's recommendations across the twelve areas that we have addressed to update agencies' policies, practices, and training. The Board recommends that LEAs work in close partnership with local transgender advocacy organizations when developing policies and the training that supports policy implementation.

3. Proposed Legislation

Earlier in this section we referenced studies that have highlighted how people of color, women, and LGBTQ individuals are disproportionately suspected of and charged with sex work-related crimes.[185] For this reason, the Board is tracking proposed legislation in California and recently adopted legislation in other states that aim to address these disparities.

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[181] Pen. Code section 832.7, subd. (b)(1)(B)(ii), effective Jan. 1, 2022, defines the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority, as "sexual assault." The propositioning for or commission of any sexual act while on duty is considered a sexual assault.

[182] See NCTE, *Failing to Protect and Serve*, *supra* note 135, at p. 19.

[183] See *id.* at p. 22.

[184] See Mallory, et al., *Discrimination and Harassment by Law Enforcement Officers in the LGBT Community* (Mar. 2015) The Williams Inst., p. 3 <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Discrimination-by-Law-Enforcement-Mar-2015.pdf> [as of Dec. 2, 2021].

[185] See, e.g., N.Y. Bar Assn., Repeal the "Walking While Trans" Ban: Rep. on Legislation by the Lesbian, Gay, Bisexual, Transgender, and Queer Rights Com., Civil Rights Com., Crim. J. Operations Com., Immig. and Nat. Law Com., and Sex and Law Com. (Feb. 2021) pp. 3-6 <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/repealing-the-walking-while-trans-law> [as of Dec. 2, 2021]; Mogulescu, *Your Cervix Is Showing: Loitering for Prostitution Policing as Gendered Stop & Frisk* (2020) 74 U. Miami L. Rev. Caveat 68, 70-71

In 2021, the California legislature voted to pass the Safer Streets for All Act (Senate Bill 357); the bill may be sent to the Governor at any time during 2022.[186] The bill would repeal provisions of existing law related to loitering with the intent to commit prostitution. It would also authorize a person convicted of a violation of loitering with the intent to commit prostitution to petition the court for the dismissal and sealing of their case, and resentencing, if applicable. Bill author Senator Wiener stated:

> 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. The creation and enactment of this offense began to cause more harm than help, because of the power it gave law enforcement to profile, target, harass, and criminalize without accountability, and the consequences of criminalization on the livelihood and safety of specifically targeted communities.[187]

Policy changes similar to those proposed in SB 357 were recently adopted by New York State and Seattle.[188]

4. Vision for Future Reports

The Policies subcommittee made three recommendations about what they would like to see on this topic in future reports: (1) analysis of CHP stop data across gender, (2) some intersectional analyses of race and gender, similar to the introductory analyses that were included in the 2021 Board Report, and (3) a review of relevant legislation, including SB 357.

<http://lawreview.law.miami.edu/wp-content/uploads/2020/05/Your-Cervix-is-Showing_Page-Proof_FINAL.pdf> [as of Dec. 2, 2021].

[186] Sen. Bill No. 357 (2021-2022 Reg. Sess.) <https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB357> [as of Dec. 2, 2021].

[187] Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Sen. Bill No. 357 (2021-2022 Reg. Sess.) as amended Sep. 10, 2021, p. 4 <https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB357#> [as of Dec. 2, 2021].

[188] See del Valle, *N.Y. Governor Signs Bill to Repeal "Walking While Trans" Ban*, CNN (Feb. 2 2021) <https://www.cnn.com/2021/02/02/us/new-york-trans-ban-prostitution-law-repeal/index.html> [as of Dec. 2, 2021] (In Feb. 2021, New York repealed its 1976 statute criminalizing loitering for the purposes of prostitution. Bill sponsor State Senator Brad Hoylman said the former law "led to hundreds of unnecessary arrests of transgender women of color and a broader culture of fear and intimidation for transgender and gender nonconforming New Yorkers"); see also Seattle City Council, *City Council Repeals Problematic Law to Reduce Disproportionate Impact on Communities of Color* (June 22, 2021) <https://council.seattle.gov/2020/06/22/city-council-repeals-problematic-law-to-reduce-disproportionate-impact-on-communities-of-color/> [as of Dec. 2, 2021] (In 2020, the Seattle City Council unanimously repealed the municipal code regarding "prostitution loitering." In 2018 the Seattle Reentry Work Group recommended repeal of the Prostitution Loitering law. The Seattle City Attorney's Office supported the repeal and City Atty. Pete Holmes recommended that other jurisdictions evaluate their loitering policies).

B. Data Driven Approaches to Disability Justice

Research and data show that people experiencing mental health crises may also be at risk for harmful and even deadly police intervention.[189] No one should fear calling for help when they or a loved one are experiencing a mental health crisis. Having a community-based health professional respond to a mental health crisis can help avoid unnecessary involvement with the police or criminal justice system, prevent death or injury, and eliminate barriers to treatment.[190]

> *"Many of us live in fear that we or our loved ones will become a victim when encountering police. We all mourned last year when an autistic man was shot dead in a California Costco by an off duty cop who was never held accountable. People of color and people with disabilities should not live in fear of getting killed, beaten, or arrested by police because they seem 'suspicious' or don't respond quickly enough to commands."*
>
> *- Disability Voices United, President Judy Mark, statement in response to the murder of George Floyd and the calls for accountability for police violence.[191]*

When we look at the intersection between race and disability, the risk issues may be compounded. Research shows that individuals perceived to be Black are more likely to be seen as "threatening" by an officer and as a result are subject to disproportionate, unnecessary, and even deadly uses of force.[192] Similarly, research shows officers are more likely to perceive someone with a mental health disability as more dangerous or threatening than those

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[189] See, e.g., *Fatal Force Shooting Database 2015-2021*, Wash. Post <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> [as of Dec. 2, 2021] (Nearly a quarter of people killed by the police throughout the nation have a known mental health disability); Premkumar et al., *Police Use of Force and Misconduct in California* (Oct. 2021) Pub. Policy Inst. of Cal. <https://www.ppic.org/publication/police-use-of-force-and-misconduct-in-california/> [as of Dec. 2, 2021] (In California more than four in ten people treated for non-fatal gunshot wounds from a police encounter had a mental health disability); Jones and Sawyer, *Arrest, Release, Repeat: How police and jails are misused to respond to social problems* (Aug. 2019) Prison Policy Initiative <https://www.prisonpolicy.org/reports/repeatarrests.html> [as of Dec. 2, 2021] (Nationally, people with multiple arrests are three times more likely to have a serious mental health disability and low rates of violence, raising the concern "that police are often used to respond to medical and mental health problems, not to matters of public safety"); *Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters* (2015) Treatment Advocacy Center, p. 3 <https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf> [as of Dec. 2, 2021] (Though numbering fewer than four in every 100 adults in America, those with severe mental health disabilities "generate no less than 1 in 10 calls for police service and occupy at least 1 in 5 of America's prison and jail beds. An estimated 1 in 3 individuals transported to hospital emergency rooms in psychiatric crisis are taken there by police"); see also generally, *Mental Health and Police Violence: How Crisis Intervention Teams Are Failing* (Sept. 2020) NPR All Things Considered <https://www.npr.org/2020/09/18/913229469/mental-health-and-police-violence-how-crisis-intervention-teams-are-failing> [as of Dec. 2, 2021].

[190] See Mark, It's Our Fight Too (June 5, 2020) Disability Voices United <https://disabilityvoicesunited.org/police-violence/> [as of Dec. 2, 2021].

[191] Mental Health America, Position Statement 59: Responding to Behavioral Health Crisis (Mar. 3, 2017) <https://www.mhanational.org/issues/position-statement-59-responding-behavioral-health-crises> [as of Dec. 2, 2021].

[192] See Richardson, *Police Efficiency and the Fourth Amend.* (2012) 87 Ind. L.J. 1143, 1150 (citing Trawalter, et al., *Attending to Threat: Race-Based Patterns of Selective Attention* (2008) 44 J. Experimental Soc. Psychol. 1322, 1324).

perceived not to have a mental health disability.[193] When we look at the intersectionality of race and disability, "police are more likely to shoot and kill Black men who exhibit mental health disabilities than White men with similar behaviors."[194]

"When we talk about police violence we need to also talk about disabled black people and the intersections of ableism and racism. Racism causes many officers to see black and brown people as a threat. And when we don't comply because we didn't hear the command or we can't move in a certain way, or we don't see a physical gesture, or maybe there's an invisible disability and like a psychiatric disability, then the noncompliance is interpreted as threatening. And that's the cause of a lot of the violence against the black and brown people, an intersection of racism and ableism, and any solutions to police brutality against black people need to also address ableism."

- Overlooked Reality of Police Violence Against Disabled Black Americans, Interview of Haben Girma, Disability Rights Advocate and Author of "The Deafblind Woman Who Conquered Harvard Law"[195]

Because community members lack alternatives to calling the police, law enforcement usually responds to individuals experiencing mental health crises. Consequently, people with mental health disabilities may unnecessarily be sent to jail or become involved with the criminal legal system.[196] This deeply impacts already limited resources, but more importantly, it is harmful and destructive to the individual, their family, and their community.[197] Communities should consider alternatives to armed police responses and prioritize community-based responses to aid a person in crisis.

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[193] See generally Watson, et al., *Police Officers' Attitudes Toward and Decisions About Persons with Mental Illness* (Jan. 2004) Psychiatric Services <https://ps.psychiatryonline.org/doi/pdf/10.1176/appi.ps.55.1.49> [as of Dec. 2, 2021]; see also McMullen-Laird, *Overlooked Reality of Police Violence Against Disabled Black Americans* (interview of Haben Girma) The Takeaway (June 15, 2020) <https://www.wnycstudios.org/podcasts/takeaway/segments/police-violence-disabled-black-americans?tab=summary> [as of Dec. 2, 2021].

[194] See Thomas, et al., Black and unarmed: statistical interaction between age, perceived mental illness, and geographic region among males fatally shot by police using case-only design (Jan. 2021) Annals of Epidemiology, vol. 53, pp. 42-49 <https://doi.org/10.1016/j.annepidem.2020.08.014> [as of Dec. 2, 2021].

[195] McMullen-Laird, *supra* note 193.

[196] *Mental Illness and the Criminal Justice System*, Nat. Alliance on Mental Illness (NAMI) <https://www.nami.org/NAMI/media/NAMI-Media/Infographics/NAMI_CriminalJusticeSystem-v5.pdf> [as of Dec. 2, 2021].

[197] Doleac, *New Evidence that Access to Healthcare Reduces Crime* (Jan. 3, 2018) Brookings Inst. <https://www.brookings.edu/blog/up-front/2018/01/03/new-evidence-that-access-to-health-care-reduces-crime/> [as of Dec. 2, 2021].

"Many of the problems associated with police involvement in behavioral health crises can be avoided by creating alternatives. Non-behavioral medical emergencies, such as heart attacks, strokes and non-vehicular accidents are often handled by the 911 system. But rather than dispatching a police officer, an ambulance is sent. A law enforcement response to a mental health crisis is almost always stigmatizing for people with mental illnesses and should be avoided when possible. Whenever possible, mental health crises should be treated using medical personnel or, even better, specialized mental health personnel."

- Mental Health in America, Position Statement: Responding to Behavioral Health Crises [198]

Given the dilemma many community members face in calling for help when someone is in crisis or exhibiting behaviors associated with mental health disabilities, examining the data will provide insight into the larger issues at play and also identify data-driven solutions in creating alternatives to police responses. The RIPA data may play an important role for communities and advocates as they continue developing strategies to destigmatize and decriminalize disability, particularly mental health disability.

1. Data Analyses: Search/Discovery Rates and Use of Force Data Review

Research demonstrates individuals with perceived disabilities are disproportionally subject to police searches and uses of force than those with no perceived disability. The RIPA Board's examination of the 2019 stop data shows those perceived or known to have a disability were subject to higher rates of searches (43.4% v. 11.0%), higher rates of being detained on the curb or in a patrol car (39.4% v. 9.8%), and higher rates of being handcuffed (45.1% v. 7.9%) compared to those perceived not to have a disability.[199]

Given the 2019 results, this year the Board took a deeper dive into the data involving individuals with a perceived or known disability. The 2020 RIPA data show officers were 4.8 times more likely to search individuals perceived or known to have a mental health disability and 2.7 times more likely to search those perceived or known to have any other type of disability than those perceived or known to have no disability. Officers were also 5.2 times more likely to use force against individuals perceived or known to have mental health disability and 3.3 times more likely to use force against individuals perceived to have other disabilities than those who have no perceived or known disability.

[198] Mental Health America, Position Statement, *supra* note 191.
[199] See Racial and Identity Profiling Advisory Board, Annual Report (2021) p. 63 <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2021.pdf> [as of Dec. 2, 2021].

i. Search and Discovery Rate Analysis by Disability

Search and discovery rates provide a unique opportunity to observe disparities in the experiences of individuals based on their identity. They provide valuable insight into the treatment of those perceived or known to have a disability, particularly those with a mental health disability.

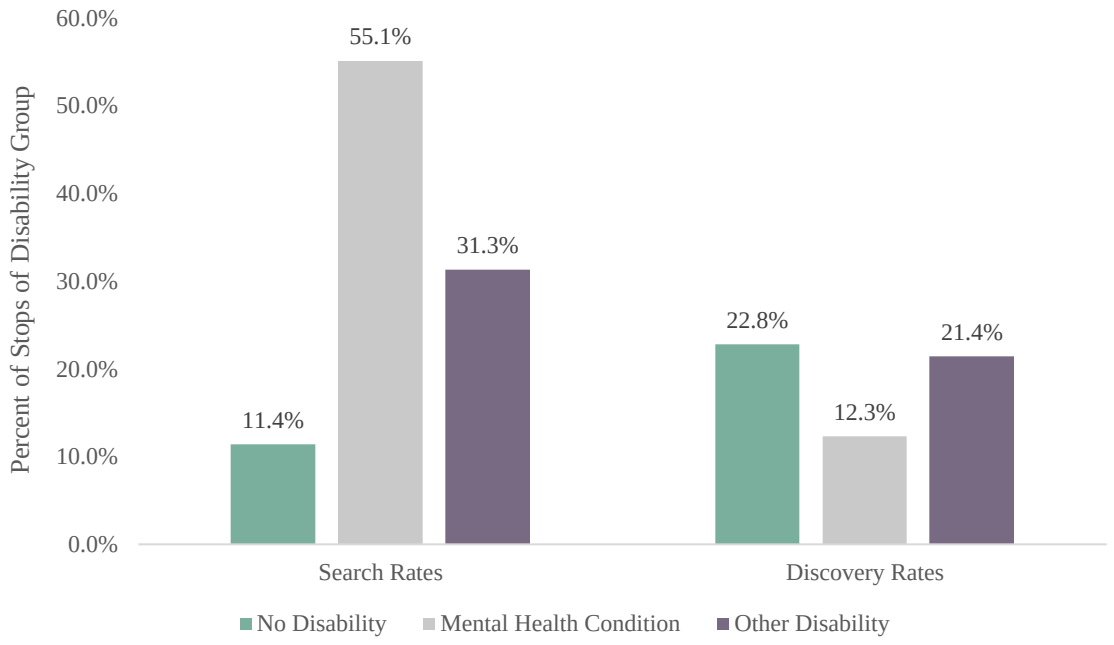
Overall, officers searched 11.9 percent of the individuals they stopped and discovered contraband or evidence in 22.4 percent of these stops. Breaking these results down by perceived or known disability, a higher proportion of individuals perceived or known to have a mental health disability (55.1%) and individuals perceived or known to have other types of disabilities[200] (31.3%) were searched in comparison to individuals perceived or known to have no disability (11.4%). These results indicate that officers searched individuals perceived or known to have a mental health disability at 4.8 times the rate at which they searched individuals perceived or known to have no disability, while individuals perceived or known to have any other type of disability were searched 2.7 times the rate of individuals perceived or known to have no disability.

Although individuals perceived or known to have disabilities are searched at a higher rate than those believed to have no disability, officers discovered contraband or evidence at a lower rate during stops with searches of individuals thought to have a disability than individuals believed to not have a disability. Individuals perceived or known to have mental health disabilities had the lowest rate of contraband or evidence discovered from searches (12.3%), followed by individuals perceived or known to have any other type of disability (21.4%).

In contrast, officers discovered contraband or evidence during 22.8 percent of stops where they searched individuals whom they perceived or knew to not have a disability. Officers discovered contraband or evidence from individuals perceived or known to have a mental health disability a lower proportion of the time compared to individuals perceived or known to have no disability. Similarly, individuals perceived or known to have other types of disabilities also had lower search discovery rates than individuals perceived or known to have no disability.

[200] The following types of perceived disabilities are grouped into the "other disabilities" category in this section: Deafness or difficulty hearing, Speech impairment or limited use of language, Blind or limited vision, Intellectual or developmental disability (including dementia), Disability related to hyperactivity or impulsive behavior (only selectable in cases where the stopped individual was a student on a K-12 campus), Other disability, or any combination of multiple perceived disability types.

Figure 36. **Search and Discovery Rates by Disability**



If officers are searching those with disabilities at a higher rate, but are less likely to find contraband, this suggests that those perceived or known to have disabilities are being searched, at least in part, because of their disability.

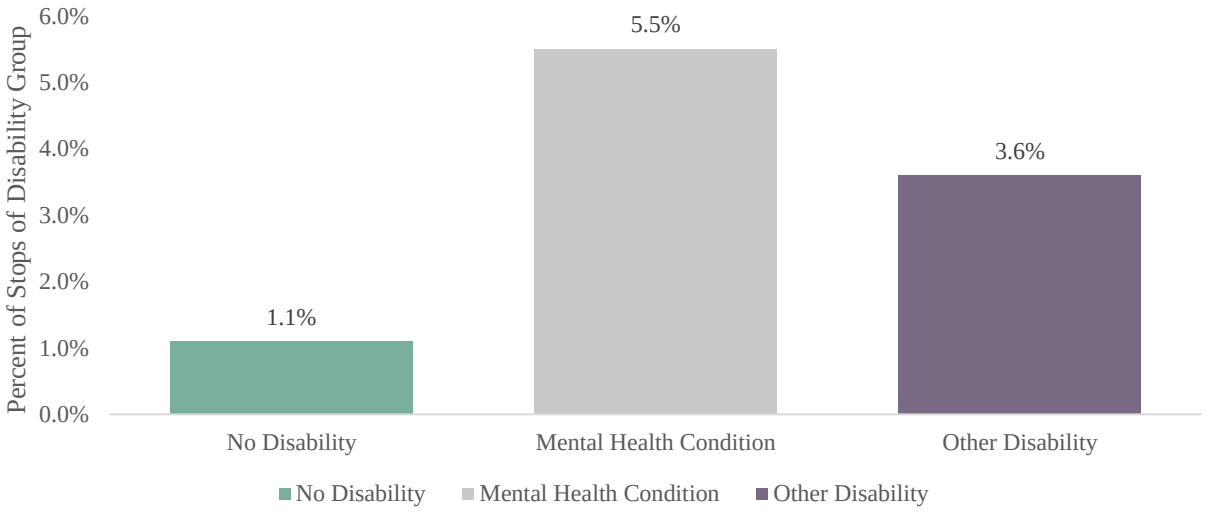
ii. Use of Force Rates by Disability

Another aspect of looking at the experiences of individuals with disabilities during police interactions is the rate at which force is used against those individuals during encounters.[201] Overall, officers used force towards 32,579 (1.1%) of all individuals who were stopped. Officers used force towards a higher proportion of individuals perceived or known to have a mental health disability (5.5%) and against individuals perceived or known to have any other type of disability (3.6%) in comparison to the individuals perceived or known to not have disability (1.1%).

Officers used force against individuals perceived or known to have mental health disabilities at 5.2 times the rate (5.5%) they used force against individuals perceived or known to have no disabilities (1.1%). Officers also used force against individuals perceived or known to have other disabilities at 3.3 times the rate (3.6%) they used force against individuals with no perceived or known disabilities.

[201] Nine out of the 23 reportable actions taken during stops constitute a type of force. These nine categories were combined to create a binary use of force variable to determine if the officer used force toward the individual during the stop. The nine action types categorized as uses of force are: baton or other impact weapon used, canine bit or held person, chemical spray used, electronic control device used, firearm discharge/use, firearm pointed at person, impact projectile discharged/used, other physical or vehicle, and person removed from vehicle by physical contact.

***Figure 37.* Use of Force Rates by Disability**



iii. Reason for Stop by Disability

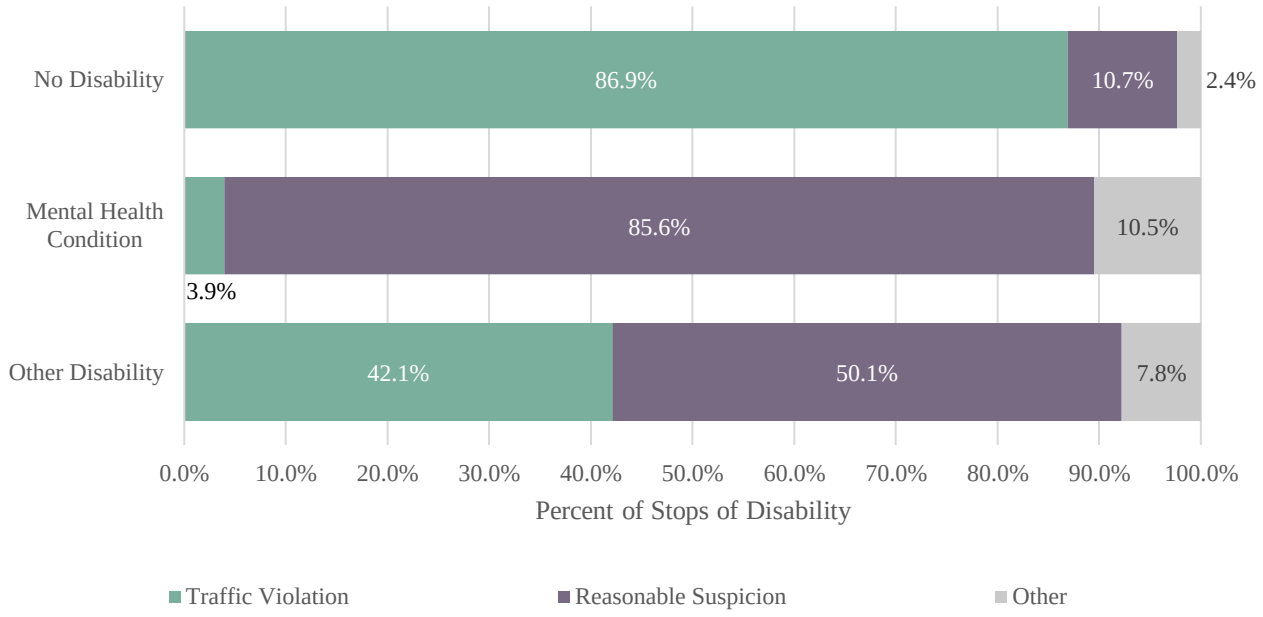
Under RIPA, officers report only the primary reason why they initiated a stop. The three most common reasons were traffic violation, reasonable suspicion, and "Other."[202]

Out of the three disability groupings examined, individuals perceived or known to have no disability had the highest proportion of their stops reported as traffic violations (86.9%) and the lowest proportion of their stops reported as reasonable suspicion (10.7%). The opposite occurred for individuals perceived or known to have mental health disabilities; officers stopped the majority of individuals perceived or known to have mental health disabilities for reasonable suspicion (85.6%) and a low proportion for traffic violations (3.9%). For individuals perceived or known to have other disabilities, officers stopped about half of individuals for reasonable suspicion stops (50.1%) and 42.1 percent for traffic violations.

The proportion of stops that began as consensual encounters and resulted in searches was 6.9 times as high (5.5%) for individuals perceived or known to have a mental health disability and 3.8 times as high for individuals perceived or known to have other disabilities (3%) than for individuals perceived or known to have no disability (0.8%).[203]

[202] For "Reason for Stop," "Other" is a combination of other elements not captured by traffic violation or reasonable suspicion, including Known to be on parole/PRCS/mandatory supervision, Knowledge of outstanding arrest warrant/wanted person, Investigation to determine whether the person is truant, and Consensual encounter resulting in a search. See Cal. Code Regs., tit. 11, § 999.226, subd. (a)(10)(A).
[203] Please see Appendix Table A.30 for a full breakdown of all reason for stop fields by disability group.

***Figure 38.* Reason for Stop by Disability**



Background on the Americans with Disabilities Act & Police Interactions

The Americans with Disabilities Act (ADA) is a federal civil rights law prohibiting discrimination against individuals with disabilities. Law enforcement agency staff involved in almost every aspect of law enforcement must comply with the ADA, including receiving civilian complaints, questioning witnesses, arresting or detaining a person, 911 dispatching, providing emergency medical services, and enforcing laws.[204] Law enforcement agencies must ensure – through policies and training – that they are not criminalizing behaviors resulting from disabilities.[205] Moreover, when law enforcement officers encounter an individual with a disability, federal and state laws require law enforcement agencies to provide a reasonable accommodation or modification to their policies and practices.[206] Federal and state laws also require law enforcement to provide meaningful access to their programs, services, and activities and to provide effective communication to people with disabilities.[207]

Officers have a legal obligation to treat everyone equitably regardless of any mental or physical disabilities. The Disability Rights Section within the United States Department of Justice's Civil Rights Division has stated that training, sensitivity, and awareness will help ensure officers carry

[204] See, e.g., Title II of the Americans with Disabilities Act (42 U.S.C. §§ 12131-12134); Fair Employment and Housing Act (Gov. Code, § 12900 et seq.); see also U.S. Dept. of J., Civ. Rights Div., *Commonly Asked Questions About the Americans with Disabilities Act and Law Enforcement* (Feb. 2020) U.S. Dept. of J. <https://www.ada.gov/q&a_law.htm> [as of Dec. 2, 2021].
[205] See, e.g., Americans with Disabilities Act, *supra* note 204; Fair Employment and Housing Act, *supra* note 204; see also U.S. Dept. of J., Civ. Rights Div., *Commonly Asked Questions, supra* note 204.
[206] See, e.g., Title II of the Americans with Disabilities Act, *supra* note 204; Sect. 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); Gov. Code, § 11135; The Unruh Civ. Rights Act (Civ. Code, § 51); and Disabled Persons Act (Civ. Code, §§ 54-55.32).
[207] See, e.g., Title II of the Americans with Disabilities Act, *supra* note 204; Sec. 504 of the Rehabilitation Act of 1973, *supra* note 206; Gov. Code, § 11135; The Unruh Civ. Rights Act, *supra* note 206; and Disabled Persons Act, *supra* note 206.

out this legal obligation. Officers should be trained to "distinguish behaviors that pose a real risk from behaviors that do not, and to recognize when an individual, such as someone who is having a seizure or exhibiting signs of psychotic crisis, needs medical attention. It is also important that behaviors resulting from a disability need not be criminalized where no crime has been committed."[208] In providing guidance to law enforcement, the Disability Rights Section has utilized two examples of illegal arrests and violations of the ADA by law enforcement officers:

- "A store owner calls to report that an apparently homeless person has been in front of the store for an hour, and customers are complaining that he appears to be talking to himself. The individual, who has mental illness, is violating no loitering or panhandling laws. Officers arriving on the scene arrest him even though he is violating no laws."[209]

- "Police receive a call in the middle of the night about a teenager with mental illness who is beyond the control of her parents. All attempts to get services for the teenager at that hour fail, so the responding officer arrests her until he can get her into treatment. She ends up with a record, even though she committed no offense."[210]

These actions violate individual statutory and constitutional rights, even if the officer is trying to aid the person in crisis. And even if an officer can point to an objectively legal basis for a stop (such as loitering), the identity profiling, disparate treatment based on disability, and failure to accommodate are unlawful. If an officer subjects a person to a detention or use of force due to a disability, it could be a violation of the ADA, and, at a minimum, suggests that the officer's agency may not have adequate policies addressing the ADA. Providing reasonable accommodations or modifications to policies and practices is an important legal requirement.

The United States Supreme Court in *City & County of San Francisco, California v. Sheehan*[211] left intact the Ninth Circuit's ruling that law enforcement agencies who fail to provide accommodations to those with disabilities may be violating the law. Although the Supreme Court declined to issue a ruling specifically about the applicability of the ADA in the *Sheehan* case, it recognized that law enforcement agencies have obligations under the ADA. In *Sheehan*, two police officers shot and seriously injured Teresa Sheehan, who was experiencing a mental health crisis. Sheehan lived in a group home for those with mental health disabilities and a social worker concerned about Sheehan's welfare called the police.[212] When two officers arrived on scene, they entered Sheehan's room and saw her grab a knife and yell something along the lines of "I am going to kill you. I don't need help. Get out."[213]

The officers retreated and closed the door to the room, but instead of waiting for backup, the officers broke down the door to Sheehan's room shortly thereafter. Sheehan had a knife in

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[208] U.S. Dept. of J., Civ. Rights Div., *Commonly Asked Questions, supra* note 204.
[209] *Ibid*.
[210] Ibid.
[211] *City & Cnty. of S.F. v. Sheehan* (2015) 575 U.S. 600, 602.
[212] *Id*. at p. 603.
[213] *Id*. at p. 604.

hand when the officers opened the door. One officer proceeded to pepper spray Sheehan and the other officer shot her multiple times before she collapsed and dropped the knife.[214]

Sheehan survived her gunshot wounds and filed a lawsuit against the San Francisco Police Department. Her claim regarding failure to accommodate was upheld by the Ninth Circuit, and ultimately San Francisco settled the matter with Sheehan for a reported million dollars.[215]

Government oversight agencies have also reviewed the practices of law enforcement agencies as they relate to people with disabilities. For example, the United States Department of Justice investigated Baltimore Police Department (BPD) practices and uncovered significant evidence that BPD as a whole had an unlawful pattern or practice of using unreasonable force against those with mental health disabilities, violating the United States Constitution and federal law.[216] In reaching this conclusion, the U.S. DOJ determined the BPD failed to make reasonable modifications to their practices when interacting with those with mental health disabilities. The U.S. DOJ asserted that "[u]nder the Fourth Amendment, officers who encounter an unarmed and minimally threatening individual who is exhibiting conspicuous signs that he is mentally unstable must de-escalate the situation and adjust the application of force downward."[217]

The constitutional and ADA violations discovered unfortunately extended beyond just the policies of the BPD. The investigative report from the U.S. DOJ further outlined several patterns of unconstitutional behavior toward those with disabilities: officers used force too quickly rather than using de-escalation tactics; acted to bring an individual in crisis into custody at all costs, resulting in unnecessary uses of force including handcuffing or transporting individuals in patrol vehicles to receive mental health treatment; and arrested "individuals with mental health disabilities or in crisis in situations where treatment—instead of jail—would more effectively serve the goals of public safety and welfare and could prevent the need for unnecessary force."[218]

The ADA and California state laws provide needed protections and accommodations for individuals with disabilities. Given the disparities shown by the RIPA data and the example of violations investigated by government agencies, it is clear that some of these protections and accommodations requirements are not being met by law enforcement agencies. Accordingly, the Board has begun to explore evidence-based best practices related to police interactions with individuals perceived to have disabilities and alternatives to police responses.

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[214] *Id*. at pp. 604-606.
[215] Emslie, *Landmark S.F. Case on Police Force and Mental Illness Settles for $1 Million*, KQED (Oct. 14, 2016) <https://www.kqed.org/news/11129913/landmark-s-f-case-on-police-force-and-mental-illness-settles-for-1-million> [as of Dec. 2, 2021].
[216] U.S. Dept. of J., Civil Rights Div., Investigation of the Baltimore City Police Dept., *supra* note 154, at p. 75.
[217] *Id*. at pp. 80-81.
[218] *Id*. at p. 84.

"Many of the problems associated with police involvement in behavioral health crises can be avoided by creating alternatives. Non-behavioral medical emergencies, such as heart attacks, strokes and non-vehicular accidents are often handled by the 911 system. But rather than dispatching a police officer, an ambulance is sent. A law enforcement response to a mental health crisis is almost always stigmatizing for people with mental illnesses and should be avoided when possible. Whenever possible, mental health crises should be treated using medical personnel or, even better, specialized mental health personnel."

- Mental Health in America, Position Statement: Responding to Behavioral Health Crises[219]

2. Best Practices Recommendations for Policies

The Board is committed to evaluating and presenting evidenced-based best practices to reduce or eliminate the disparate treatment of those with disabilities. Policymakers, municipalities, and law enforcement agencies can make significant progress in addressing disparate treatment of individuals with disabilities by shifting certain calls for service away from police and into the hands of community-based health care professionals.[220] The Board also recommends that agencies and municipalities evaluate their own policies to include: (1) a robust policy to prevent racial and identity profiling of individuals with disabilities, (2) a policy to prevent profiling based on disability type, and (3) a training component for officers on interacting and effective communication with those with disabilities. The following recommendations are drawn from a range of law enforcement, academic, governmental, and non-profit organizations that have expertise in this area.

Agencies Should Have a Robust Policy to Prevent Racial and Identity Profiling of Individuals with Disabilities and Require Reasonable Accommodations When Necessary

All agencies should consider adopting clear written policies and procedures demonstrating their commitment to end profiling of individuals with disabilities and provide reasonable accommodations under the ADA and applicable state law. In developing such policies, agencies should consider partnering with community members and advocacy organizations, such as the National Alliance on Mental Illness (NAMI).

There are a few foundational principles that the Board recommends agencies and municipalities include in their policies as listed below:

- In developing these policies, agencies must include a statement explaining reasonable accommodation laws and an officer's duty to provide accommodations to someone experiencing a mental health crisis, especially in the context of use of force.[221]

[219] See Mark, *supra* note 190; see also Mental Health America, Position Statement, *supra* note 191.
[220] For more details on these best practices, see pages 185-189 of the Calls for Service section of the Report.
[221] See, e.g., Pen. Code, § 835a; Title II of Americans with Disabilities Act, *supra* note 204; Fair Employment and Housing Act, *supra* note 204; see also U.S. Dept. of J., Civ. Rights Div., *Commonly Asked Questions, supra* note 204.

- Agencies should include a statement in their use-of-force policies that reflects the legal requirement that officers "shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person."[222] Further, the policy should stress the sanctity of life and prohibit peace officers from using deadly force when other resources and techniques, such as tactical repositioning or de-escalation, are reasonably safe and feasible.[223]

- Agencies should include in their policies a commitment to a no-force-first approach that emphasizes the importance of engagement, collaboration, and de-escalation.[224] Officers should be given clear guidance on how time and distance can benefit someone experiencing a crisis.

- Policies must also include language on the importance of not criminalizing individuals with mental health disabilities and that an officer should not initiate a contact just because someone appears to have a disability or appears unhoused.[225]

- Policies should generally address interactions with people with disabilities who are not in crisis and how to make accommodations or modifications when interacting with, for example, someone who is deaf or hard of hearing, has autism, or has an intellectual disability.

- Agencies should have real-life examples in their policies, such as the ones provided above from the U.S. DOJ, that demonstrate when profiling is occurring, as well as examples of accommodations to provide when interacting with those with disabilities. For example, officers may need to make reasonable accommodations for someone who is deaf or hard of hearing and cannot hear officers' verbal commands. An interpreter or alternate form of communication may be a necessary accommodation. Similarly, someone with autism or an intellectual disability that affects their ability to understand and respond to instructions may need reasonable accommodations from officers.

- In drafting policies, agencies should establish a preference for the "least police-involved response possible consistent with public safety." When possible, the agencies should consider diverting calls involving a behavioral health component to appropriate community-based crisis response teams.[226]

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[222] Pen. Code, § 835a, subd. (c)(2).
[223] See Pen. Code, § 835a, subd. (a)(2).
[224] See *National Guidelines for Behavioral Crisis Care: Best Practices Toolkit* (2020) Substance Abuse and Mental Health Services Admin., p. 12 <https://www.samhsa.gov/sites/default/files/national-guidelines-for-behavioral-health-crisis-care-02242020.pdf> [as of Dec. 2, 2021].
[225] See, e.g., Title II of the Americans with Disabilities Act, *supra* note 204; Fair Employment and Housing Act, *supra* note 204; see also U.S. Dept. of J., Civ. Rights Div., *Commonly Asked Questions*, *supra* note 204.
[226] See Consent Decree, *U.S. v. Police Dept. of Baltimore City*, *supra* note 155, at p. 40.

- Dispatch protocols must emphasize a preference for relying upon a community-based crisis response when they receive calls involving a person with a mental health disability or experiencing a mental health crisis.

- Policies must prioritize responses by trained mental health professionals, emphasize de-escalation, and prioritize the well-being of people whose needs are not being met.[227]

- Agencies should have a stand-alone policy on effective communication to reasonably ensure people with disabilities, including victims, witnesses, suspects, and arrestees, have equal access to law enforcement services, programs, and activities.[228] For example, the fact that an individual appears to be nodding in agreement does not always mean they completely understand the message. When there is any doubt, officers should ask the individual to communicate back or otherwise demonstrate their understanding.

- Agency policies should explain how to furnish "appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in or benefit from the services, programs, or activities of a public entity."[229] The individual's preferred communication method must be honored unless it is unavailable and another effective method of communication exists under the circumstances.[230]

- Policies or agency procedures and training should also provide guidance on when it is appropriate to engage with family to help de-escalate a crisis or provide additional information to officers to help them resolve a crisis without force.

- When creating policies for communicating and interacting with individuals with disabilities, law enforcement agencies should include representatives from the disability rights community in drafting their policies and implementing their trainings.[231]

> *"The disability rights movement's demand 'Nothing about us, without us' requires substantive inclusion of disabled people in decision-making related to their interests"*
>
> *- Guidry-Grimes, The Hastings Center Report,* see footnote 231

- Police should not be at the forefront of resolving social issues, and municipalities, policymakers, and law enforcement agencies should eliminate specialized outreach teams, such as housing outreach, and instead shift the

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[227] See The Leadership Conference on Civil and Human Rights, *New Era of Public Safety: An Advocacy Toolkit for Fair, Safe, and Effective Community Policing* (2019), pp. 54-55 <https://civilrights.org/wp-content/uploads/Toolkit.pdf> [as of Dec. 2, 2021].
[228] See Title. II of the Americans with Disabilities Act, *supra* note 204; Fair Employment and Housing Act, *supra* note 204.
[229] *U.S. v. Arlington County, VA Sheriff,* et. al (E.D. Va. 2016) 1:15-cv-00057-JCC-MSN.
[230] See 28 CFR 35.160; Title II of the Americans with Disabilities Act, *supra* note 204; Fair Employment and Housing Act, *supra* note 204.
[231] See The Leadership Conference on Civil and Human Rights, *supra* note 227; Guidry-Grimes et al. *Disability rights as a necessary framework for crisis standards of care and the future of health care* (2020) Hastings Center Rep., 50(3), pp. 28-32 <https://doi.org/10.1002/hast.1128> [as of Dec. 2, 2021].

responsibilities of those teams to community-based specialized social service outreach teams.[232]

- Law enforcement agencies as well as municipalities should eliminate practices, such as the practice of "sweeps," that criminalize social welfare issues stemming from a lack of adequate community-based infrastructure, including housing.[233]

- Agencies and municipalities should adopt a policy where law enforcement supervisors and prosecuting agencies would decline to file or pursue charges if the underlying conduct is based on a mental health disability and it was a significant factor in the commission of the alleged offense.[234]

Policies Covering Treatment of Individuals with Disabilities Should Include a Component on Training and Community-Based Solutions

Any effective policy must also have an accompanying training component that emphasizes best practices and gives officers the tools needed to provide reasonable accommodations. When developing such trainings, agencies should partner with community members and advocacy organizations. There are a few foundational principles agencies should include in their practices and training:

- Agencies should strengthen crisis intervention training for all officers, recruits, and dispatchers that "focuses on identifying individuals with mental health disabilities and effectively responding to individuals with mental health disabilities, including making reasonable modifications and diversion to treatment services."[235]

- Agencies should offer extensive anti-bias training on disability and more specifically on how institutional racism and implicit and explicit biases may compound issues for someone experiencing a mental health crisis or who has a mental health disability.[236]

- During training, agencies should teach officers not to make assumptions regarding the criminality or dangerousness of an individual based on behavior that may stem from a disability.

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[232] See Felner, et al., *Why Cities Must End Their Reliance on Police to Manage Homelessness – and How They Can Do It* (Feb. 2020) Scholars Strategy Network <https://scholars.org/contribution/why-cities-must-end-their-reliance-police-manage-homelessness-and-how-they-can-do-it> [as of Dec. 2, 2021]; see also Anderson, *Baltimore Police no Longer have officers assigned to homeless outreach, but advocates say those resources can be better utilized* (Jan. 2020) Baltimore Sun <http://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-homeless-20200123-ot5mxi3xovdlhlnpt2bpr2g55m-story.html> [as of Dec. 2, 2021].
[233] See Felner et al., *supra* note 232.
[234] This policy change would build upon existing statutory law regarding misdemeanor or felony diversion for arrest or offenses that stem from a mental health disability. See Pen. Code, §1001.36.
[235] See U.S. Dept. of J., Civil Rights Div., Investigation of the Baltimore City Police Dept., *supra* note 154, at p. 112.
[236] See Mental Health America, *Racism and Mental Health* (2020) Mental Health America <https://www.mhanational.org/racism-and-mental-health> [as of Dec. 2, 2021].

- Agencies should adopt specific training on how to respect the rights of those with disabilities and how to provide reasonable accommodations.[237]

- Sworn staff, call takers, and dispatch personnel may need additional training regarding how to recognize when a person may have a mental health or other disability that affects their communication by taking into account a number of factors, including self-reporting, information provided by witnesses, the agencies' previous knowledge of the individual, or an officer's direct observation.

- Training should include communication, negotiation, and de-escalation techniques that equip officers with the skills necessary to resolve a crisis without using force.[238]

- Officers should be trained on how to properly use time, distance, and cover when responding to a crisis and eliminate "the use of concepts like the '21-foot rule' and 'drawing a line in the sand' in favor of using distance and cover to create a "reaction gap."[239]

- Training should also emphasize the importance of trauma-informed care, which requires "sensitivity to the prevalence and effects of trauma in the lives of people accessing services."[240] The training should equip officers with an intimate understanding and respect for how "poverty, class, racism, social isolation, past trauma, sex-based discrimination, and other social inequalities affect people's vulnerability to and capacity" for getting treatment.[241]

- Policies and training should also address how to apply the philosophy of harm reduction to treatment of those with disabilities. Harm reduction seeks to reduce harms associated with an untreated mental health disability or substance abuse disorder while also respecting a person's autonomy and decision on how or if to seek treatment.[242] Officers and care providers may need training on how to work to minimize the harmful effects rather than simply ignoring or condemning them.[243]

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[237] See The Leadership Conference on Civil and Human Rights, *supra* note 227, at p. 29.
[238] H.R.1159, 117th Congress (2021-2022) Preventing Tragedies Between Police and Communities Act of 2021.
[239] *Ibid*.
[240] See Isobel, et. al., *What is needed for Trauma Informed mental health services in Australia? Perspectives of clinicians and managers* (2020) Internat. J. of Mental Health Nursing, 30(1), pp. 72-82 <https://pubmed.ncbi.nlm.nih.gov/33169478/> [as of Dec. 2, 2021].
[241] See National Harm Reduction Coalition, *Principles of Harm Reduction* (2020) Nat. Harm Reduction Coalition <https://harmreduction.org/about-us/principles-of-harm-reduction/> [as of Dec. 2, 2021].
[242] See Mosel, *Harm Reduction Guide* (2020) American Addition Centers <https://americanaddictioncenters.org/harm-reduction> [as of Dec. 2, 2021]; see also *Crisis Services Meeting Needs, Saving Lives* (Dec. 2020) Substance Abuse and Mental Health Services Admin., p. 96 <https://store.samhsa.gov/product/crisis-services-meeting-needs-saving-lives/PEP20-08-01-001> [as of Dec. 2, 2021].
[243] See National Harm Reduction Coalition, *supra* note 241.

- Officers should receive scenario-based training on interaction with individuals with disabilities, and a component of that training should include input from disability rights advocates.[244]

- Agencies should train officers on alternatives to incarceration, including local mutual aid programs and treatment providers.[245]

- Agencies should require that officers or mental health professionals who are specifically trained in interacting with individuals experiencing a mental health crisis and trained in the application of de-escalation techniques for handling such crises are dispatched to these calls when available.

The Board hopes these recommendations will be a starting point for law enforcement agencies and advocates to work together to improve police practices surrounding the treatment of individuals with disabilities. As many communities begin shifting certain roles – such as responding to a mental health crisis – away from law enforcement, agencies should partner with community groups and trained professionals to respond to certain calls for service and implement trainings to help officers identify when a community-based crisis response is appropriate.

More information and details on best practice recommendations related to calls for service and community-based crisis response can be found in the Calls for Service chapter of this Report on pages 185-189.

C. Stops and Searches

Tackling the complex issue of eliminating racial and identity profiling in law enforcement compels the Board to conduct both a micro- and macro-analysis of law enforcement policies and practices. In this Report, the Board examines profiling with respect to consensual searches and stops and searches of individuals on post-conviction supervision. Consensual searches – or consent searches – are searches conducted of someone's person or property with the permission of that individual. Stops and searches of individuals under post-conviction supervision (usually by a court after pleading guilty to a crime or being released from jail or prison) may be part of the court-ordered conditions of supervision for individuals who are on

[244] H.R.1159, *supra* note 238.
[245] See, e.g., Baltimore Public Behavioral Health System Gap Analysis Report (Dec. 2019) p. 11 <https://public.powerdms.com/BALTIMOREMD/documents/623350> [as of Dec. 2, 2021]; U.S. Dept. of J., Civil Rights Div., Investigation of the Baltimore City Police Dept., *supra* note 154, at pp. 111-12.

parole,[246] probation,[247] post-release community supervision (PRCS),[248] or mandatory supervision[249] (hereinafter collectively referred to as "supervision").

"Consent only" searches occur when "consent given" is the only basis for a search performed by an officer. "Supervision only" searches occur when a supervision condition is the only basis for a search by an officer. Consent only searches and supervision only searches occurred in a small portion of all stops in 2019 (1.6% and 1.7%, respectively) and 2020 (1.4% and 1.7% respectively), but for the over 102,033 individuals who experienced consent only searches and the 110,411 individuals searched only because of their supervision status, these law enforcement interactions are significant and can be life-changing. These types of searches also have different outcomes based on identity group, making it even more important to examine them closely.

Given the potential consequences that could result from these stops, this is an issue that deserves special attention, particularly if the initial contact between an individual and law enforcement is due to racial or identity profiling and not suspicion of any criminal activity. We must take a deeper look at the data to better understand the costs and benefits to the community in conducting these types of stops and searches. These analyses will help us identify policy reforms that could reduce disparities in who is stopped and searched, as well as eliminate racial and identity profiling, while still permitting the police to perform their lawful duties.

1. Consent Searches

A consent search is when an officer approaches a person and asks if they may search their person, car, or even residence. Officers are permitted to use their own discretion, which is rooted in the officer's personal and professional experience, and do not need to suspect any criminal wrongdoing in order to request consent to search.[250] Discretionary searches, by their

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[246] Parole is a period of supervision that follows a state prison sentence, during which an individual remains under the control of the California Department of Corrections and Rehabilitation's Division of Adult Parole Operations. Individuals on parole are supervised by parole agents, and must follow certain requirements or "conditions" of parole. See Cal. Code Regs., tit. 15, § 2355; see also Root & Rebound, *What are the main types of supervision in California?* <https://roadmap.rootandrebound.org/parole-probation/introduction/what-are-the-main-types-of-supervision-in-californ/> [as of Dec. 2, 2021].

[247] "Probation is a type of supervision that a judge orders at trial as *part of the original sentence*, either as an alternative to incarceration OR in addition to incarceration." Root & Rebound, *What are the main types of supervision in California?*, *supra* note 246, original italics. Probation can be formal (meaning the individual has to check in with a probation officer) or informal (meaning there is no assigned probation officer). See Pen. Code, § 1203.

[248] PRCS is a form of supervision by county probation officers (instead of state parole) when an individual is released from state prison after incarceration for a non-violent, non-serious, non-sexual crime. See Pen. Code § 3450; Cal. Code Regs., tit. 15, §§ 3079-79.1.

[249] "Mandatory Supervision is a form of supervision provided for through a process called 'split sentencing,' a judge can split the time of a sentence between a jail term and a period of supervision by a county probation officer." Root & Rebound, *What are the main types of supervision in California?*, *supra* note 246; Pen. Code, § 1170 (h)(5)(B).

[250] See *Florida v. Royer* (1983) 460 U.S. 491; see also *Schneckloth v. Bustamonte* (1973) 412 U.S. 218.

nature, are vulnerable to bias, as there are no objective criteria for whom to stop or search and why.[251]

This increased opportunity for bias can lead to disparities, as demonstrated by the trends in the 2019 and 2020 RIPA data. As the Board noted in its previous report, "given the disparities in consent only searches and discovery rates, and that neither state nor federal law requires officers to suspect any criminal wrongdoing before they request consent to search a person or their property, an obvious question is raised: should individuals be subjected to a search if, based on the officer's perception, the individual is innocent of engaging in apparent criminal activity?"[252] The data analyses of the past several years underscore the Board's concerns that consent searches are vulnerable to bias and result in disparate treatment of individuals based on their race or identity.

i. Data Analyses:

a. Persons Asked for Consent to Search

In capturing RIPA data, officers must report when they ask an individual for consent to search. This information is captured in two separate data fields, depending on the type of search the officers request to perform: 1) consent to search a person, and 2) consent to search their property. Officers must also indicate whether they received consent from the individual to perform a search. Overall, officers asked 2.7 percent of the individuals they stopped for consent to perform a search. The rate at which officers asked for consent to perform a search ranged from 0.7 percent of stopped individuals perceived to be Middle Eastern/South Asian to 4.1 percent of stopped individuals perceived to be Multiracial.

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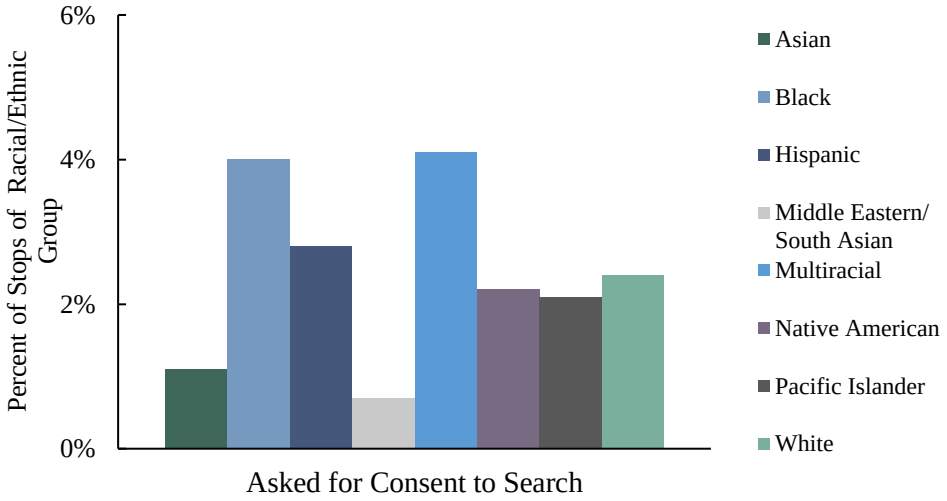
[251] See generally Ridgeway, *Assessing the Effect of Race Bias in Post-Traffic Stop Outcomes Using Propensity Scores* (2006) 22 J. Quantitative Criminology 1 <https://www.rand.org/pubs/reprints/RP1252.html> [as of Dec. 2, 2021]; see also, e.g., Eberhardt, *How racial bias works -- and how to disrupt 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 Dec. 2, 2021]; 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 Dec. 2, 2021] (citing Pamela M. Casey et al., *Addressing Implicit Bias in the Courts* (2013) 49 Ct. Rev. 64, 67).

[252] See Racial and Identity Profiling Advisory Board, Annual Report (2021), *supra* note 199, at p. 73.

Figure 39. Stopped Individuals Asked for Consent to Search by Race/Ethnicity



The results of this analysis reveal a trend in the 2019 and 2020 RIPA data: Black or Multiracial individuals are asked for consent to search at a higher rate than those who are perceived to be White. These disparities reported in the RIPA data are consistent with other data around the country demonstrating racial disparities in consent searches.[253]

b. Reported Consent Response

Overall, in the 2020 RIPA data, officers reported that 94.6 percent of individuals consented to a search when asked by an officer. Given such high rates of consent, when looking at the practice of consent searches, it is important to consider if these searches are truly consensual, i.e. whether a person feels free to decline an officer's request to search.

Thinking critically about "voluntariness" is crucial to assessing this police practice because consensual searches must be voluntary in order to be constitutional.[254] The U.S. Supreme Court cautioned about the meaning of "voluntariness" specifically with respect to consent searches under the Fourth Amendment, finding that "if under all the circumstances it has appeared that the consent was not given voluntarily -- that it was coerced by threats or force, or granted only in submission to a claim of lawful authority -- then we have found the consent invalid and the search unreasonable."[255] The research discussed in more detail on page 107-116 of this report,

[253] See, e.g., Ross et al., *Testing for Disparities in Traffic Stops: Best Practices from the Connecticut Model* (2020) Criminology & Public Policy, p. 1297 <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1745-9133.12528> [as of Dec. 2, 2021]; see generally Connecticut Racial Profiling Prohibition Project, State of Connecticut: Traffic Stop Data Analysis and Findings, 2018 (May 2020) <https://assets.website-files.com/6076e3f57e39855392637f16/608969ac86055d0bd5d5e680_2018-Connecticut-Racial-Profiling-Report.pdf> [as of Dec. 2, 2021]; Kelly, *Race, Cars and Consent: Reevaluating No-Suspicion Consent Searches* (2016) DePaul J. for Social Justice, pp. 253-54 <https://via.library.depaul.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1066&context=jsj> [as of Dec. 2, 2021]; *California Highway Patrol Bans Consent Searches Following Review of Data Collection Showing Discriminatory Pattern* (Apr. 2001) ACLU <https://www.aclu.org/press-releases/california-highway-patrol-bans-consent-searches-following-review-data-collection> [as of Dec. 2, 2021].

[254] See *Bustamonte,* 412 U.S. at pp. 223-225.

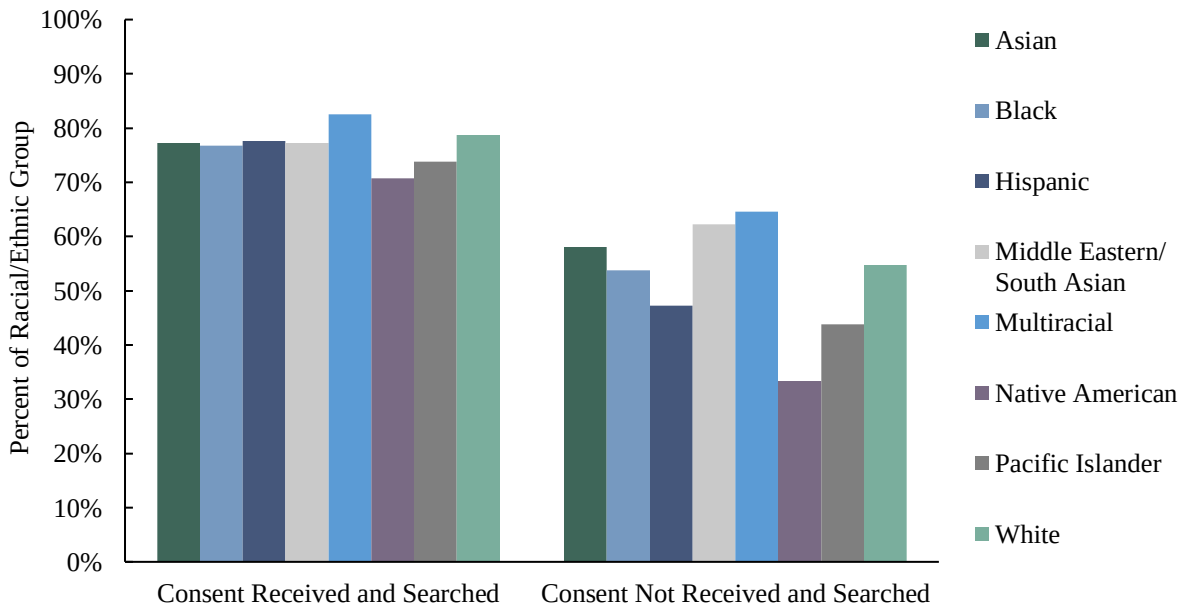
[255] *Id.* at pp. 218, 233.

coupled with the RIPA data, strongly suggest that consensual searches actually may be submissions to a claim of lawful authority. If this is true, it is important to ask whether consent searches should be permitted at all given the important constitutional issues at stake.

c. Consent Given and Consent Refusal Search Rates

Another consideration when examining the impact of this policing tactic is what it means to refuse consent. Officers reported searching 77.7 percent of individuals that gave consent to search when asked.[256] Officers also reported searching a little over half (52.1%) of the individuals who did not give consent by using some other basis for conducting the search.[257] Officers who asked individuals for consent to perform a search reported the highest search rates for Multiracial individuals for both consent given searches (82.5%) and for searches where consent was not received (64.6%). The opposite was true for search rates reported for Native American individuals (70.7% for consent given and 33.3% for consent not provided).

Figure 40. Search Rates for Consent Response by Race/Ethnicity



It is worth noting that many law enforcement agencies' policies characterize asking for consent as "minimiz[ing] the intrusiveness" of a search, which may account for the widespread use of

[256] One possible explanation for this is a data entry error where officers are selecting they asked for consent but failed to select a search was actually performed.

[257] The three most common search bases reported for instances where a stopped individual did not provide consent to an officer who asked for consent to search were for the officer's safety/safety of others (33.1%), incident to arrest (30.3%), and condition of supervision (19.1%).

this policing tactic.[258] However, at the end of the day, a search is invasive –regardless of the basis –and, for 52.1% of individuals who refused to give consent, they were searched anyway.

d. Search Rates Across Search Types

In collecting RIPA data, officers must indicate that they performed a search and must indicate the basis for performing the search by selecting from a list of 13 different criteria, including consent given.[259] When applicable, officers may indicate that they had multiple bases for performing a search. Officers provided "consent given" as the basis for 83,854 (24.1%) of the searches that they performed in 2020. "Consent given" was the *sole* basis reported for 39,709 (11.4%) of searches performed by officers (hereafter referred to as "consent only searches"). The rate at which consent only searches occurred varied for each racial/ethnic group. Consent only search rates ranged from 0.3 percent of Middle Eastern/South Asian individuals to 2.1 percent of Black individuals who were stopped. In other words, the rate Black individuals were subjected to consent only searches was seven times the rate for Middle Eastern/South Asian individuals, the group with the least amount of consent only searches.

Officers reported "consent given" in addition to other search bases for 44,145 (12.7%) of searches that they performed (hereafter referred to as "consent plus searches"). The rate at which consent plus searches occurred varied by racial/ethnicity group, ranging from 0.4 percent of Middle Eastern/South Asian individuals to 2.8 percent of Multiracial individuals who were stopped. The rate for Multiracial individuals subjected to consent plus searches was seven times the rate for Middle Eastern/South Asian individuals, the group with the least amount of consent plus searches.

Compared to consent searches, search rates for other discretionary searches were more variable across racial/ethnic groups.[260] Search rates for other discretionary searches ranged from 1 percent for Middle Eastern/South Asian individuals to 9.3 percent for Black individuals.[261]

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[258] See, e.g., the Search and Seizure policies prepared by Lexipol and used by Anaheim PD, Fresno County SD, Riverside PD, Santa Ana PD, Ventura SD, Berkeley PD, Culver City PD, Rohnert Park, Cotati PD, and Petaluma PD (requiring officers to document "[a]ny efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys).")

[259] The other reportable search bases include officer safety/safety of others, search warrant, condition of supervision, suspected weapons, visible contraband, odor of contraband, canine detection, evidence of crime, incident to arrest, exigent circumstances/emergency, vehicle inventory, and suspected violation of school policy.

[260] See the Known Supervision Stops and Searches section of this report for a further explanation and definition of "other discretionary searches."

[261] The higher search rates for other discretionary searches, relative to consent only and consent plus search rates, is to be expected since there are more search bases encompassed within the other discretionary search category. However, the observed disparities for other discretionary searches also warrant future exploration to understand what may be driving these other discretionary search disparities.

Figure 41. Search Rates by Search Type and Race/Ethnicity

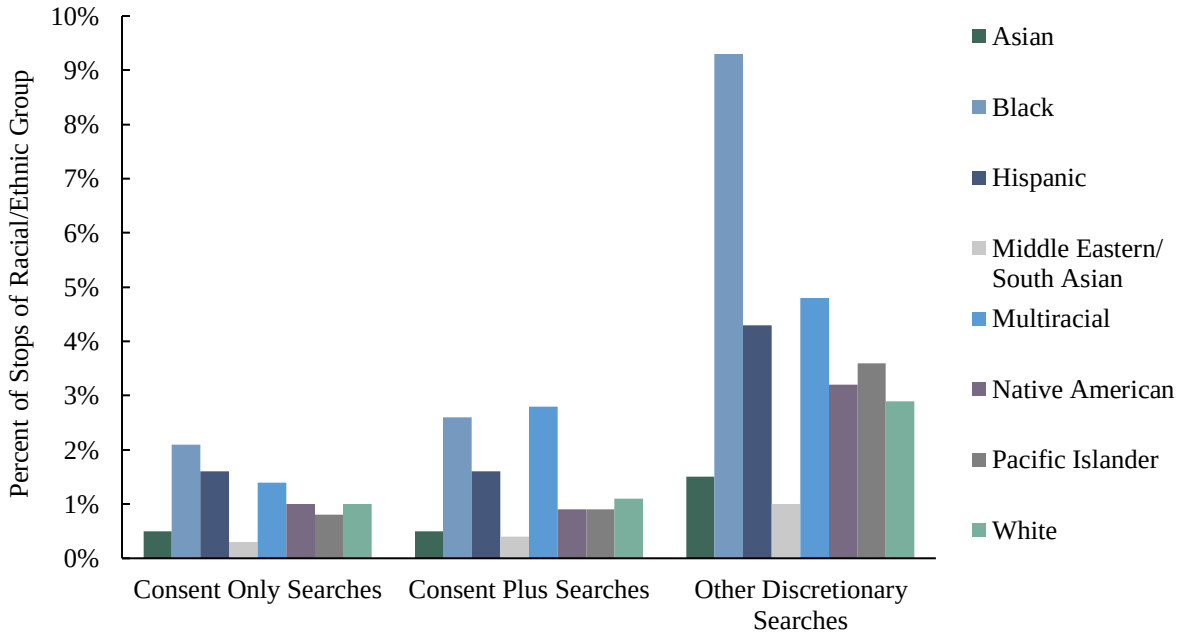


Figure 41 shows clear disparities in who is searched, regardless of the basis for search. Overall, these disparities in the data support what research has showed[262] – that when discretion and subjectivity are permitted, there is more potential for searches based upon bias rather than an objective assessment of behavior. The Board is interested in examining the "other discretionary searches" to determine other sources of disparities in future reports.

e. Discovery Rates by Search Type

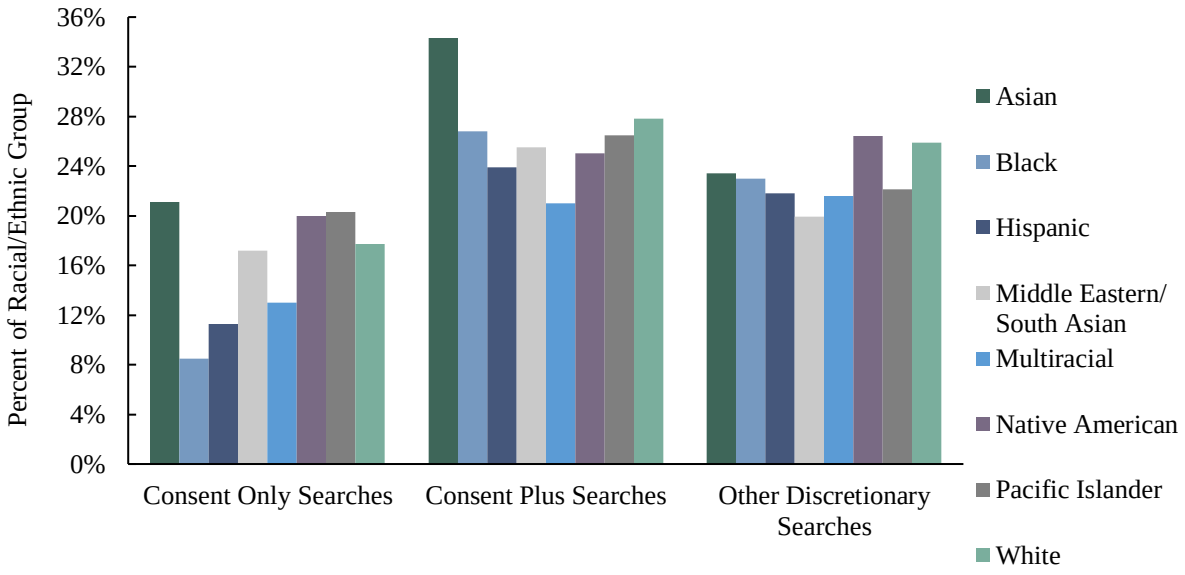
One way to test for disparities in the data is to look at the rate at which contraband is discovered. The hypothesis is that if officers are less likely to find contraband after searching people of a particular identity group, then those individuals are objectively less suspicious and may be searched, at least in part, because of their perceived identity.

Results indicate that discovery rates tended to vary more between racial/ethnic groups for "consent only searches" and "consent plus" than for other discretionary searches. Consent only searches also generally had lower discovery rates (12.3%) compared to both consent plus searches (25.7%) and other discretionary searches (23.1%). While Black, Hispanic/Latine(x), and Multiracial individuals were searched at higher rates for consent only searches compared to all other racial/ethnic groups, they had the lowest discovery rates for this type of search (8.5%, 11.3%, and 13.0% respectively). A similar pattern is shown for consent plus searches, where Hispanic/Latine(x) and Multiracial individuals are searched at higher rates but have the lowest discovery rates (23.9% and 21.0% respectively). For both consent only and consent plus searches, Asian individuals had the highest discovery rate (21.1% and 34.3% respectively).

[262] See Racial and Identity Profiling Advisory Board Report (2021), *supra* note 199, at p. 24 (citing Richardson, *Police Efficiency and the Fourth Amendment* (2012) 87 Ind. L.J. 1143, 1150).

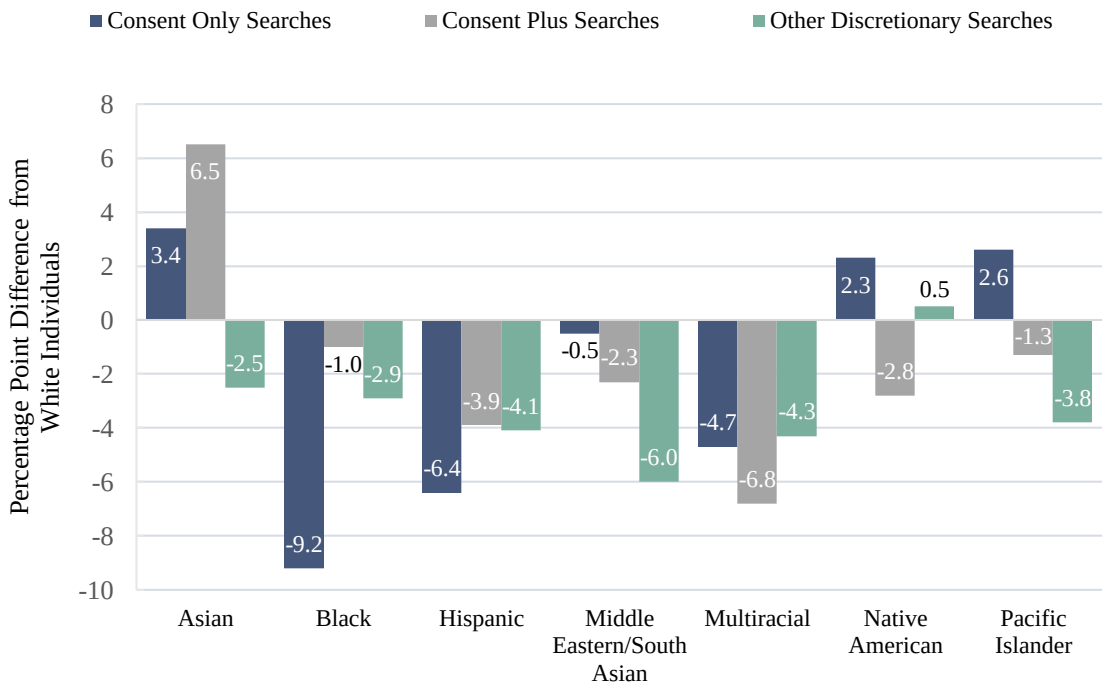
For other discretionary searches, discovery rates were highest for Native American individuals (26.4%) and lowest for Middle Eastern/South Asian individuals (19.9%).

Figure 42. Discovery Rates by Search Type and Race/Ethnicity



Discovery rates are presented in the following figure for each racial/ethnic group as differences from White individuals; White individuals had a discovery rate of 17.7 percent for consent searches, 27.8 percent for consent plus searches, and 25.9 percent for other discretionary searches. For consent only searches, Black individuals had the largest difference in discovery rates; Black individuals' discovery rate was 9.2 percentage points lower than the rate reported for White individuals. Overall, Asian, Native American, and Pacific Islander individuals all had higher discovery rates for consent only searches compared to White individuals. Lastly, Asian individuals had higher discovery rates for consent plus searches and Native Americans had higher rates for other discretionary searches compared to White individuals.

Figure 43. Discovery Rate Differences by Search Type and Race/Ethnicity



Law enforcement agencies and policymakers should critically consider the cost and the benefit, if any, these searches have for the community and for law enforcement legitimacy. The RIPA data shows that consent only searches result in relatively low discovery rates compared to searches based on reasonable suspicion or probable cause. The data also shows that the discovery rates of contraband or evidence are so low that consent only searches are difficult to justify as a benefit to public safety. Accordingly, at a time when resources within police departments are spread thin, it seems that resources would be better utilized in focusing on searches based upon reasonable suspicion or probable cause than consent searches.

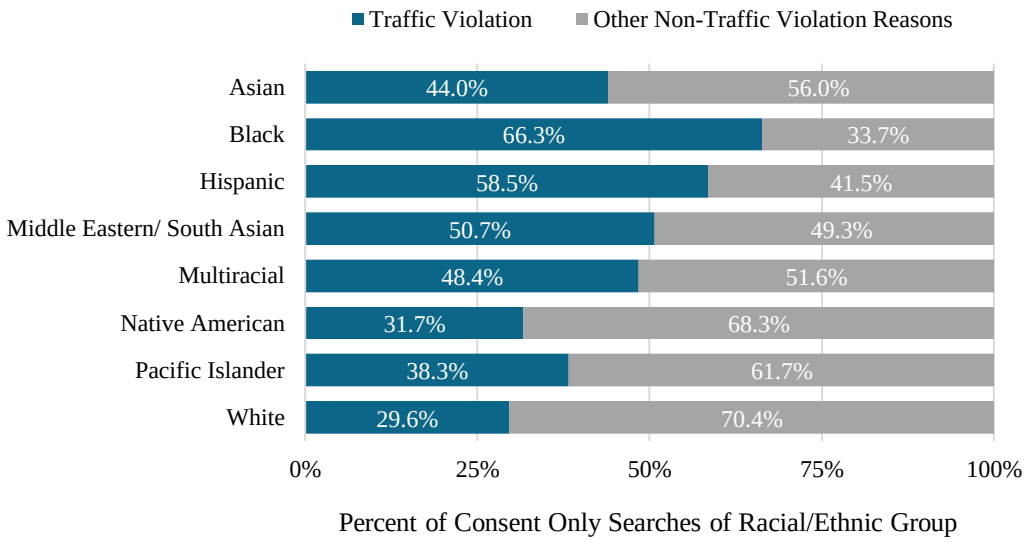
f. Reason for Stop for Consent Only Searches

One way to examine the impact of these consent searches is to look at when or under what circumstances a person is asked consent to search, i.e., why was the officer engaging with an individual to begin with. For stops in which officers provided "consent given" as the sole basis for search, 53.4 percent were reported as traffic violations and 46.6 percent were reported as categories grouped as "Other non-traffic violation" reasons for stopping the individual.[263] The "reason for stop" reported for consent only searches varied across racial/ethnicity groups. Officers reported higher proportions of reasons in the "Other non-traffic violation" category for

[263] Other reasons for stop that an officer could report include consensual encounter resulting in a search (19.7%), condition of supervision (0.9%), reasonable suspicion individual was engaged in criminal activity (24.4%), warrants/wanted person (0.8%), truancy (0.7%), investigation to determine whether student violated school policy (<0.1%), and possible violations of the Education Code (0.0%). These Primary Reason for Stop categories are combined in this section under the category of "other non-traffic violations." See Appendix Table A.17 for a breakdown of all stop reasons reported for consent only searches by race/ethnicity.

White individuals (70.4%) and higher proportions of traffic violations for Black individuals (66.3%).

Figure 44. Reason for Stop for Consent Only Searches by Race/Ethnicity



Some consent searches may not have any nexus to the alleged offense for which the person is stopped and therefore could be pretextual stops.[264] For example, if a person were stopped for a traffic infraction like a broken tail light, without other suspicion of a crime, asking for consent to search the vehicle seems unnecessary, and thus strongly suggests that the stop was pretextual. It also opens up the door to racial and identity profiling if officers have misperceptions that some individuals seem "suspicious" without being able to articulate reasonable suspicion or probable cause to search. The 2020 stop data reveals that over half of stops where officers conducted consent only searches of Black, Hispanic/Latine(x) and Middle Eastern/South Asian individuals were initiated in response to a traffic violation. Meanwhile, less than 30 percent of consent only searches of White individuals occurred during stops for traffic violations. These findings may suggest that officers perform pretextual stops at disparate rates across race and ethnicity groups.

g. Results of Stop for Consent Only Searches

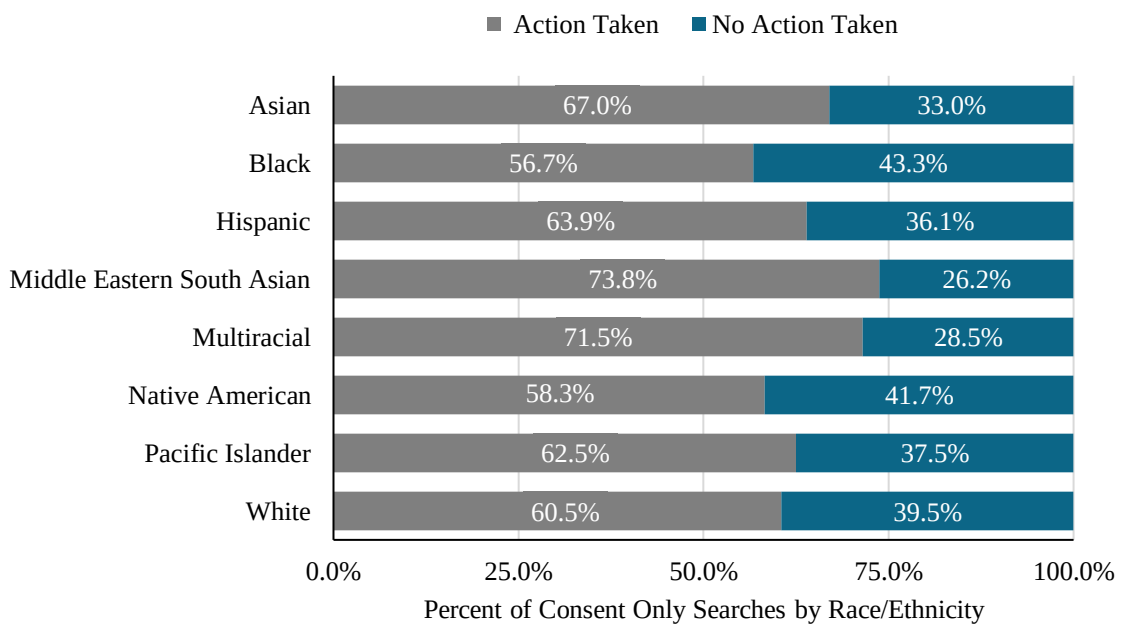
Another important consideration when looking at consent searches is the result of the stop.[265] Overall, during stops in which officers reported conducting a consent only search, 38.5 percent of individuals had no reportable actions taken towards them as a result of the stop. For consent only searches, officers reported taking no action as the result of stop most frequently during stops of individuals they perceived to be Black (43.3%). Officers tended to take no

[264] A detailed discussion on pretext stops appears on page 131.

[265] "Result of Stop" options include: No action; Warning; Citation for Infraction; In-Field Cite and Release; Custodial Arrest Pursuant to Outstanding Warrant; Custodial Arrest Without Warrant; Field Interview Card Completed; Noncriminal Transport or Caretaking Transport; Contacted Parent/Legal Guardian or Other Person Responsible for Minor; Psychiatric Hold; Contacted U.S. Department of Homeland Security; Referral to School Administrator; and Referral to School Counselor.

action as the result of stop least often (26.2%) during stops of individuals they perceived to be Middle Eastern/South Asian.

Figure 45. Stop Result for Consent Only Searches by Race/Ethnicity



Stops where an officer does not take an action at the end of the encounter should be examined more closely to determine if bias or disparate treatment may be a cause for the initial reason for stop.[266] These results, like low search discovery rates, may be an indicator that officers lack sufficient legal justifications to initiate a stop or search in the first place and that who officers decide to search may be motivated in part by implicit or explicit bias.

ii. Best Practices Recommendations for Policies

As evidenced by the data discussed in these sections, the RIPA data show similar patterns to what other researchers have found when evaluating consent searches. First there are racial and ethnic disparities in searches of White individuals compared to Black and Latine(x) individuals.[267] Second, consent searches are statistically not as successful in locating

[266] U.S. Dept. of J., Civil Rights Div., Investigation of the Baltimore City Police Department (2016) p. 28 <https://www.justice.gov/crt/file/883296/download> [as of Dec. 2, 2021].

[267] See Examining Equity in Transportation Safety Enforcement, Hearings Testimony before House Com. on Transportation and Infrastructure, Subcom. On Highways and Transit, 117th Cong., 1st Sess. ("Examining Equity") (Feb. 2021), testimony of Ken Barone <https://transportation.house.gov/imo/media/doc/Barone%20Testimony.pdf> [as of Dec. 2, 2021]; see also generally Schwartz, *So-called 'Consent Searches' Harm Our Digital Rights* (Jan. 2021) Electronic Frontier Foundation <https://www.eff.org/deeplinks/2021/01/so-called-consent-searches-harm-our-digital-rights> [as of Dec. 2, 2021] and *Rodriguez v. California Highway Patrol* (N.D. Cal. 2000) 89 F. Supp. 2d 1131.

contraband as other types of searches.[268] Given these findings, the Board has considered best practice recommendations for consent only searches.

Voluntariness and Consent Searches:

Consent searches raise questions of voluntariness and the effect of an authority figure making such a request. Under the law, a person is free to give an officer permission to search or decline a request to search. However, unless there is an agency-specific policy, an officer does not have an affirmative responsibility to explain to the individual that they have the right to refuse consent to a search or that they can limit the scope of the search when giving consent.[269] In fact, a person may have "consented" to a search simply by not objecting under the legal theory of implied consent.[270] The courts have found that as long as the consent was given "voluntarily," meaning it was freely given and without coercion, the search is legal.[271] The RIPA data shows 94.6% of people who are asked consent to search comply with the officer's request.[272] Research suggests that nearly everyone "consents" to searches when asked by an authority figure due, in part, to the inherent power inequality. Because such a power inequality exists between an officer and a civilian, not everyone may feel entitled to exercise their right to say "no" to a search.

"People comply with police requests to perform searches for social rather than informational reasons. Crucial aspects of the social context, the authority of the police officer and the awkwardness of refusal, prevail even when people are properly informed of their rights. It is high time to abandon the myth that notifying people of their individual rights is enough."

- Roseanna Sommers, University of Chicago, see footnote 275

"Like many Black drivers, I experience a hollowing fear anytime I'm stopped by police. My body tenses, it's hard to breathe, and I genuinely wonder if I'll make it through the situation. When police approach slowly and cautiously, as if they think I'm a potential threat, and ask for consent to search my car for drugs or weapons, those feelings intensify . . . fear made me contemplate letting the officer search my car, even though I knew it would lead me to feel more violated and traumatized than I already was."

- Philip V. McHarris [273]

[268] See Examining Equity, *supra* note 267.
[269] See, e.g., *Fla. v. Rodriguez* (1984) 469 U.S. 1, 6-7; *Bustamonte,* 412 U.S. at p. 227.
[270] See, e.g., *Bustamonte,* 412 U.S. at p. 219; *Fla. v. Jardines* (2013) 569 U.S. 1, 10; *Birchfield v. North Dakota* (2016) 579 U.S. 136 S. Ct. 2160, 2185.
[271] *Bustamonte,* 412 U.S. at pp. 226-28.
[272] See page 100 of RIPA report.
[273] McHarris, *I Experience a Hollowing Fear Any Time I'm Stopped by Police: Gutting the Fourth Amendment* has turned tiny traffic violations into abusive traffic stops and coercive searches for millions of Black drivers like myself (Nov. 10, 2020) The Nation <https://www.thenation.com/article/society/driving-black-police-stops/> [as of Dec. 2, 2021].

A recent study, conducted by Sommers and Bohns,[274] examined whether consent searches were truly voluntary by tracking whether participants would agree to a search of their cell phone when asked by researchers. The study included 200 participants of undergraduates at a university in the Northeast.[275] One set of participants were asked, "before we begin the study, can you please unlock your phone and hand it to me? I'll just need to take your phone outside of the room for a moment to check for some things."[276] A separate set of participants – the control group – watched the questioning of the other participants and then were asked if they would agree to the same request.[277] The study allowed researchers to compare what participants thought they would do and what they actually did when faced with an intrusive search request. Overall, they found 97% of people asked to turn over their phone did so, although 86% people in the control group thought the request was unreasonable.[278] Thus, nearly all of the participants consented to a search of their phone that the control group – representing the neutral observer –found unreasonable.

Next, Sommers and Bohns tested to see whether people withheld consent if they were advised that they could refuse the search. Researchers gave a Miranda-like warning to see if it changed the participants' behavior and found the "practice did not significantly reduce the rates at which people handed over their phones."[279] They "also examined whether those who received the warning felt less pressured to agree to hand over their phones and found that the warning had no significant effect on how participants actually felt."[280] This study demonstrates the psychological pressure to comply with a search request and shows there is a significant difference between what an observer thinks they would do in this situation and what might happen in the field. Sommers and Bohns concluded that "people comply with police requests to perform searches for social rather than informational reasons. Crucial aspects of the social context, the authority of the police officer and the awkwardness of refusal, prevail even when people are properly informed of their rights. It is high time to abandon the myth that notifying people of their individual rights is enough."[281]

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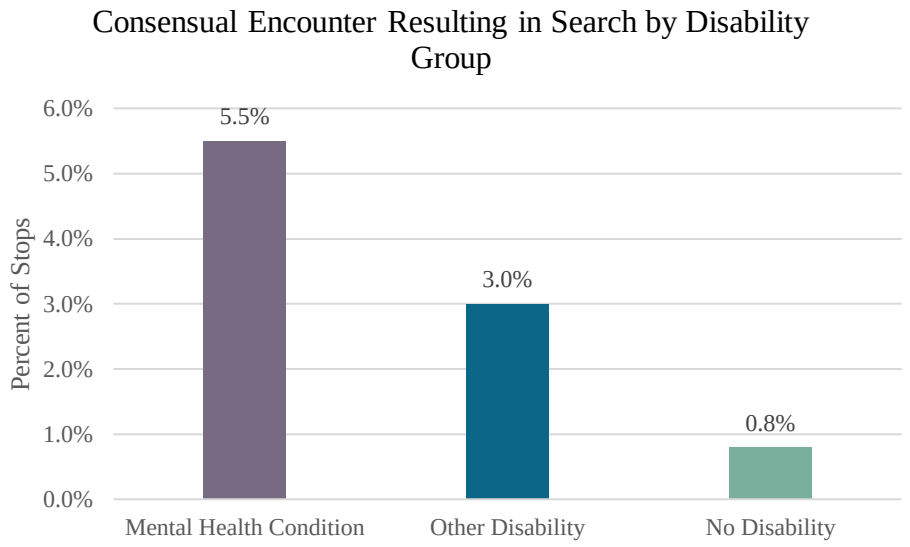
[274] See Sommers, *Are Consent Searches Truly Voluntary?* (May 14, 2019) Scholars Strategy Network <https://scholars.org/contribution/are-consent-searches-truly-voluntary> [as of Dec. 2, 2021].
[275] Roseanna Sommers is a Harry A. Bigelow Teaching Fellow and Lecturer in Law at University of Chicago Law School. Vanessa Bohns is an Associate Professor of Organizational Behavior at Cornell University ILR School. See Sommers et al., *The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance* (2019) 128 Yale L.J. 1962, 1982.
[276] Sommers, *Are Consent Searches Truly Voluntary?*, *supra* note 274; see also Sommers et al., *The Voluntariness of Voluntary Consent: Consent Searches and the* Psychology *of Compliance*, *supra* note 275, at p. 1983.
[277] Sommers, *Are Consent Searches Truly Voluntary?*, *supra* note 274; see also Sommers et al., *The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance*, *supra* note 275, at pp. 1983-84.
[278] See Sommers, *Are Consent Searches Truly Voluntary?*, *supra* note 274; see also Sommers et al., *The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance*, *supra* note 275, at p. 2010.
[279] Sommers, *Are Consent Searches Truly Voluntary?*, *supra* note 274; see also Sommers et al., *The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance*, *supra* note 275, at p. 1963.
[280] Sommers, *Are Consent Searches Truly Voluntary?*, *supra* note 274; see also Sommers et al., *The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance*, *supra* note 275, at p. 2019.
[281] Sommers, *Are Consent Searches Truly Voluntary?*, *supra* note 274; see also Sommers et al., *The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance*, *supra* note 275, at pp. 2018-19. It is important to note that this research was conducted with undergraduate students, so it may have limited application to law enforcement interactions with civilians and potential contraband objects, but it does demonstrate some of the psychology underlying the concept of consent.

Prohibiting Consent Searches of Vulnerable Populations Based upon Disability and Age

Given the results of the Sommers and Bohns study, it is also important to consider how vulnerable populations, such as youth or individuals with a mental health disability, may be more influenced by authoritative pressure to comply with a request than the college students in the above experiment.

Scholars have found those with mental health and developmental disabilities are more likely to comply with an officer's request and as a result are "over-criminalized as they fall subject to the consensual search trap."[282] In fact, the RIPA data shows the proportion of stops that began as consensual encounters and resulted in searches was 6.9 times higher (5.5%) for individuals perceived to have a mental health disability and 3.6 times higher for individuals perceived to have other disabilities (3%) than for individuals whom officers perceived to have no disability (0.8%).[283]

Figure 46. Proportion of Stops That Began as Consensual Encounter Which Resulted in a Search by Disability Group

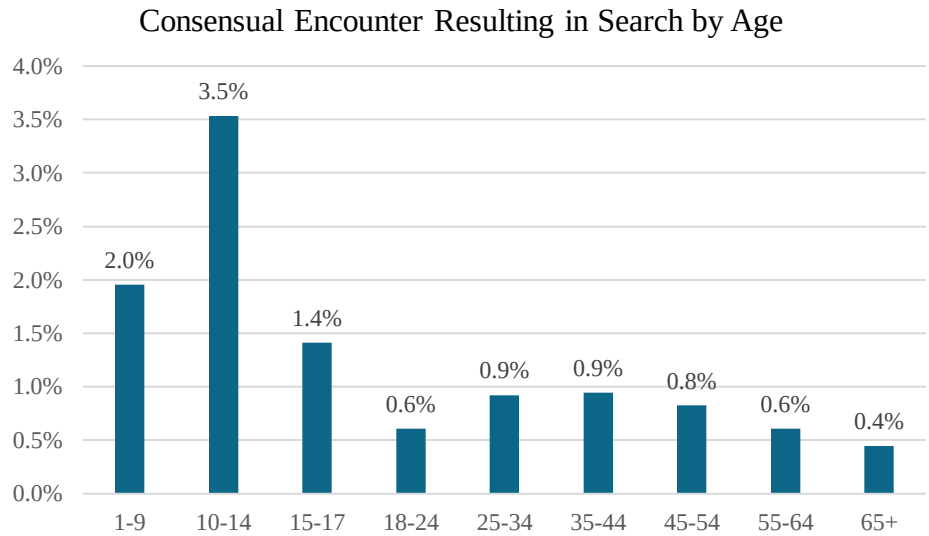


Youth are especially susceptible to comply with an officer's request, and the U.S. Supreme Court has recognized that "children are generally more vulnerable to outside influences than adults and have limited understandings of the criminal justice system and the roles of the institutional actors within it."[284] The RIPA data also reveal that children have a higher

[282] See Hernandez, *Incapacity to Refuse Consent: Fourth Amendment Offenses in Consensual Searches of Individuals with Mental Illness* (2014) 23 S. Cal. Rev. L. & Social J. 387, 408 <https://gould.usc.edu/students/journals/rlsj/issues/assets/docs/volume23/Spring2014/2.Hernandez.pdf> [as of Dec. 2, 2021].
[283] Please see Appendix Table A.32 for a full breakdown of all reason for stop fields by disability group.
[284] See Sen. Bill No. 203 (2019-2020 Reg. Sess. § 1); *Roper v. Simmons* (2005) 543 U.S. 551, 569.

proportion of their stops begin as a consensual encounter and then result in a search than their adult counterparts.

Figure 47. Proportion of Stops That Began as Consensual Encounter Which Resulted in a Search by Age



[285]

Despite youth having numerous protections under the law due to their vulnerability, they "receive no added protection under the Fourth Amendment, as courts treat age as only one factor in determining voluntary consent."[286]

Given all of these considerations, agencies may wish to review or amend their consent search policies to include specific provisions about interacting with youth or those with mental health disabilities or alternatively prohibit consent searches of certain vulnerable populations entirely. Officers would still be able to conduct searches if there is probable cause to do so. Advocates and legislators may also wish to consider legislative changes that would either limit or prohibit consent searches or increase protections for those with serious mental health disabilities or youth, as research has shown that these searches are likely not consensual.

Prohibiting Consent Searches of Vehicles and Cell Phones

As one solution, some law enforcement agencies and state legislatures have prohibited consent searches based on the type of search, such as a car or a cell phone. Several agencies have implemented policy changes prohibiting consent searches of vehicles. Rhode Island, for example, has a law stating "unless there exists reasonable suspicion or probable cause of criminal activity, no motor vehicle stopped for a traffic violation shall be detained beyond the time needed to address the violation."[287] Similarly, after working with researchers and

[285] Totals are calculated from the RIPA data available on OpenJustice at <https://openjustice.doj.ca.gov/data>.
[286] See Anderson, *The Costs of Youth: Voluntary Searches and the Laws Failure to Meaningfully Account for Age* (2020) 62 Ariz. L. Rev. 241, 245.
[287] R.I. Gen. Laws, § 31-21.2-5(a) (2017).

reviewing stop data, the state of Connecticut passed a law in October 2020 prohibiting officers from requesting consent to search a vehicle stopped only for a motor vehicle violation.[288]

Special consideration should also be given to consent searches of cell phones, since "modern cell phones, as a category, implicate privacy concerns far beyond those implicated by the search of a cigarette pack, a wallet, or a purse."[289] Similar to other consent searches, a consent search of a cell phone is vulnerable to bias, and many agencies currently require written consent to search computers.[290] What sets cell phone searches apart from other types of consent searches is the amount of data that can be obtained in that type of search. Cell phones store an immense amount of data "that reveal much more in combination than any isolated record."[291] Under the law, an officer may search a phone incident to arrest only if they have a warrant to search the phone, but can evade the warrant requirement by asking for consent to search.[292]

A cell phone search is not only highly intrusive, but it is also rarely related to evidence of any crime that was the cause of the stop, such as having a broken tail light.[293] Additionally, most people likely do not fully understand the scope of the consent they give nor what is going to be done with the data on their phone if they do consent.[294] In fact, a cell phone search can involve the extraction all of the data from a person's phone and can be reexamined by law enforcement at any time; this includes everything from text messages, conversations on apps, location data, deleted photos, internet search histories, etc.[295] "The power and information asymmetries of cell phone consent searches are egregious and unfixable."[296] As such, agencies and policymakers should consider prohibiting consent searches of cell phones and instead require officers to obtain a warrant.[297]

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[288] Conn. Gen. Stats. §§ 54-33b; 54-33o.

[289] Riley v. California (2014) 573 U.S. 373, 393; see generally Koepke et al., Upturn Toward Justice in Technology, *Mass Extraction: The Widespread Power of U.S. Law Enforcement to Search Mobile Phones* (2020) <https://www.upturn.org/static/reports/2020/mass-extraction/files/Upturn%20-%20Mass%20Extraction.pdf > [as of Dec. 2, 2021]**;** Schwartz, So-called 'Consent Searches' Harm Our Digital Rights, *supra* note 267.

[290] Of the Wave 3 and 3.5 Agencies, Anaheim Police, Fresno Sheriff, Riverside Police, Santa Ana Police, Berkeley Police, Davis Police, Rohnert Park, Santa Rosa Police, Sonoma Police, Sonoma Sheriff, CSU Sonoma Police, Windsor PD, Cotati PD, and Petaluma PD all require a written consent form to search digital evidence.

[291] See *Riley v. California*, 573 U.S. at p. 375.

[292] See *id.* at p. 376; see also *Bustamonte,* 412 U.S. at p. 219.

[293] See *Knowles v. Iowa* (1998) 525 U.S. 113, 114-19 (holding that the issuance of a citation did not authorize the officer, consistent with the Fourth Amendment, to conduct a full search of the car because (1) there was no need to discover and preserve evidence since once defendant was stopped and issued a citation, "all the evidence necessary to prosecute that offense had been obtained" and (2) the threat to safety from issuing a traffic citation was significantly less than in the case of a custodial arrest.)

[294] Koepke et al., *supra* note 289, at pp. 53-54**.**

[295] Ibid.

[296] See Schwartz, *So-called 'Consent Searches' Harm Our Digital Rights*, *supra* note 267 (quoting Koepke et al., *supra* note 289, at p. 59)**.**

[297] See Koepke et al., *supra* note 289, at p. 58; see also Schwartz, *So-called 'Consent Searches' Harm Our Digital Rights*, *supra* note 267.

Written Consent Search Forms and Recording Consent on Body Worn Camera

A popular proposed reform to combatting the disparities with consent searches is to require written consent to search or record the consent response on camera.[298] A written consent form is usually a standardized form that requires a signature of the person stopped affirming they consent to the search. Not all consent search forms are the same; some give a legal advisement about the right to refuse to search while others are just a statement the person "agrees" to the search.[299] However, emerging research suggests that these forms may not solve the problem for a few reasons: (1) the forms may not mitigate the coercive nature or the psychological pressure to comply with an officer's request to search;[300] (2) the forms may not increase a person's understanding of their rights;[301] and (3) obtaining a signed consent form could "insulate[ ] law enforcement from later invalidation of the search on voluntariness grounds."[302]

Indeed, these consent forms can later be used by the courts as dispositive proof that the consent was "voluntary" even if that is truly not the case. In a study of suppression motions (motions to challenge the legality of a search), the accused prevailed 10% of the time; for consent searches, the accused prevailed 9% of the time and when a consent form was present only 5% of the time.[303] This is in part because "consent" is an exception to the requirement for officers to have evidence of criminal activity prior to conducting a search. Though the Board's review of policies showed that many agencies are encouraging the use of body worn cameras,[304] cameras do nothing to inform the person stopped of their rights or alleviate the power differential during a police encounter.

Although written consent search forms, recording the consent on a body worn camera, or an advisory of the right to refuse or limit the scope of the search have become common reform proposals, such reforms do not address the root problems of these police practices, as

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[298] An Office of Inspector General Report regarding LAPD expressed concerns about whether individuals were giving consent for searches and whether the officers were asking the question or telling individuals they would be getting searched. (See generally L.A. of the Inspector Gen., Review of Stops Conducted by the Los Angeles Police Department in 2019 (Oct. 27, 2020) <https://a27e0481-a3d0-44b8-8142-1376cfbb6e32.filesusr.com/ugd/b2dd23_d3e88738022547acb55f3ad9dd7a1dcb.pdf> [as of Dec. 2, 2021].) In response, in November 2020, the Los Angeles Police Commission approved a new LAPD policy entitled, "Field Officer's Notebook, Form 15.03.00," which requires officers to get written consent after asking for consent, advising the individual that they may withdraw consent at any time, and, if the officer gets "implied consent," then they must get confirmation recorded on body-worn cameras or on their digital In-Car Video System. See Los Angeles Police Dept., Office of the Chief of Police Administrative Order No. 22 (Nov. 20, 2020) *Field Officer's Notebook, Form 15.03.00 – Revised; and, Consent to Search Verbal Advisement, Form 15.05.00 Activated* <https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2021/09/AO-22-2020-FIELD-OFFICERS-NOTEBOOK-CONSENT-TO-SEARCH.pdf> [as of Dec. 2, 2021].

[299] Leong, et al., *Consent Forms and Consent Formalism* (2013) 2013 Wis. L. Rev. 751, 752-753.

[300] See Sommers, *Are Consent Searches Truly Voluntary? supra* note 274; see also Sommers et al., *The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance*, *supra* note 275; Leong et al., *Consent Forms and Consent Formalism*, *supra* note 299, at pp. 782-783, 788-789.

[301] See Leong et al., C*onsent Forms and Consent Formalism*, *supra* note 299, at p. 753.

[302] See *id*. at pp. 753-754.

[303] See *id*. at p. 779.

[304] Of the Wave 3 and 3.5 Agencies, Alameda Sheriff, Kern Sheriff, Santa Ana Police, Santa Clara Sheriff, Ventura Sheriff, Berkeley Police, Sonoma Sheriff, Sonoma Police, and Windsor Police all require body worn cameras to be activated when requesting consent to search.

discussed above. Voluntary 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.[305] Moreover, research suggests that officers' discretion leads to disparate stops and searches of Black and Hispanic/Latine(x) individuals.[306] Therefore, there are likely better solutions, such as severely limiting when a consent search would be appropriate or eliminating the practice entirely. Such solutions can require officers to focus on evidence-based searches, which may result in an increase in finding contraband and may improve community trust.

Evidence-Based Policing: Reducing Disparities, Improving Police Tactics and Community Relations

Reducing Disparities:

A significant part of what is driving the disparities is ***who*** is being asked consent to search. The 2019 and 2020 data show that Black and Hispanic/Latine(x) individuals are asked for consent to search at higher rates than White individuals.[307] This suggests that such disparities are driven by explicit or implicit bias. In last year's report, the Board reviewed studies on implicit bias, explaining that implicit biases "arise from the natural functioning of the human brain and refer to the beliefs or attitudes a person holds that can shape their understanding, actions, and decisions in an unconscious manner. Relying on their implicit biases, individuals may make unconscious associations in an attempt to quickly make sense of a complex, highly evolving environment."[308]

Social psychologists point out that hunches or gut instincts are ripe for bias.[309] Officers can mitigate this bias by adding in "friction" between the hunch and the actions they choose to take next. This friction occurs when the officer has to articulate a legal basis to search and ask themselves "is this stop intelligence led?"[310] Adding friction can work to interrupt implicit bias, and cause the person to stop and point to objective evidence of criminal activity. Simply having an officer ask themselves that question may result in a reduction of the disparities observed in the data. In fact, in Oakland, adding this type of friction before an officer stopped an individual reduced stops of individuals perceived as Black by 43 percent and those perceived as Hispanic or Latine(x) by 35 percent.[311]

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[305] See Sommers, *Are Consent Searches Truly Voluntary?*, *supra* note 274; see also generally Sommers et al., *The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance*, *supra* note 274.
[306] See Racial and Identity Profiling Advisory Board Report (2021), *supra* note 199, at p. 8.
[307] See *id.* at p. 71.
[308] See *id*. at p. 23 (citing Krieger Hamilton, The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity (1995) 47 Stan. L. Rev. 1161, 1187).
[309] See Ridgeway, *Assessing the Effect of Race Bias in Post-Traffic Stop Outcomes Using Propensity Scores*, *supra* note 108, at 1; see also Eberhardt, *How racial bias works -- and how to disrupt it*, *supra* note 251.
[310] See Eberhardt, *How racial bias works -- and how to disrupt it*, *supra* note 251; see also Oakland Police Department, Office of Chief of Police, *2016-18 Racial Impact Report* (2019) p. 3 <https://cao-94612.s3.amazonaws.com/documents/OPD-Racial-Impact-Report-2016-2018-Final-16Apr19.pdf> [as of Dec. 2, 2021] ("Preliminary results have shown that reductions in stop activity have caused the proportion of intelligence-led stops to increase. From 2017 to December 19, 2018, the overall percentage of intelligence-led stops increased from 27% to 31% (See Table 10).").
[311] Eberhardt, *How racial bias works -- and how to disrupt it*, *supra* note 251; see also Oakland Police Department, Office of Chief of Police, *2016-18 Racial Impact Report*, *supra* note 310, at pp. 3-4.

Improving Police Tactics:

Even if reducing disparities is not the explicit goal of agencies making policy reforms, sometimes policy changes made for other reasons can have the benefit of reducing disparities and harm to BIPOC communities. Notably, the California Highway Patrol, the largest law enforcement agency in the state, issued a moratorium on consent searches from 2001 to 2006, prohibiting consent searches of a person or their vehicle. The recommendation to prohibit consent searches originally came from a team of CHP managers in the early 2000's. They reviewed the agency's consent search data and found that during the course of a year CHP officers had conducted 1,370 consent searches, a small fraction of the 3 million stops CHP conducted in 2000.[312] Former CHP Commissioner Helmick questioned the practice, asking "With that few searches, I wondered are they worthy or beneficial for us to keep doing, when the public questions the need to do them? The whole idea of consent searches is bothersome to me, that you just ask a person if you can search their car."[313] Helmick then issued a six-month moratorium on consent searches in 2001.

The moratorium was then extended to 2006 as a part of the settlement of a lawsuit, *Rodriguez v. CHP.*[314] Data from discovery in the lawsuit showed that "Latinos were approximately three times as likely to be searched by drug interdiction officers than whites in the Central and Coastal Divisions, and African Americans were approximately twice as likely to be searched by drug interdiction officers in those divisions."[315] The ACLU noted that "the reforms agreed to by the CHP should serve as model policy for local police departments throughout the state."[316]

Law enforcement agencies that have eliminated or prohibited consent searches may also see an increase in the likelihood of finding contraband. A law enforcement agency outside New Haven, Connecticut prohibited consent searches after significant disparities were identified in their stop data. Specifically researchers discovered that "the department made nearly 151 consent searches of Black motorists and 46 of Hispanic/Latine(x) motorists with hit-rates of 7.9 and 15.2 percent respectively."[317] After seeing these disparities, the agency consulted with community members and stakeholders and implemented policy changes. The agency found that by prohibiting consent searches, "[p]olice searches were more successful at finding contraband, i.e. a 63-percentage point increase, and the department ceased to be identified as having a disparity in subsequent annual analyses."[318] The agency also reformed their policies to focus traffic enforcement on hazardous driving behaviors, i.e. evidence-based stops, which is discussed in more detail in the Pretext Stops section of the report.

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[312] See : *California Highway Patrol Bans Consent Searches Following Review of Data Collection Showing Discriminatory Pattern*, *supra* note 253.
[313] See Herel, *CHP chief orders ban on consent searches of cars* (Apr. 2001) S.F. Gate <https://www.sfgate.com/news/article/CHP-chief-orders-ban-on-consent-searches-of-cars-2929735.php> [as of Dec. 2, 2021].
[314] See *Rodriguez v. CHP* (2003) ACLU <https://www.aclunc.org/our-work/legal-docket/rodriguez-v-chp> [Dec. 2, 2021].
[315] See *California Highway Patrol Bans Consent Searches Following Review of Data Collection Showing Discriminatory Pattern*, *supra* note 253.
[316] *Ibid.*
[317] See Connecticut Racial Profiling Prohibition Project, State of Connecticut: Traffic Stop Data Analysis and Findings, 2018, *supra* note 253, at p. 45.
[318] Ross et al., Testing for Disparities in Traffic Stops: Best Practices from the Connecticut Model, *supra* note 253, at p. 1297.

Community Relations:

Policy changes, like those implemented near New Haven, can have a great impact on improving police and community relations. If an officer conducts a search without an objectively legal basis, individuals may feel they are being unfairly targeted for enforcement. "Not only is public support fundamental to the legitimacy of the police, but it is also important for enlisting the public in efforts to reduce crime. Moreover, there is growing evidence that public support depends on the public's perception that police treat people fairly and professionally."[319] Agencies should be particularly mindful of the impact of consent search inquiries; to an officer it may seem like a minor intrusion, but to an individual the mere act of asking them for consent to search implies that the officer thinks the person could be a criminal. As such interactions become more commonplace and prevalent, such conduct ultimately fosters distrust among the community at large. Policy changes that focus on evidence-based searches, rather than subjective motivations or officer discretion, can help to reduce disparities and will thus increase community trust.

Recommendations to Agencies, Municipalities, and the Legislature –Consent Searches:

Piecemeal approaches to reduce the frequency of consent searches may have some impact, but the evidence does not show that they can eliminate or significantly reduce the substantial observed disparities indicative of racial and identity profiling. In light of the need for strong policy changes with impactful results, the Board recommends the Legislature pursue legislation that would severely limit and/or end the practice of consent searches. The Board further recommends that law enforcement agencies or municipalities adopt policies or laws that limit or prohibit consent searches and require officers to conduct only evidence-based searches based on reasonable suspicion or probable cause.

2. Known Supervision Stops and Searches

The Board also hopes to reduce disparities and improve community relationships by limiting situations where an officer asks someone about their supervision status – "are you on probation or parole?" In California, a person convicted of a crime may be placed on court-ordered supervision,[320] and the judge may also impose certain conditions to being on supervision. 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.[321]

[319] Miller et al., Vera Institute of Justice, *Public Opinions of the Police: The Influence of Friends, Family and News Media* (May 2004) p. 1 <https://www.ojp.gov/pdffiles1/nij/grants/205619.pdf> [as of Dec. 2, 2021] (citing Tyler, *Why People Obey the Law* (1990) Yale University Press; Tyler, *Trust and Law Abidingness: A Proactive Model of Social Regulation* (2001) Boston University L.Rev. 81(2): 361-406).

[320] For more information on the types of supervision, see notes 246-49.

[321] See, e.g., *People v. Sanders* (2003) 31 Cal. 4th 318, 333; *People v. Reyes* (1998) 19 Cal. 4th 743, 750-754; *In re* Jaime *P.* (2006) 40 Cal. 4th 128, 139.

Similarly, the law requires an officer to know that the person is on supervision *before* the officer stops a person because of supervision status. The courts have been explicit about this: "no conduct is more unreasonable than stopping a vehicle and then hoping the stop later can be justified if one of the occupants in the vehicle happens to be on probation or parole. Such a stop cannot reasonably be related to a probation/parole search condition because the officer(s) did not know the individual was on probation or parole."[322] Given the far-reaching effect being on supervision has on a person's constitutional rights, it is important to consider how bias may play a role in stops and searches where supervision may be an issue.

i. Mass Incarceration and Systemic Issues that Contribute to Disparities in Stops:

Throughout the nation, it is estimated that 1 out of 58 adults are on supervision.[323] Black individuals are "2.6 times as likely to be on probation, and nearly 4 times as likely to be on parole, as compared to White individuals."[324] The percentage of Hispanic/Latine(x) individuals in the probation population (13%) is more in line with their share of the general population (19%), although Hispanic/Latine(x) individuals are systemically undercounted in correctional statistics[325] and in census counts. Individuals identifying as Native American or Alaska Native are "48% more likely to be on probation, and 77% more likely to be on parole, than their [W]hite counterparts."[326]

Studies have found that Black individuals are between 50% and over 100% more likely than White individuals to be charged with parole violations, even when "controlling for relevant demographic and legal factors," such as overall supervision and residential populations, for example.[327] This data on the disproportionate representation of people of color on supervision should be reviewed with care so as not to interpret the statistics as an indictment of specific groups of people, but rather as a reflection of the long-term impacts of poverty, segregation, discrimination, and urbanization.[328]

Notably, compared to other states, "California reincarcerated the largest absolute number of people (64,761) from probation in 2018, making up 47% of all exits from probation across the

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[322] See *People v. Hester* (2004) 119 Cal. App. 4th 376, 380.

[323] The Bureau of Justice Statistics releases reports annually on probation and parole data throughout the country but reviews prior years' data; thus, the present report is a review of 2017-2018 data but it was published in 2020. See Kaeble, and Alper, U.S. Dept. of J., Bur. of Justice Statistics, Probation and Parole in the U.S., 2017-2018 (Aug. 2020) p. 1 <https://www.bjs.gov/content/pub/pdf/ppus1718.pdf> [as of Dec. 2, 2021].

[324] See Bradner et al., *More Work to Do: Analysis of Probation and Parole in the U.S., 2017-2018 ("More Work to Do"*) (Aug. 2020) Columbia Univ. Justice Lab, p. 6 <https://justicelab.columbia.edu/sites/default/files/content/More%20Work%20to%20Do.pdf> [as of Dec. 2, 2021].

[325] Latine(x) people are systematically undercounted in correctional statistics, as many states do not report data on ethnicity even when they do report data on race. Therefore, we expect that the BJS data likely underestimates supervision disparities for Latine(x) people. See Eppler-Epstein et al., *The Alarming Lack of Data on Latinos in the Criminal Justice System* (2016) Washington, DC: The Urban Institute <https://apps.urban.org/features/latino-criminal-justice-data/?language=english> [as of Dec. 2, 2021].

[326] Bradner et al., *More Work to Do*, *supra* note 324, at p. 6.

[327] *Id*. at p. 7.

[328] See National Resource Center on Children & Families of the Incarcerated, Rutgers University-Camden, Children and Families of the Incarcerated Fact Sheet (2014) <https://nrccfi.camden.rutgers.edu/files/nrccfi-fact-sheet-2014.pdf> [as of Dec. 2, 2021].

state."[329] This means that almost half of the people on probation in California were found to be in violation of their probation and were consequently reincarcerated. Additionally, "California also had the largest number of people incarcerated for technical violations – 46,479 people, or one-third (34%) of all Californians exiting probation for any reason in 2018."[330] A technical violation occurs when someone fails to comply with a term of supervision; typically it is not a new criminal offense. Some examples of technical violations could be failing to participate in a court-ordered class, missing an appointment with a probation officer, traveling to another city or state without pre-approval, failing to pay child support, or being late for curfew.

A 2018 Justice Center of Council of State Governments study estimates California spends $2 billion annually to re-incarcerate people for supervision violations, and $235 million per year on technical violations alone, "such as missing a drug rehab appointment or socializing with a friend who has a criminal record."[331] Community supervision is not only costly, but it significantly contributes to mass incarceration by sending people back to prison for minor or technical rule violations. Experts have described this as "a tripwire that can trigger a vicious cycle of incarceration for people under supervision for administrative rule violations that would rarely lead someone not under supervision into prison."[332] Research has shown that mass incarceration can decimate communities of color by socially and economically isolating individuals from their families and communities during and after their incarceration;[333] given their prevalence, technical violations are likely a contributing factor. One way to help break this cycle is to stop making assumptions that an individual is engaged in criminal activity simply because they may have a criminal history. By closely examining the RIPA stop data and existing research on mass incarceration, we can begin to identify data-driven solutions to addressing bias in the context of supervision stops and searches.

ii. Data Analyses:

a. Search and Discovery Rates

Under the RIPA regulations, an officer may indicate the primary reason for a stop was known parole, probation, post-release community supervision (PRCS), or mandatory supervision only when the officer knew this information prior to initiating the stop. Officers can also indicate that a basis for performing a search was a condition of a person's supervision regardless of the primary reason for stop. The 2020 RIPA data shows that 21,060 individuals were stopped for known supervision and 77,210 individuals were searched due to conditions of their supervision, indicating a number of individuals searched were not initially detained due to supervision status.

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[329] Bradner et al., *More Work to Do*, *supra* note 324, at p. 10.
[330] *Ibid*.
[331] See Sen. Com. on Public Safety, analysis of Assem. Bill No. 1950 (2019-2020 Reg. Sess.) p. 4, citing The Council of State Governments Justice Center, *Confined and Costly: How Supervision Violations are Filling Prisons and Burdening Budgets* (2019) <https://csgjusticecenter.org/publications/confined-costly/?usState=CA#primary> [as of Dec. 2, 2021].
[332] See Equal Justice Initiative, *Probation and Parole Driving Mass Incarceration* (Nov. 25, 2020) <https://eji.org/news/probation-and-parole-driving-mass-incarceration/> [as of Dec. 2, 2021].
[333] See Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness (2010) pp. 12-15.

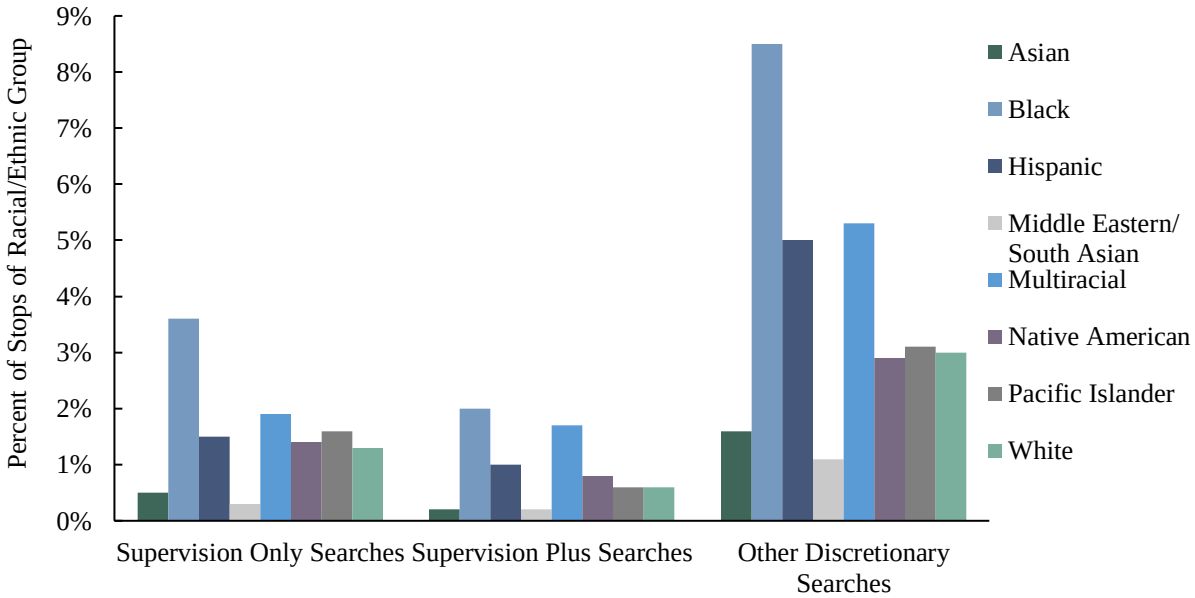
In cases where an officer performs a search pursuant to a condition of supervision, the officer must indicate that a basis for the search was "Condition of parole/probation/PRCS/mandatory supervision" (hereafter referred to as "condition of supervision"). Condition of supervision was the sole search basis reported for 63.8 percent (49,234) of these searches while the other 36.2 percent (27,976) included additional search bases in combination with condition of supervision.

Rates for supervision only searches[334] per stop varied between racial/ethnic groups; rates ranged from 0.3 percent of Middle Eastern/South Asian individuals to 3.6 percent of Black individuals who were stopped. Middle Eastern/South Asian individuals (8.5%) also had the lowest proportion of their searches conducted solely due to a condition of supervision while Black individuals had the highest number and proportion (17,309; 17.3%). In comparison, 11,991 searches were conducted solely due to a condition of supervision for White individuals, constituting 14.7 percent of all searches of White individuals.

Officers reported performing supervision plus searches[335] at higher rates for Black individuals (2.0%) they stopped and at lower rates for Asian (0.2%) and Middle Eastern/South Asian individuals (0.2%). For other discretionary searches, search rates ranged from 1.1 percent for Middle Eastern/South Asian individuals to 8.5 percent for Black individuals.[336]

[334] For the purposes of the analyses included in the Known Supervision Stops and Searches Section of this report (condition of supervision search analyses), "supervision only searches" refers to searches where the condition of parole/probation/PRCS/mandatory supervision was the sole basis officers provided for performing the search.
[335] For the purposes of the analyses included in the Known Supervision Stops and Searches Section of this report (condition of supervision search analyses), "supervision plus searches" refers to searches where the condition of parole/probation/PRCS/mandatory supervision was one of multiple search bases officers provided for performing the search.
[336] For the purposes of the analyses included in the Known Supervision Stops and Searches Section of this report (condition of supervision search analyses), "other discretionary searches" refers to searches where incident to arrest, vehicle inventory, search warrant, and condition of parole/probation/PRCS/mandatory supervision search bases were *not* one of the search bases that officers provided for performing the search.

Figure 48. Search Rates by Search Basis and Race/Ethnicity[337]



This data illustrates clear disparities in who is searched based upon supervision status. Here, officers performed supervision only searches of individuals they stopped and perceived to be Black at 2.8 times the rate at which they performed these types of searches of stopped individuals they perceived to be White. Similarly, officers also performed supervision plus searches of Black individuals they stopped at 3.3 times the rate they performed supervision plus searches of White individuals they stopped. Although we know that there are higher numbers of Black and Latine(x) individuals under some form of supervision due to systemic racism embedded in our criminal legal system, that alone cannot explain the disparities illustrated above.[338]

b. Discovery Rates

Overall, officers reported lower discovery rates for supervision only searches (20.3%) and other discretionary searches (20.5%) while reporting higher discovery rates for supervision plus searches (30.4%). Discovery rates varied across racial/ethnicity groups for the three search types analyzed. For supervision only searches, discovery rates ranged from 16.8 percent for Black individuals to 28.2 percent for White individuals. For supervision plus searches, discovery rates ranged from 23.7 percent for Multiracial individuals to 40.2 percent for Pacific Islander individuals. For other discretionary searches, officers reported lower proportions of contraband/evidence discovered for Multiracial (18.6%), Pacific Islander (18.7%), and Middle

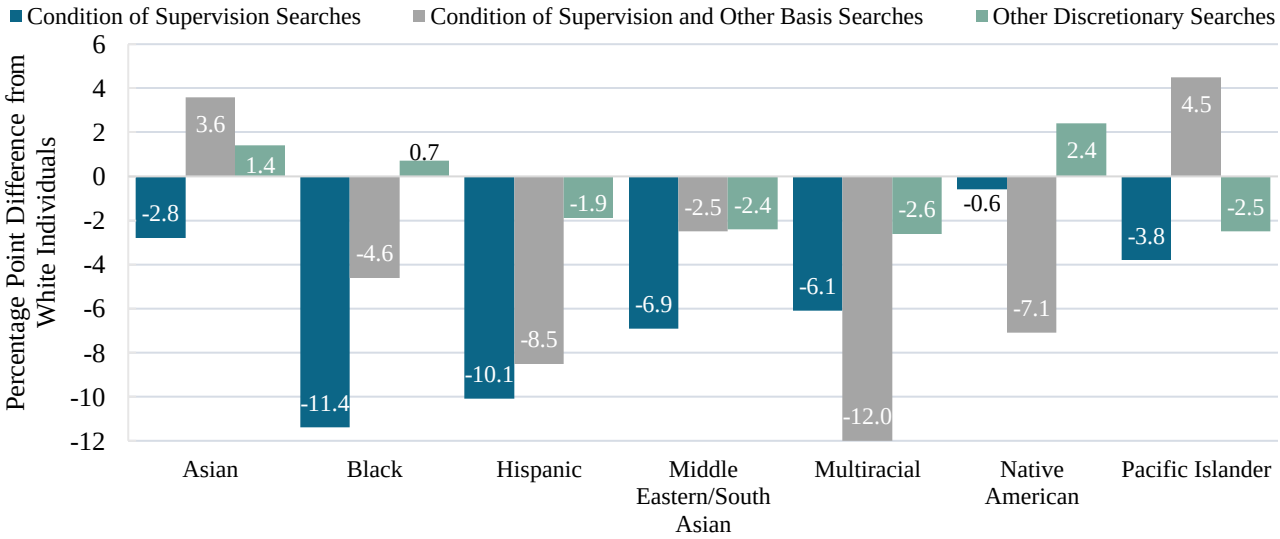
[337] The higher search rates for other discretionary searches, relative to supervision only and supervision plus search rates, is to be expected since there are more search bases encompassed within the other discretionary search category. However, the observed disparities for other discretionary searches also warrants future exploration to understand what may be driving these other discretionary search disparities.

[338] See Bradner et al., *More Work to Do*, *supra* note 324, at p. 7 (discussion of how Black and Latine(x) people are more likely to be charged with supervision violations or sent to prison as compared to similarly situated White people and how structural racism makes it more difficult for a person to successfully complete a term of probation).

Eastern/South Asian individuals (18.8%) while reporting higher proportions of contraband/evidence discovered for Native American individuals (23.6%).

Discovery rates are presented in the following figure for each racial/ethnic group as differences from White individuals; White individuals had a discovery rate of 28.2 percent for condition of supervision searches, 35.7 percent for condition of supervision and other basis searches, and 21.2 percent for other discretionary searches. The discovery rates for supervision only searches were lower for all racial/ethnic groups compared to White individuals; Black individuals had the largest difference in their discovery rate (-11.4 percentage points). For supervision and other basis searches, Multiracial individuals had the largest discovery rate difference compared to White individuals; the discovery rate for Multiracial individuals was 12 percentage points less than the rate for White individuals. Lastly, Asian, Black, and Native American individuals had higher discovery rates for other discretionary searches compared to White individuals.

Figure 49. Discovery Rate Differences by Search Type and Race/Ethnicity



When assessing this data, it is imperative to look holistically at our criminal legal system to understand the real world impacts. For example, in this figure above, the dark blue columns (for "condition of supervision searches" only) indicate that officers were less likely to find contraband or evidence when searching non-White individuals. Yet non-White individuals are subjected to more searches and more constant police interaction.

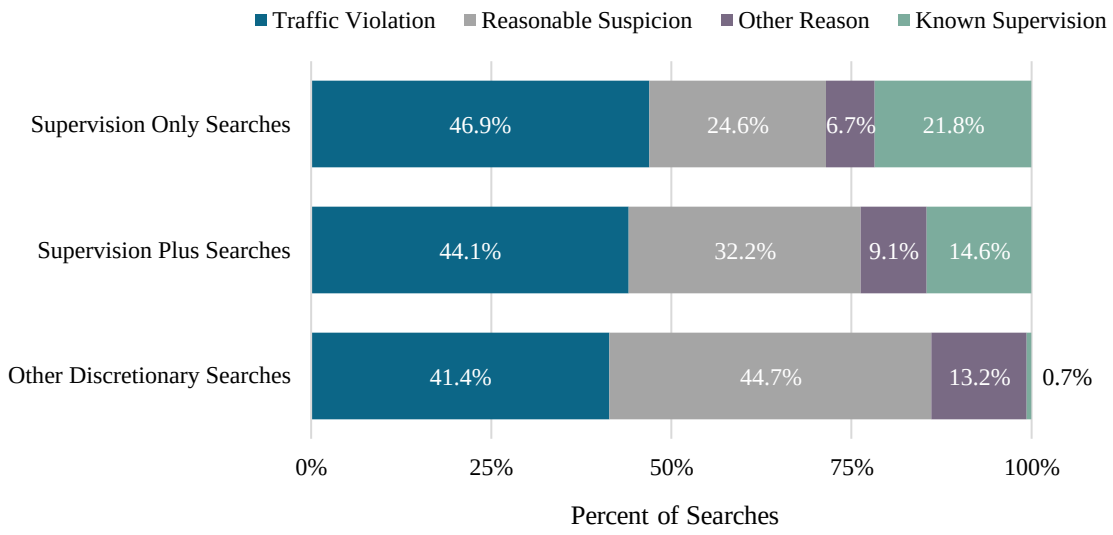
Reason for Stop for Condition of Supervision Searches

Across the three search types analyzed, officers reported a higher proportion of supervision only searches occurred during stops for traffic violations (46.9%) and a lower proportion occurred during reasonable suspicion stops (24.6%) and stops with reasons grouped together as "Other" (6.7%).[339] Officers reported conducting a higher proportion of other discretionary

[339] Other reasons for stop that the officer could report included consensual encounter resulting in a search, warrants/wanted person, truancy, investigation to determine whether student violated school policy, and possible violations of the Education

searches during reasonable suspicion stops (44.7%) and a lower proportion during known supervision stops (0.7%).

Figure 50. Reason for Stop by Search Type



We can see from this figure that most of these encounters are not initiated due to supervision status and may not have any nexus to the fact that an individual is on supervision. For example, just over one in five Supervision Only Searches (21.8%) occurred during a stop where the primary reason for the stop was that the person stopped was known to be on supervision, and stopped primarily because of their supervision status, i.e. non-criminal activity. Moreover, the highest proportion of stops that resulted in supervision only searches began with traffic violations (46.9%), where officers searched individuals for no reason other than the fact that they were on supervision.

The reason for stop distribution for each type of search varied by racial/ethnic group. Of stops where officers indicated that they conducted a supervision only search, Black individuals had higher proportions of being stopped for a traffic violation (58.2%) while White individuals had higher proportions of being stopped for reasonable suspicion (36.7%). Furthermore, of stops where officers conducted a supervision only search, Native Americans had higher proportions of being stopped for both known supervision (32.2%) and reasons grouped together as "Other" (12.6%).

Of stops where officers indicated that they conducted a supervision plus search, Black individuals had higher proportions of being stopped for a traffic violation (48.6%) and White individuals had higher proportions of being stopped for reasonable suspicion (38.6%). Multiracial individuals had higher proportions of being stopped for known supervision (18.6%)

Code. These Primary Reason for Stop categories are combined in this section under the category of "Other." See Appendix Table A.21 for a breakdown of all stop reasons reported by race/ethnicity for each type of search analyzed in this section.

and Native American individuals had higher proportions of being stopped for reasons grouped together as “Other” (22.4%).

Lastly, of stops where officers indicated that they conducted other discretionary searches, Hispanic individuals had higher proportions of being stopped for a traffic violation (46.5%) while Asian (52.5%) and Pacific Islander individuals (52.4%) had higher proportions of being stopped for reasonable suspicion. Of stops where officers conducted other discretionary searches, Native American individuals had higher proportions of being stopped for known supervision (1.7%) and reasons grouped together as “Other” (25.3%).

Figure 51. Reason for Stop for Supervision Only Searches by Race/Ethnicity

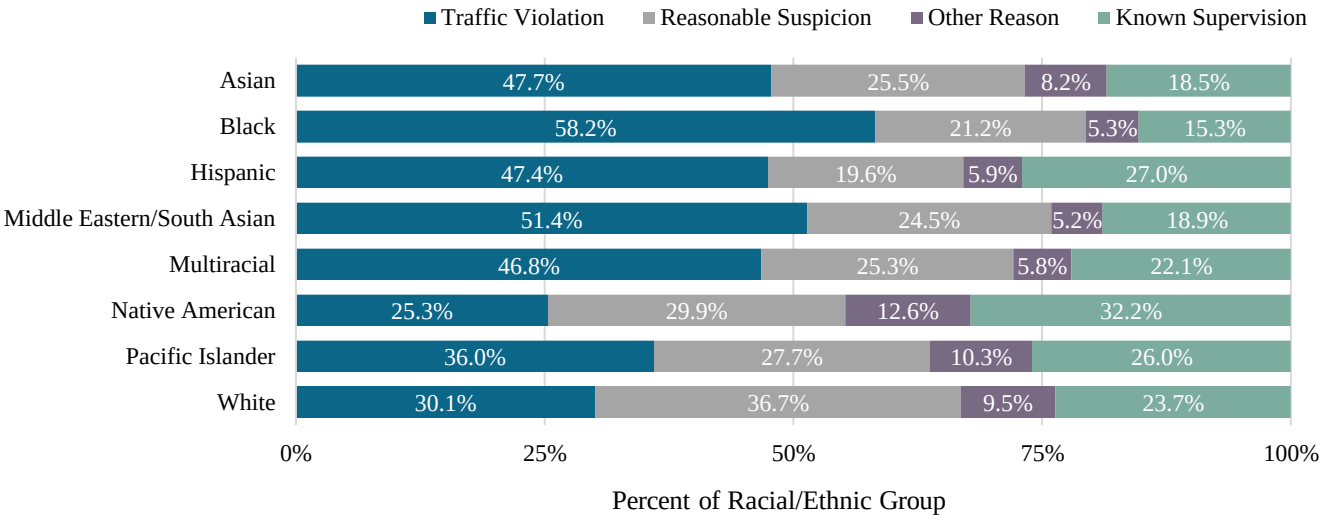


Figure 52. Reason for Stop for Supervision Plus Searches by Race/Ethnicity

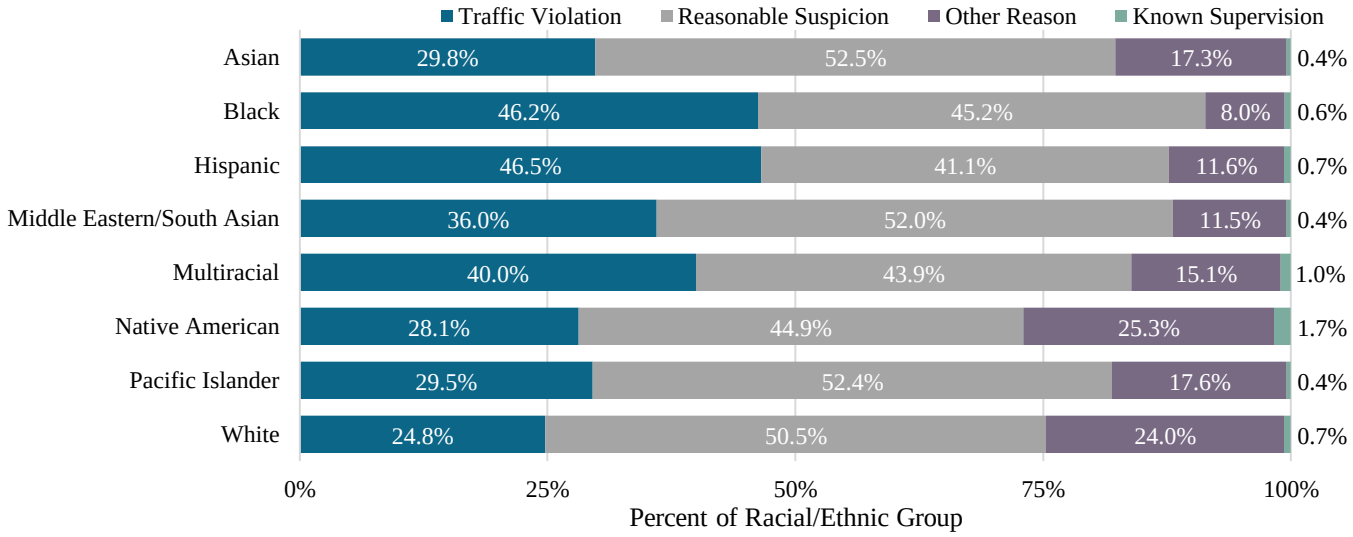
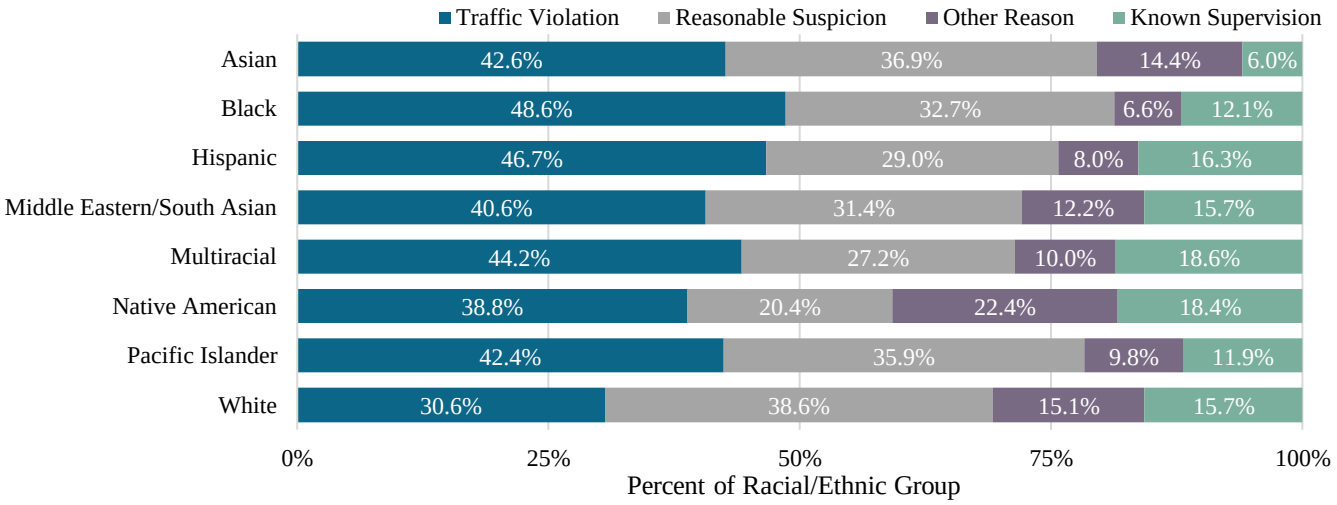


Figure 53. Reason for Stop for Other Discretionary Searches by Race/Ethnicity



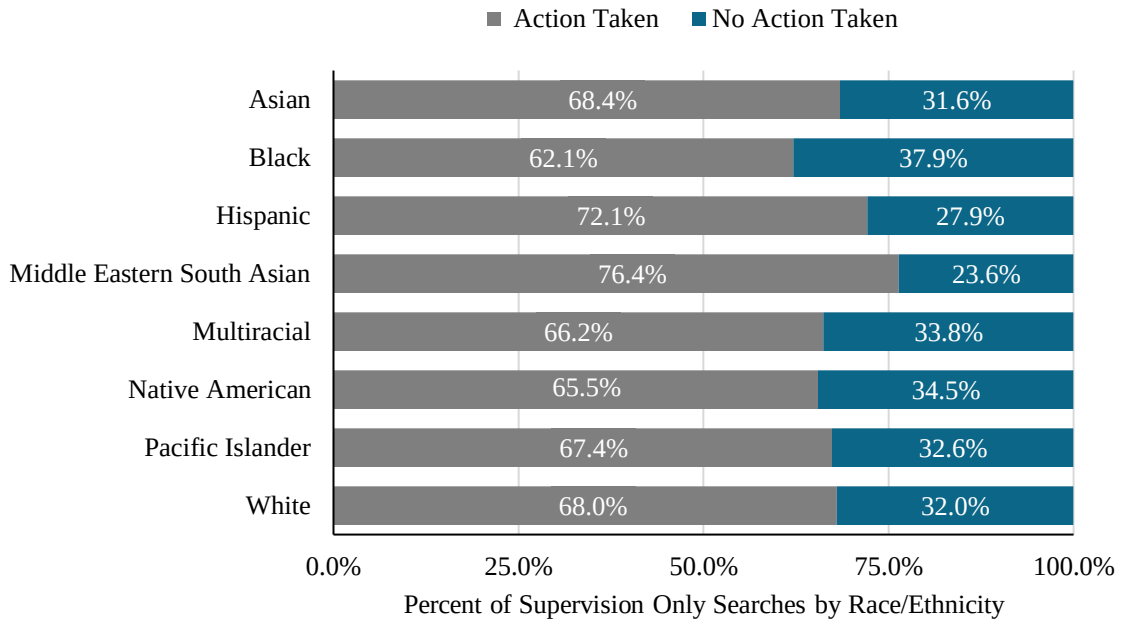
Generally, traffic stops are the most frequent reason officers interact with stopped individuals, and therefore, the data related to how those interactions play out is important. The data shows that for supervision only stops and supervision plus searches, approximately a quarter to 30 percent began as traffic stops for individuals perceived as White, whereas for individuals perceived as Black, just over 58 percent of supervision only searches and 48.6 percent of supervision plus searches began as a traffic stop.

c. Results of Stop for Condition of Supervision Only Searches

Another important consideration is the ultimate result or outcome of these supervision stops and searches. Overall, during stops in which officers conducted a supervision only search, 32.5 percent of individuals had no reportable actions taken towards them as a result of the stop. Action rates for supervision only searches varied between racial/ethnic groups. Officers reported taking no action as the result of stop most frequently during stops of individuals they perceived to be Black (37.9%). Officers tended to take no action as the result of stop least often (23.6%) during stops of individuals they perceived to be Middle Eastern/South Asian.

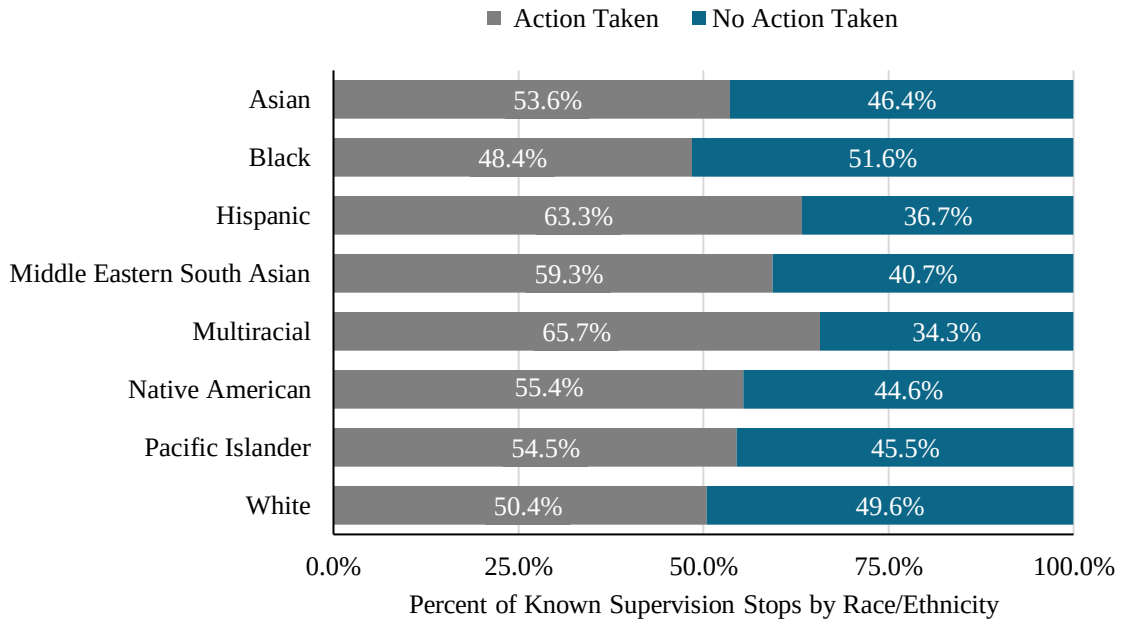
d. Results of Stop for Condition of Known Supervision Stops

Figure 54. Stop Result for Supervision Only Searches by Race/Ethnicity



Overall, of stops where officers reported known supervision as the reason for stop, 44.0 percent of individuals had no reportable actions taken towards them as a result of the stop. Officers reported taking no action as the result of stop most frequently during known supervision stops of individuals they perceived to be Black (51.6%). Officers tended to take no action as the result of stop least often (34.3%) during known supervision stops of individuals they perceived to be Multiracial.

Figure 55. Stop Result for Known Supervision Stops by Race/Ethnicity



Similarly to consent searches, stops where an officer does not take an action at the end of the encounter should be examined closely to determine if bias or disparate treatment may be a cause for the initial reason for stop.[340] These results coupled with low search yield rates may be an indicator that there is lack of a sufficient justification to initiate a stop or search in the first place. A close examination of the data reveals that there may be concrete policy changes agencies can make now – such as prohibiting supervision inquiries and limiting supervision searches – that will greatly reduce disparate treatment of individuals.

iii. Research on Model Policies/Language Limiting/Prohibiting Probation Inquiries/Searches

Limiting Supervision Inquiries:

As with consent searches, the Board believes law enforcement agencies can begin to mitigate racial and identity disparities with respect to supervision by first examining who is being asked if they are on supervision.

In a study reviewing Oakland Police Department's (OPD) stop data and comparing it to body worn camera footage, researchers found "officers were more likely to mention the word probation in conversations with African American community members" and also used more severe legal words – such as "arrest" or "prison" – in comparison to White community

[340] See U.S. Dept. of J., Civil Rights Div., Investigation of the Baltimore City Police Dept., *supra* note 154, at p. 28.

members.[341] The study further found that "93% of probation/parole searches were of African Americans and Hispanics."[342]

The OPD study also affirmed that Black and Hispanic/Latine(x) residents generally felt more disrespected and misunderstood by police than White or Asian residents.[343] "Many respondents of color described feeling singled out, subject to increased scrutiny, or differentially treated because of their race when officers pulled them over."[344] After concluding the survey, researchers recommended that law enforcement agencies monitor public opinions of the police and experiences to help shape policy reforms.[345]

> *"Given that many of the underlying offenses that trigger supervision, as well as the stops and arrests that can lead to violation proceedings, stem from over-policing, particularly in poor and minority communities, [we must] develop and implement a plan, with specific metrics, to reduce disparate treatment of people based on race, poverty, and geography." – Human Rights Watch & ACLU,* see footnote 347.

Municipalities and agencies need to evaluate whether asking someone if they are on supervision, without a specific law enforcement objective, is worth the significant negative consequences to police-community relations. For OPD, it was not. Instead, OPD acknowledged that even a simple inquiry into someone's supervision status is intrusive; OPD then decided to prohibit inquiries into a person's supervision status in an effort to rebuild community trust through transparency.[346]

The San Diego Police Department (SDPD) also developed a policy prohibiting inquiries into a person's probation or parole status during a stop. SDPD's police states that SDPD tracked an increase in civilian complaints raising community concerns related to questions about previous arrests, and/or probation or parole status and presumably this was one factor that went into the policy change.[347] SDPD reports the policy is still in effect and it has seen a decrease in complaints since the policy change.

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[341] See Eberhardt, J. L., Stanford Univ. SPARQ, Strategies for Change: Research Initiatives and Recommendations to Improve Police-Community Relations in Oakland, Calif. ("Strategies for Change") (June 2016) p. 17 <https://stanford.app.box.com/v/Strategies-for-Change> [as of Dec. 2, 2021].
[342] See *id*. at p. 56.
[343] See *id*. at p. 17.
[344] See *id*. at p. 35.
[345] See *id*. at p. 36.
[346] An officer may only inquire into a person's supervision status if "there is an [i]mmediate [t]hreat to [o]fficer safety or the safety of others." Oakland Police Dept., *Dept. General Order R-02: Searches of Individuals on Probation, Parole, Mandatory Supervision and PRCS* (Post-Release Community Supervision) ("*Dept. General Order R-02*") (Oct. 2019) <https://public.powerdms.com/oakland/tree/documents/1800988> [as of Dec. 2, 2021]; see also Tadayon, *New Oakland policy limits when parolees can be searched without a warrant* (July 2019) East Bay Times <https://www.eastbaytimes.com/2019/07/10/new-oakland-police-policy-limits-warrantless-searches-on-parolees> [as of Dec. 2, 2021].
[347] See Dillon, *SDPD Will Have the Right to Remain Silent on Probation Question* (Apr. 22, 2014) Voice of San Diego < https://www.voiceofsandiego.org/topics/politics/sdpd-will-have-the-right-to-remain-silent-on-probation-question/> [as of Dec. 2, 2021]; San Diego Police Dept., Training Bulletin, TB 14-02, *Citizen Contacts – Inquiries of Probation or Parol*e (Apr. 9, 2014) <https://www.voiceofsandiego.org/wp-content/uploads/2014/04/Inquiries-of-Probation-or-Parole.pdf> [as of Dec. 2, 2021],

Similarly, in an "effort to foster community trust," Berkeley Police Department implemented a policy stating that officers "should not ask if a person is on probation or parole when a person has "satisfactorily identified themselves."[348] The policy instead encourages officers to simply run a records check on the person during a traffic or investigative stop.[349]

The officer yelled on the intercom, "'Don't you park your car right there. Move to the other side of the street,' Harvey-Slocum recalled the officer saying to her son. Eagle and Harvey-Slocum had his license and registration ready but said the officer was more concerned with another issue. 'Are you on probation or parole?

Eagle is set to graduate with a Master's in mechanical engineering next fall at the age of 21 and he says to be asked if he's on probation or parole is tough to reconcile.

'You can't really recognize, like, the feelings that you have. I was kind of just blown back,' Eagle said. But that was not why Harvey-Slocum said she started recording. She said he ran a stop sign, but kept questioning, asking if he's on probation or parole'… 'I have worked too hard to get him where he is. I will not bury my son,' Harvey-Slocum said."

- Interview of Stacey Harvey-Slocum and Tobias Eagle [350]

For law enforcement agencies, prohibiting or limiting probation inquiries is a policy change that could lead to big gains in community trust and respect that ultimately improve public safety. As noted in the sections above, evidence-based searches are more effective at reducing crime and may help improve community relations.

Limiting Supervision Searches:

Another important and related area that agencies may wish to explore is limiting when and how officers conduct supervision searches. For example, not only did OPD limit supervision inquiries, they also limited when an officer should conduct a supervision search. Presently OPD officers may perform a supervision search for an individual convicted of a non-violent offense only if they have reasonable suspicion the person is engaged in criminal activity.[351] Similarly, Berkeley Police Department does not allow officers to detain or search a person simply because an officer is aware of a person's probation status.[352] Instead, the Berkeley Police Department

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Human Rights Watch and ACLU, *Revoked: How Probation and Parole Feed Mass Incarceration in the U.S.* (Aug. 2020), p. 222 <https://www.hrw.org/report/2020/07/31/revoked/how-probation-and-parole-feed-mass-incarceration-united-states>[as of Dec. 2, 2021].

[348] Berkeley Police Dept., Law Enforcement Services Manual, *Policy 311 Search and Seizure* ("*Policy 311 Search and Seizure*") (2021), Section 311.5 <https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/Search_and_Seizure.pdf> [as of Dec. 2, 2021].

[349] Ibid.

[350] Dickerson, *Man says he was 'blown back' by interaction with Elk Grove officer* (Sept. 2020) Fox40 KTXL <man-says-he-was-blown-back-by-interaction-with-elk-grove-officer> [as of Dec. 2, 2021].

[351] See Oakland Police Dept., *Dept. General Order R*-02, *supra* note 346.

[352] See Berkeley Police Dept., *Policy 311 Search and Seizure*, *supra* note 348, at Section 311.6.

policy requires the officer to have at a minimum a reasonable suspicion the person is engaged in criminal activity.[353]

During the COVID-19 pandemic, some agencies, including the Los Angeles County Probation Department, relaxed probation requirements, such as reducing in home visits or searches to only those at high risk of "reoffending."[354] Both Humboldt County and Sacramento County also implemented similar changes, limiting technical violations as well as suspending searches and arrests to only those that are directly linked to a public safety concern.[355]

Numerous studies and researchers have found that if the changes like those implemented by Los Angeles County Probation, Humboldt, and Sacramento become permanent, they likely would have "no adverse effect on public safety."[356] These studies demonstrate "what does make a difference increasing public safety is engaging with those on supervision as community members rather than potential reoffenders."[357] Notably, a broad coalition, which includes more than 50 current and former elected prosecutors, 90 current and former probation and parole officials, and currently and formerly supervised people, among others, have called for probation and parole to be "smaller, less punitive, and more equitable, restorative, and hopeful."[358]

Given the data, research, and positive outcomes, the Board recommends that California law enforcement agencies adopt policies restricting law enforcement inquiries into supervision status and searches.[359]

Evidence-Based Policing: Reducing Disparities, Improving Police Tactics & Community Relations:

The Board encourages agencies to monitor and review their data regularly for disparities and explore and implement policy changes that may address those disparities. When looking at supervision data, law enforcement agencies should ask if the practice "helps or hinders

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[353] See *id*. at Section 311.5.

[354] See White, *Probation Conditions Relaxed During the Pandemic. Some Say They Should Stay That Way* ("*Probation Conditions Relaxed*") (June 2020) The Appeal <https://theappeal.org/coronavirus-probation-parole-technical-violations/> [as of Dec. 2, 2021]; Equal Justice Initiative, *Probation and Parole Driving Mass Incarceration*, *supra* note 332.

[355] See *COVID-19 Response* (Mar. 2020) EXiT: Executives Transforming Probation and Parole <https://www.exitprobationparole.org/covid-19-response> [as of Dec. 2, 2021].

[356] Equal Justice Initiative, Probation and Parole Driving Mass Incarceration, *supra* note 332; see also Doleac, Study after study shows ex-prisoners would be better off without intense supervision (July 2018) Brookings Institute <https://www.brookings.edu/blog/up-front/2018/07/02/study-after-study-shows-ex-prisoners-would-be-better-off-without-intense-supervision/> [as of Dec. 2, 2021].

[357] White, Probation Conditions Relaxed, *supra* note 354.

[358] See, e.g., *Statement on the Future of Probation and Parole in the United States,* EXiT: Executives Transforming Probation and Parole, <https://www.exitprobationparole.org/statement> [as of Dec. 2, 2021]; Walker, *Community Supervision Is Overused, Overly Punitive and Fuels Mass Incarceration, Justice Leaders Say* (Dec. 2020) Witness LA <https://witnessla.com/community-supervision-is-overused-and-overly-punitive-and-fuels-mass-incarceration-justice-leaders-say/> [as of Dec. 2, 2021]; *COVID-19 Response,* EXiT: Executives Transforming Probation and Parole <https://www.exitprobationparole.org/covid-19-response> [as of Dec. 2, 2021].

[359] See Equal Justice Initiative, Probation and Parole Driving Mass Incarceration, *supra* note 332; see also Doleac, Study after study shows ex-prisoners would be better off without intense supervision, *supra* note 356.

community-police relations, individuals' rehabilitation process, and the protection of the community from crime."[360]

The RIPA data collected during 2019 and 2020 indicates that the practice of conducting supervision only searches is not only characterized by racial disparities but also results in low yield rates (17.4% in 2019 and 20.3% in 2020). Given the low yield rates, law enforcement agencies should re-evaluate if it is necessary to search individuals they stop based solely on their supervision status.

In 2020, the state of California passed AB 1950, which reduced the length of probation terms. Proponents of the bill advocated that "reducing the length of probation terms would enable probation officers to more effectively manage their caseloads by focusing resources on those most at risk of reoffending."[361] Notably, the bill proponents specifically stated that one benefit of this change in policy is to help "end wasteful spending" and reduce the "length of time that a person might be subject to arbitrary or technical violations that result in re-incarceration."[362] Here too, by limiting probation inquires and searches, officers can focus their limited time and resources on the most serious violations.

Recommendations to Agencies, Municipalities, and the Legislature – Supervision Inquiries, Stops, and Searches:

The Board recommends that agencies, municipalities, and the Legislature institute policies to prohibit or limit supervision inquiries. Additionally, the Board recommends prohibiting officers from detaining or searching a person simply because an officer is aware of a person's supervision status. Instead, the officer should have at a minimum a reasonable suspicion the person is engaged in criminal activity. Both of these policy changes can lead to big gains in community trust and respect that ultimately improve public safety and save officers time, while also preventing unlawful profiling and unnecessary detention and harassment of individuals not suspected of any illegal conduct.

[360] Eberhardt, *Strategies for Change*, *supra* note 341, at p. 56.
[361] Sen. Rules Com., Off of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 1950 (2019-2020 Reg. Sess.).
[362] Ibid.

3. Pretext Stops

> *"Traffic stops . . . are the most common entry point for contact between civilians and the police. And the harms that can accompany a traffic stop encompass far more than physical violence. . . . Even the most routine stop can cause apprehension or fear, for some. And a resulting ticket or fine can have devastating effects on the driver. For example, drivers who cannot afford to pay the fine often lose their license. As a result, those who need a license to work will lose their jobs. And that in turn makes it harder for them to pay their fines and have their license reinstated. The stakes for ensuring even-handed traffic enforcement are high. And traffic enforcement is not even-handed. The evidence is clear: [B]lack drivers are more likely to be stopped than [W]hite drivers . . . ."*
>
> – *Rohit Asirvatham & Michael Frakes, et. al., Duke Law School,* see footnote 363

A pretext stop is when an officer stops someone for a traffic violation or minor infraction with intention to use the stop to investigate a hunch that by itself would not amount to reasonable suspicion or probable cause.[363] As noted in the Consent Searches section of this report, an officer may pull someone over for a broken tail light, but then ask a person to search their vehicle or person. There would be no reason to conduct a search based upon the broken tail light, and therefore, the officer is using the stop as a pretext to investigate something unrelated to the stop.[364] During a pretextual stop, officers often ask the person stopped for consent to search in order to find evidence of a different crime.

In the analysis above, the Board explored the data related to consent searches, which revealed that people of color were disproportionately asked for consent to search. Given the serious questions raised by the disparate outcomes in the consent data, the Board wanted to evaluate the different types of traffic violations that may be ripe for pretextual stops. In this year's report, the Board first identifies the most common types of traffic stops across the race/ethnicity demographic collected by the data.

i. Data Analyses

a. Traffic Violation Type

When an officer indicates that the primary reason for a stop was a traffic violation, they must also select the type of violation associated with the stop.[365] Officers may select from three types of traffic violations: moving, non-moving, and equipment. Moving violations were the most common type of traffic violation officers listed as the primary reason for conducting stops

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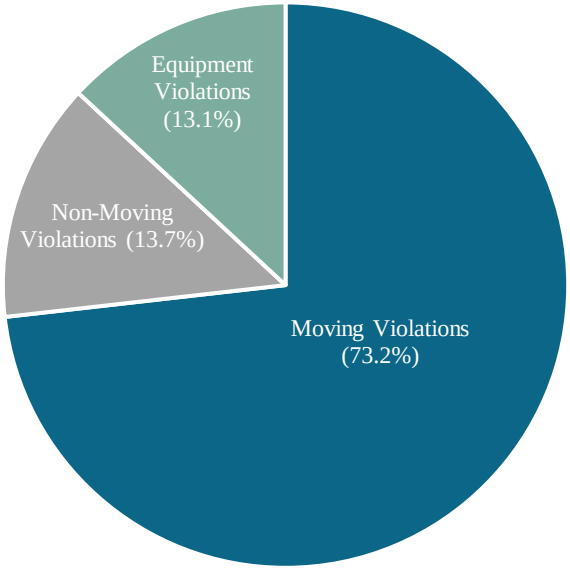
[363] See generally Asirvatham and Frakes, *Are Constitutional Rights Enough? An Empirical Assessment of Racial Bias in Police Stops* (Aug. 2020) Duke L. School Public L. & Legal Theory Series No. 2020-56 <http://dx.doi.org/10.2139/ssrn.3673574> [as of Dec. 2, 2021].

[364] See generally *Ibid*.

[365] See Cal. Code Regs., tit. 11, § 999.226, subd. (a)(10)(A)(1) for information on the data elements required to be reported by officers for stops involving traffic violations as the primary reason for stop.

(73.2%), followed by non-moving violations (13.7%), and lastly, equipment violations (13.1%).[366] Non-moving and equipment violations were grouped together for analyses, in part, due to the similarities of the Vehicle Code sections officers reported across the two violation types.[367]

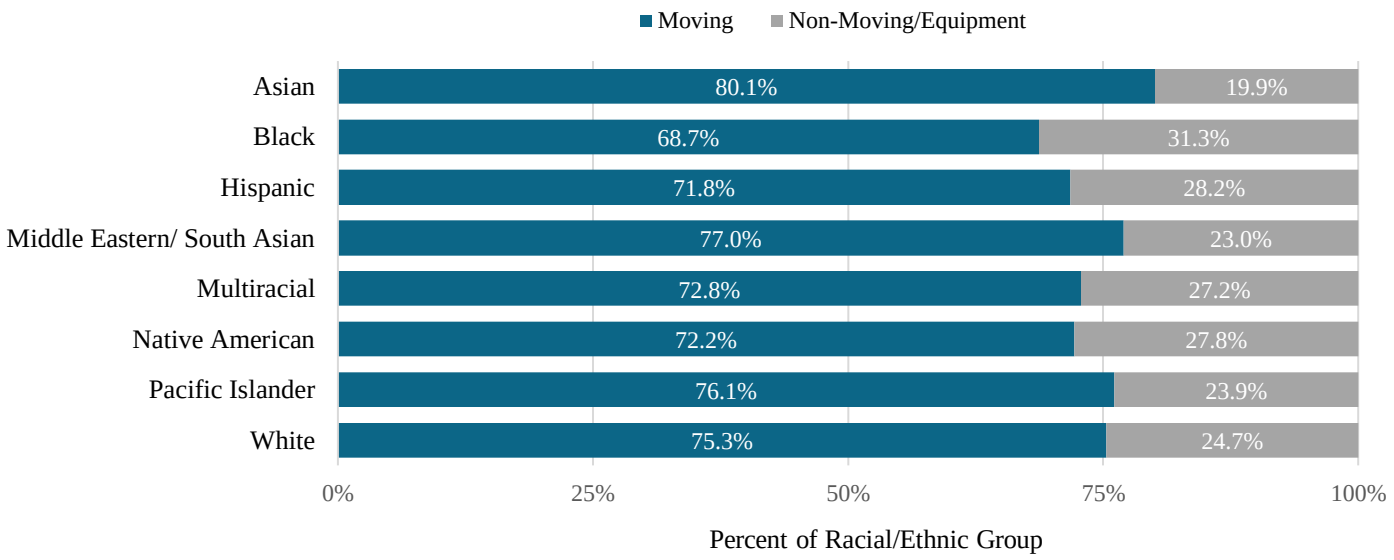
Figure 56. Traffic Violation Type



Rates of traffic violation type reported by officers varied by racial/ethnicity group. Officers reported higher proportions of moving violations for Asian individuals (80.1%) while reporting higher proportions of non-moving/equipment violations for Black individuals (31.3%) relative to other racial/ethnic groups. The proportion of traffic stops for moving violations were 4.8 percent higher for individuals perceived to be Asian than individuals perceived to be White. The proportion of traffic stops for non-moving equipment violations were 6.6 percent higher for individuals perceived to be Black than for individuals perceived to be White.

[366] Due to a technical error, 20 records are missing information for the type of traffic violation.
[367] The Vehicle Code sections "no registration," "display of plates/tags," and "failure to comply with commercial vehicle rule" made up 51.4 percent of non-moving violations and 42.8 percent of equipment violations.

Figure 57. Traffic Violation Type by Race/Ethnicity



b. Vehicle Code Sections Reported by Violation Type (Moving vs. Non-Moving/Equipment)

Figure 57 displays the top five Vehicle Code sections reported for moving violations, both overall and then repeated without including data from the CHP.[368] Across both analyses, officers reported the same top five moving violations and reported the highest proportion for speeding-related violations. When CHP is removed from analysis, the proportion of speeding-related and unsafe lane change/turn violations reported decreased while the proportion of failure to stop at limit line, failure to obey traffic sign, and cellphone violations reported increased.[369]

[368] Due to similarities among some of the Vehicle Code sections, we categorized similar codes together for purposes of analysis. For example, Cal. Veh. Code §§ 23123.5, (no handheld device while driving) and 23123 (no wireless telephone while driving without a hands-free device) were grouped together to create a category labeled "Cellphone Violation." Please see Appendix Table B.1.1 for information on the specific Vehicle Code sections grouped together for analysis. Additionally, all descriptive statistics for the top five Vehicle Code sections are provided in Appendix Table B.1.2 for moving violations and Appendix Table B.1.3 for non-moving/equipment violations.

[369] The California Highway Patrol accounts for a large proportion of stop records from 2020 (57.7%).
Given that the practices of municipal agencies' traffic enforcement 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.

Figure 58. Top Five Moving Violation Codes

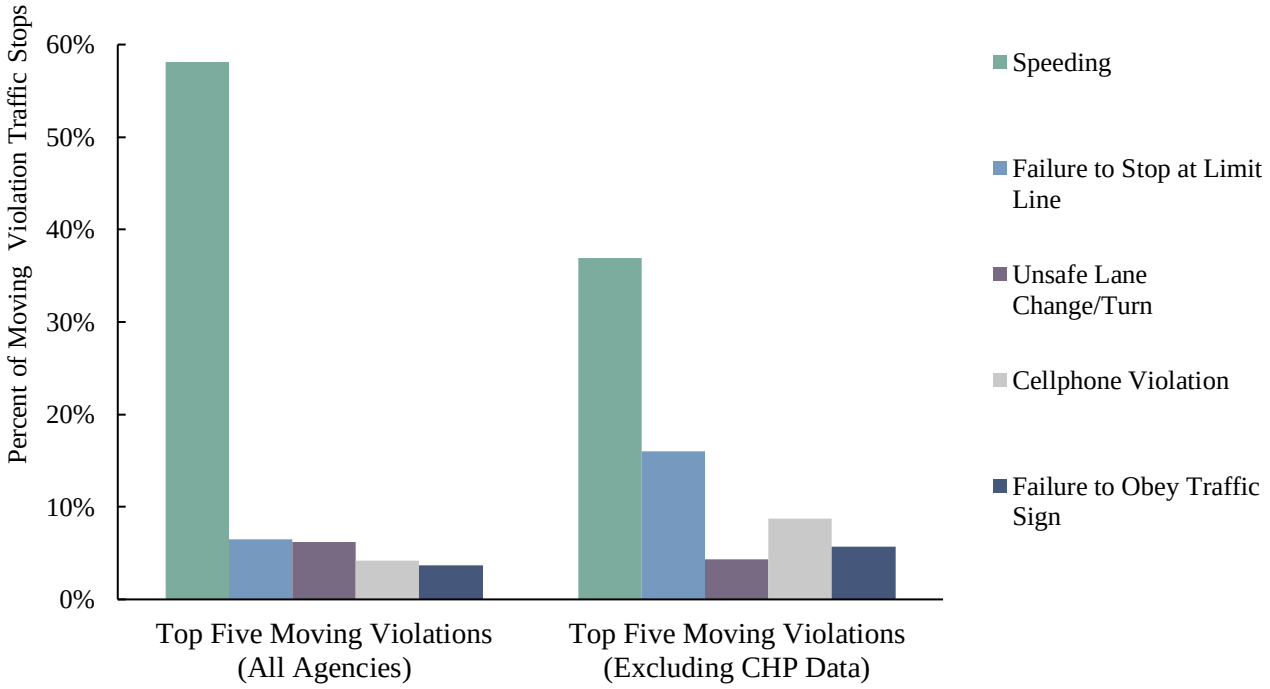


Figure 58 displays the top five Vehicle Code sections reported for non-moving/equipment violations, both overall and repeated without including data from the CHP. Officers reported the highest proportions for no registration, display of license plates/tags, vehicle lighting equipment, and obstructed window violations both with and without CHP data. When examining the data from all agencies, cellphone violations are the fifth highest violation reported by officers, while bike light violations are the fifth highest when CHP records are excluded.[370]

[370] Bike light violations are identified the same way as the other offense types in this analysis, by identifying a specific vehicle code section – Cal. Veh. Code § 21201(d) – in the offense code field for stops where the primary reason for stop was a traffic violation. A proposal to amend the RIPA regulations under current consideration would add an additional field to the stops data collection form where officers would identify that the person stopped is a bicyclist, regardless of whether the bicycle was relevant to the reason for stop; however, in 2020, this was not a field that existed within the RIPA data. See Calif. Dep. of J., Proposed Text of Modified Regulations, *supra* note 74.

Figure 59. Top Five Non-Moving/Equipment Violation Codes

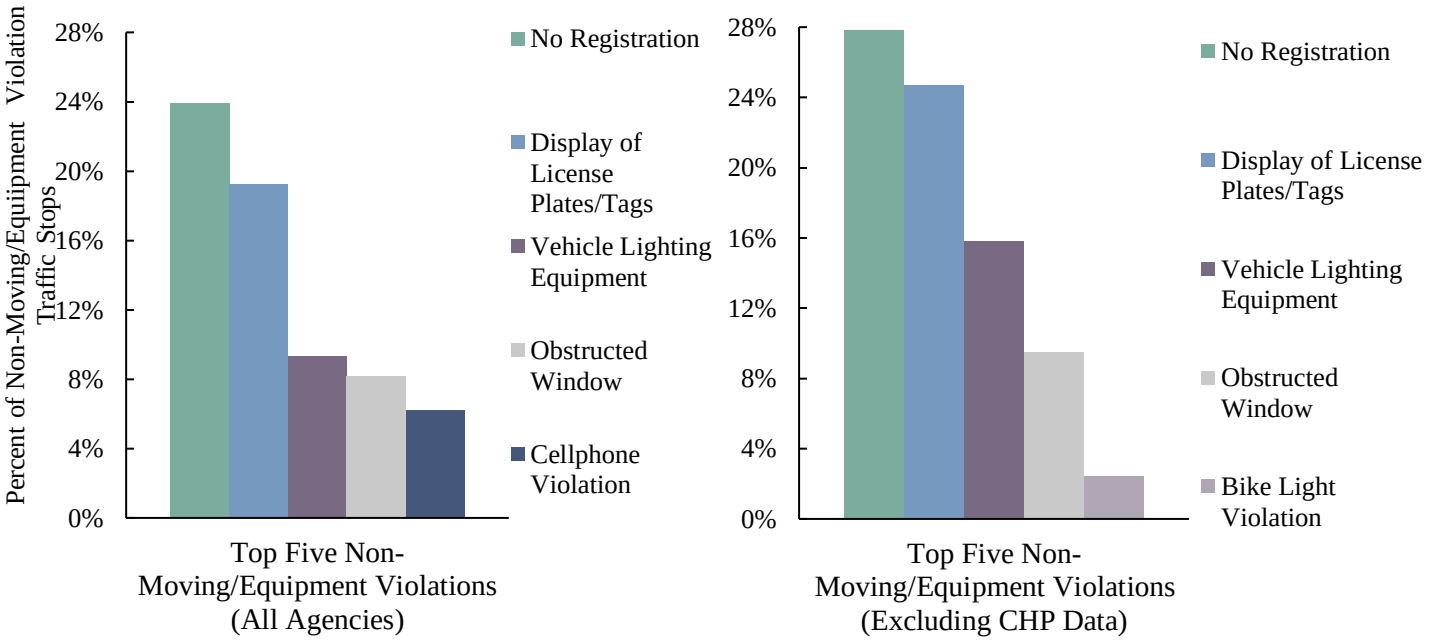


Table 5 displays the top five moving violation Vehicle Code sections across all agencies by the reported race/ethnicity of stopped individuals.[371] Speeding, failure to stop at limit line, cellphone violation, unsafe lane changes or turn, and failure to obey traffic sign were the top five Vehicle Code sections reported for moving violations across all racial/ethnic groups. White individuals had higher proportions of speeding violations (63.4%) while officers reported stopping a smaller proportion of Black individuals for speeding (52.4%). Officers reported higher proportions of violations relating to failing to stop at limit line for Asian individuals (8.6%) and reported lower proportions for individuals grouped in the "Other" category (5.5%).[372]

Officers reported higher proportions of cellphone violations for Asian individuals (5.6%) and lower proportions for Black individuals (3.4%). Individuals grouped in the "Other" category had higher proportions of unsafe lane change/turn violations reported (7.9%) while White individuals had lower proportions reported (5.3%). Lastly, officers reported higher proportions of failure to obey traffic sign violations for Asian individuals (4.6%) and lower proportions for White individuals (3.3%).

[371] The table from which officers select the primary reason for stop offense code is not dependent upon the violation type (i.e., whether officers select moving or non-moving violation). With the exception of registration violations, the RIPA regulations do not dictate what traffic violation type applies to which offense codes. Accordingly, in practice, officers vary in what traffic violation types they tend to select for stops made for some offense codes. For example, some officers may select that a stop for a violation of Cal. Veh. Code § 23123(a) – a cell phone violation – is a moving violation, while others may select that the stop was for a non-moving violation.

[372] Due to relatively low frequencies, stopped individuals perceived to be Middle Eastern or South Asian, Native American, Pacific Islander, or Multiracial were combined into the "Other" category for analyses presented in the Pretext Stops Section of this report.

Table 5. Top Five Moving Violation Codes by Race/Ethnicity (All Agencies)

Race/Ethnicity	Asian	Black	Hispanic	Other	White
Top Offense	Speeding (60.7%)	Speeding (52.4%)	Speeding (55.5%)	Speeding (60.6%)	Speeding (63.4%)
Second Offense	Failure to Stop at Limit Line (8.6%)	Unsafe Lane Change/Turn (7.2%)	Failure to Stop at Limit Line (6.7%)	Unsafe Lane Change/Turn (7.9%)	Failure to Stop at Limit Line (5.9%)
Third Offense	Unsafe Lane Change/Turn (7.0%)	Failure to Stop at Limit Line (6.9%)	Unsafe Lane Change/Turn (6.7%)	Failure to Stop at Limit Line (5.5%)	Unsafe Lane Change/Turn (5.3%)
Fourth Offense	Cellphone Violation (5.6%)	Cellphone Violation (3.4%)	Cellphone Violation (3.9%)	Cellphone Violation (4.8%)	Cellphone Violation (4.5%)
Fifth Offense	Failure to Obey Traffic Sign (4.6%)	Failure to Obey Traffic Sign (3.4%)	Failure to Obey Traffic Sign (3.9%)	Failure to Obey Traffic Sign (4.2%)	Failure to Obey Traffic Sign (3.3%)

When CHP data is excluded from analysis, the same violations (speeding, failure to stop at limit line, cellphone violation, unsafe lane change or turn, and failure to obey traffic sign) were identified as being the top five moving violations reported by officers across all racial/ethnic groups, with the exception of Black individuals (Table 5). Speeding, failure to stop at limit line, cellphone violation, display of plates/tags, and no registration violations were identified as being the top five moving violations for Black individuals. However, registration and display of plates/tags violations fall under the non-moving type of traffic violation and thus, may be a reporting error. When these are removed from the analysis, unsafe lane change (4.9%) and failure to obey traffic sign (3.8%) are identified in the top five moving violations reported by officers for Black individuals.

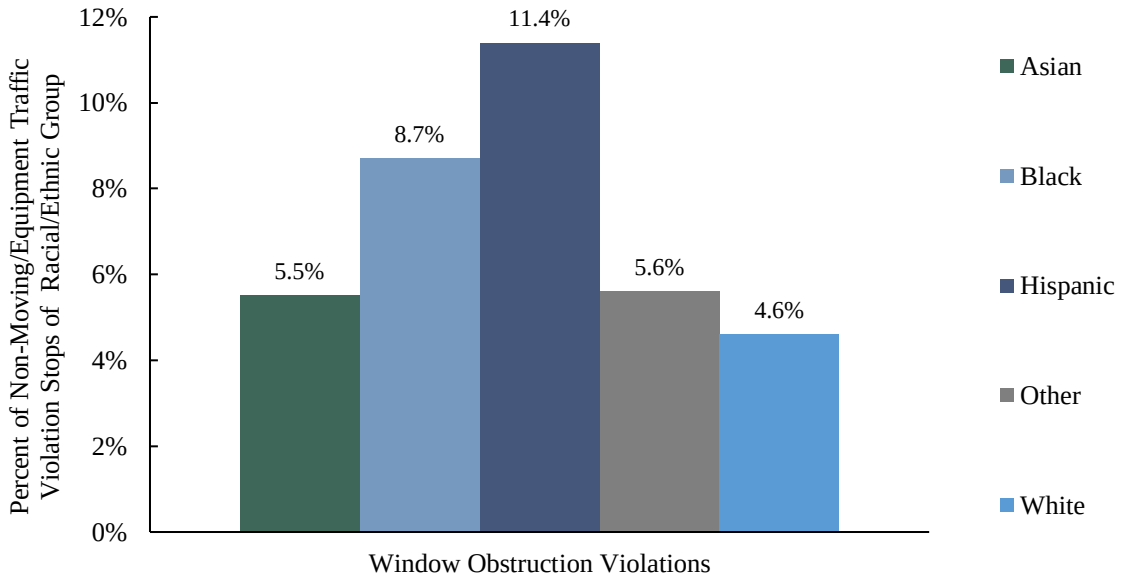
Table 6. Top Five Moving Violation Codes by Race/Ethnicity (Excludes CHP Data)

Race/Ethnicity	Asian	Black	Hispanic	Other	White
Top Offense	Speeding (35.8%)	Speeding (30.3%)	Speeding (35.5%)	Speeding (42.0%)	Speeding (43.3%)
Second Offense	Failure to Stop at Limit Line (21.3%)	Failure to Stop at Limit Line (14.9%)	Failure to Stop at Limit Line (15.5%)	Failure to Stop at Limit Line (16.0%)	Failure to Stop at Limit Line (16.4%)
Third Offense	Cellphone Violation (14.3%)	Cellphone Violation (6.0%)	Cellphone Violation (7.7%)	Cellphone Violation (11.4%)	Cellphone Violation (11.1%)
Fourth Offense	Failure to Obey Traffic Sign (7.4%)	Display of Plates/Tags (5.2%)	Failure to Obey Traffic Sign (5.6%)	Unsafe Lane Change/Turn (6.3%)	Failure to Obey Traffic Sign (6.0%)
Fifth Offense	Unsafe Lane Change/Turn (5.6%)	No Registration (5.1%)	Unsafe Lane Change/Turn (4.3%)	Failure to Obey Traffic Sign (6.2%)	Unsafe Lane Change/Turn (4.3%)

Compared to moving violations, the top five California Vehicle Code sections reported for non-moving and equipment violations were more variable across racial/ethnic groups (Table 6). No registration, display of plates/tags, and vehicle lighting equipment were identified as being in the top five non-moving/equipment violations reported by officers across all racial/ethnic groups. Officers reported higher proportions of stops based on no registration violations for Black individuals (28.2%) and the lowest for individuals grouped in the "Other" category (16.6%). For display of plates/tags violations, officers reported higher proportions of stops for Black individuals (26.0%) and lower proportions of stops for Hispanic/Latine(x) individuals (16.1%).

Black, Hispanic/Latine(x), and White individuals were the only groups where window obstruction violations were identified as the basis for stop among their top five non-moving/equipment violations reported by officers. Compared to White individuals (4.6%), officers reported nearly 2.5 times more stops based on window obstruction violations for Hispanic/Latine(x) individuals (11.4%) and 1.9 times more for Black individuals (8.7%).

Figure 60. Obstructed Window Non-Moving/Equipment Traffic Violations by Race/Ethnicity (All Agencies)



Asian individuals, individuals in the "Other" racial/ethnic group, and White individuals were the only groups where cellphone violations were identified among their top five non-moving/equipment violations reported by officers, ranging from 7.9 percent for White individuals to 14.1 percent for Asian individuals. Lastly, failure to obey traffic lane signs was identified among the top five non-moving/equipment violations reported for Asian (6.1%) and Black individuals (3.5%) while failure to comply with a commercial vehicle rule was identified in the top five for Hispanic/Latine(x) individuals (6.1%) and individuals grouped in the "Other" category (11.5%).

Table 7. Top Five Non-Moving/Equipment Violation Codes by Race/Ethnicity (All Agencies)

Race/Ethnicity	Asian	Black	Hispanic	Other	White
Top Offense	No Registration (19.8%)	No Registration (28.2%)	No Registration (21.5%)	Display of Plates/Tags (16.9%)	No Registration (27.0%)
Second Offense	Display of Plates/Tags (19.2%)	Display of Plates/Tags (26.0%)	Display of Plates/Tags (16.1%)	No Registration (16.6%)	Display of Plates/Tags (19.4%)
Third Offense	Cellphone Violation (14.1%)	Window Obstruction (8.7%)	Window Obstruction (11.4%)	Failure to Comply with Commercial Vehicle Rule (11.5%)	Vehicle Lighting Equipment (10.1%)
Fourth Offense	Vehicle Lighting Equipment (10.5%)	Vehicle Lighting Equipment (8.0%)	Vehicle Lighting Equipment (9.6%)	Cellphone Violation (9.2%)	Cellphone Violation (7.9%)
Fifth Offense	Failure to Obey Traffic Lane Signs (6.1%)	Failure to Obey Traffic Lane Signs (3.5%)	Failure to Comply with Commercial Vehicle Rule (6.1%)	Vehicle Lighting Equipment (8.0%)	Window Obstruction (4.6%)

When CHP data is excluded from analysis, display of plates/tags, no registration, vehicle lighting equipment, and obstructed window violations were identified as being in the top four non-moving/equipment violations reported by officers across all racial/ethnic groups (Table 7). The fifth most common non-moving/equipment violation reported by officers differed across racial/ethnic groups. Officers reported cellphone violations as the fifth most common non-moving/equipment violation for Asian individuals and White individuals. The fifth most common non-moving/equipment violation reported by officers for Black individuals was parking violations. Lastly, the fifth most common non-moving/equipment violation reported for Hispanic/Latine(x) individuals was bike light equipment violations and local ordinance violations were reported as the fifth most common non-moving/equipment for individuals grouped together in the "Other" category.

Table 8. Top Five Non-Moving/Equipment Violation Codes by Race/Ethnicity (Excludes CHP Data)

Race/Ethnicity	Asian	Black	Hispanic	Other	White
Top Offense	No Registration (23.3%)	Display of Plates/Tags (30.2%)	No Registration (26.0%)	Display of Plates/Tags (26.9%)	No Registration (31.1%)
Second Offense	Display of Plates/Tags (22.9%)	No Registration (28.9%)	Display of Plates/Tags (22.2%)	No Registration (23.5%)	Display of Plates/Tags (24.2%)
Third Offense	Vehicle Lighting Equipment (21.7%)	Vehicle Lighting Equipment (12.0%)	Vehicle Lighting Equipment (16.7%)	Vehicle Lighting Equipment (16.5%)	Vehicle Lighting Equipment (17.5%)
Fourth Offense	Window Obstruction (6.8%)	Window Obstruction (10.8%)	Window Obstruction (12.0%)	Window Obstruction (6.9%)	Window Obstruction (4.4%)
Fifth Offense	Cellphone Violation (4.7%)	Parking Violation (2.4%)	Bike Light Equipment (2.9%)	Local Ordinance Violation (4.5%)	Cellphone Violation (3.2%)

Delving into stops of members of the public for bike light violations can tell us a lot about pretext stops and racial and identity profiling in law enforcement. These stops, like vehicle stops, can and have turned deadly.[373] In 2020 Dijon Kizzee, a young Black man, lost his life to a LASD deputy during a stop for riding a bike on the wrong side of the street, prompting weeks of protests calling for justice and accountability.[374]

A Los Angeles Times investigation uncovered that LASD deputies search 85% of bike riders whom deputies stop, and seven in 10 stops involve Hispanic/Latine(x) individuals.[375] Bicyclists also explained they were often asked if they were on supervision or if they had any weapons on them, demonstrating that these stops may be pretextual.[376]

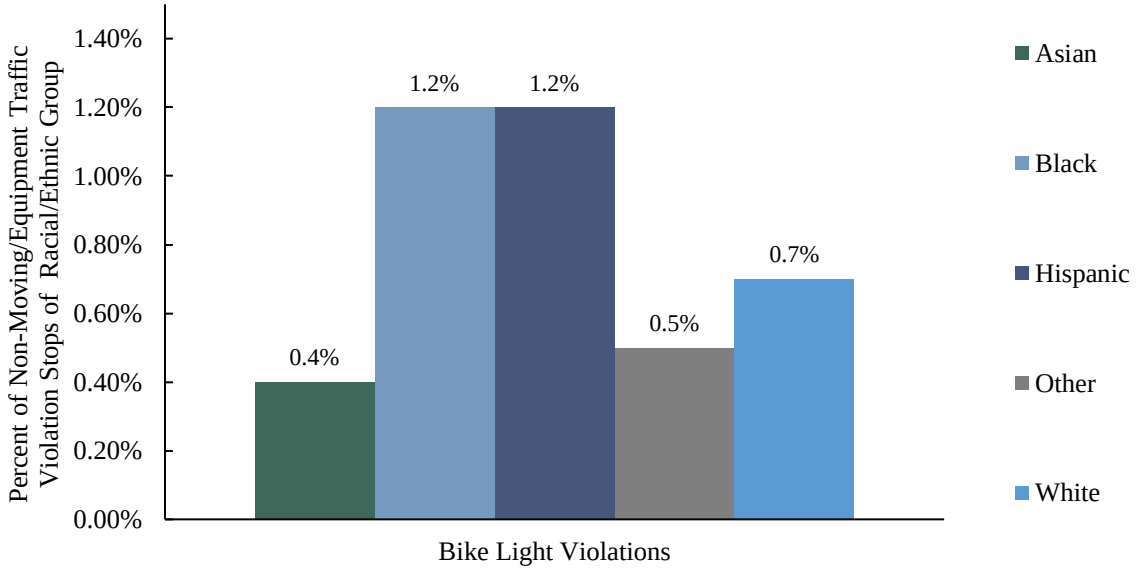
To illustrate this, Ojmarrh Mitchell, a criminology professor at Arizona State University who co-wrote a 2016 U.S. Department of Justice report that examined bike stops by the Tampa Police Department, stated: "These stops were made for searches. You've committed this tiny infraction, and now the officer is asking to run their hands through your pockets or pat you down. It doesn't make sense unless they were using the stop as a pretext."[377]

In the analysis below, the Board reviewed a narrow category of bicycle stops – lighting or biking equipment violations – to investigate potential disparities in these types of stops. The findings

[373] Tchekmedyian, et al., *L.A. sheriff's deputies use minor stops to search bicyclists, with Latinos hit hardest*, Los Angeles Times (Nov. 4, 2021) <https://www.latimes.com/projects/la-county-sheriff-bike-stops-analysis/> [as of Dec. 2, 2021].
[374] Ibid.
[375] Ibid.
[376] Ibid.
[377] Ibid.

show that a larger proportion of non-moving/equipment violation stops were initiated for bicycle lighting violations for Black and Hispanic/Latine(x) individuals in comparison to White individuals.

Figure 61. Bike Light Non-Moving/Equipment Traffic Violations by Race/Ethnicity (All Agencies)



This analysis is a starting point for the Board and municipalities to begin analyzing their data for enforcement activities that result in disparate treatment and eliminating practices that drive those inequities. For example, the Los Angeles Times investigation also looked at violations for riding on the sidewalk.[378] Likewise, in future reports the Board hopes to delve further into these stops and searches to identify data-driven solutions to improve public safety and eliminate pretextual stops.

ii. Data-Driven Solutions to Identify Pretext Stops and their Outcomes

In California and throughout the nation, traffic stops are the number one reason people come into contact with the police, and they can have serious – sometimes even fatal – consequences for those who are stopped.[379] "Sandra Bland was pulled over for failing to signal a turn. [. . .] Philando Castile was pulled over because his brake lights were out. Each one the victim of a pretextual stop: when someone is detained for a minor infraction while police seek evidence of a more serious crime."[380]

[378] Ibid.

[379] Asirvatham and Frakes, *Are Constitutional Rights Enough? An Empirical Assessment of Racial Bias in Police Stops*, *supra* note 363.

[380] See Hodge and Johnson, *Ending Pretextual Stops is an Important Step Toward Racial Justice* (Dec. 18, 2020) Vera Institute of Justice <https://www.vera.org/blog/ending-pretextual-stops-is-an-important-step-toward-racial-justice> [as of Dec. 2, 2021].

As long as an officer can point to an objective reason for the stop, such as a broken tail light, the subjective reason for the stop, even if it is motivated in bias, will not affect the constitutionality of the search. This is because a 1996 Supreme Court case, *Whren v. United States,*[381] held that the constitutional reasonableness of traffic stops does not depend on the actual motivations of the individual officers involved.[382] *Whren* has become one of the most sharply criticized legal decisions of our time.[383]

> *"Whren is in many ways the Plessy of its era. It endorsed racial discrimination, and thereby encouraged its spread."*
> *– Gabriel J. Chin & Charles J. Vernon, George Washington Law Review,* see footnote 383

Pretextual stops can be influenced by an officer's own implicit or explicit bias, as well as agency policies that may focus certain types of enforcement actions in different neighborhoods, which can cause disparities in who is selected for enforcement actions or pulled over in the first place.[384]

Through analysis of stop data and working with researchers, several police agencies identified disparities in their traffic stops associated with pretextual stops, and then made policy changes to address those issues. For example, a police department near New Haven, Connecticut (discussed above on page 115) previously had a policy of stopping cars for low-level equipment violations and would request consent to search a vehicle. Researchers found that illegal contraband was rarely found during those searches (about 7%).[385] As a result, after consulting with community members, they reformed their policies to focus traffic enforcement on hazardous driving behaviors rather than low-level equipment violations. After implementing these changes in conjunction with prohibiting consent searches, the law enforcement agency noticed a lower crime rate (5%), fewer traffic accidents (10%), and a 63% increase in searches yielding contraband.[386]

Similarly, officers in a police department near Hartford, Connecticut were stopping motorists for lighting violations in nearly 40% of vehicle stops, hoping to catch DUI drivers.[387] When the department started working with researchers, they found that only one out of the 1,608 traffic stops for lighting violations resulted in a DUI arrest.[388] Not only were these stops ineffective in locating DUI drivers, they were also the primary source of the disparities between White individuals and people of color who were pulled over.[389] In response to the disparities

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[381] *Whren v. United States* (1996) 517 U.S. 806, 819.
[382] *Id*. at p. 813.
[383] See 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; see also *Plessy v. Ferguson* (1986) 163 U.S. 537, the U.S. Supreme Court decision that upheld the constitutionality of racial segregation under the "separate but equal" doctrine.
[384] See Ross, et al., *Testing for Disparities in Traffic Stops: Best Practices from the Connecticut Model* (2020) Criminology and Public Policy, p. 1297 <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1745-9133.12528> [as of Dec. 2, 2021].
[385] Examining Equity in Transportation Safety Enforcement, Testimony by Ken Barone before House Com. on Transportation and Infrastructure, Subcom. on Highways and Transit, 117th Congress, 1st Sess. ("Examining Equity") (Feb. 24, 2021) <https://transportation.house.gov/imo/media/doc/Barone%20Testimony.pdf> [as of Dec. 2, 2021].
[386] See *Ibid*.
[387] Ibid.
[388] Ibid.
[389] *Ibid*.

observed, the agency changed its practices. Officers were instead instructed to look for objective evidence of driving under the influence. After making this change, the department found that disparities were reduced and there was an increase in DUI arrests.[390]

The consequences of pretextual stops can be severe. Over half of all of the police killings in 2020 stemmed from non-violent incidents and over 10% of killings by police began with a traffic stop.[391] In 2015, Sandra Bland lost her life after a pretextual stop. A police officer targeted her and pulled up so closely behind her that he essentially forced her to get out of his way, and she changed lanes without signaling.[392] The officer then pulled her over for failing to signal. The next day Sandra Bland was found deceased in her jail cell after allegedly dying of suicide.[393] This past year, Daunte Wright was shot and killed when a police officer admitted to firing her gun rather than her electronic control weapon (i.e., a Taser).[394] Mr. Wright was pulled over for having expired vehicle registration tags and an air freshener hanging from the rear view mirror of the car.[395] The Board calls on leaders of law enforcement agencies to examine their own data for disparities and reexamine their use of pretextual stops to avoid such tragic consequences.

Vision for Future Reports

In future reports, the Board will take a deeper look at the statistical data and specific types of stops that may be pretextual and the cause of disparate treatment of individuals. The Board would also like to explore emerging models that separate traffic enforcement from criminal investigations entirely. For example, the Berkeley Police Department in 2021 began the implementation phase of its new traffic enforcement model, allowing traffic enforcement stops only for driver safety-related issues rather than low-level offenses.[396]

The Board is also interested in exploring jurisdictions that have made legislative or policy changes to prevent officers from enforcing certain traffic code violations. The City of Philadelphia Police Department passed a law in 2021 that prohibits stops of vehicles for minor traffic infractions such as a damaged bumper or an expired registration tag.[397] Similarly the city of Minneapolis now prohibits pretextual stops for low-level offenses, and in the state of Virginia officers are banned from making stops for reasons such as tinted windows or the odor of

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[390] Ibid.
[391] Rummier, *Over Half of Police-Involved Killings in 2020 began after non-violent incidents* (Apr. 12, 2021) Axios <https://www.axios.com/police-killings-2020-non-violent-incidents-dd3035a9-3182-43b9-9742-1a5f8786ca6c.html> [as of Dec. 2, 2021].
[392] See Montgomery, *Sandra Bland, It Turns Out, Filmed Traffic Stop Confrontation Herself*, The New York Times (May 7, 2019) <https://www.nytimes.com/2019/05/07/us/sandra-bland-video-brian-encinia.html> [as of Dec. 2, 2021].
[393] See *Ibid*.
[394] Bogel-Burroughs and Bosman, *Police Office Who Shot and Killed Daunte Wright was Training Others*, The New York Times (Apr. 13, 2021) <https://www.nytimes.com/2021/04/13/us/minnesota-officer-kim-potter-resigns.html> [as of Dec. 2, 2021].
[395] *Ibid*.
[396] Raguso, *Plans firm up to remove police from traffic stops, but it's a long road ahead* (May 25, 2021) Berkeleyside <https://www.berkeleyside.org/2021/05/25/berkeley-department-of-transportation-civilian-traffic-enforcement> [as of Dec. 2, 2021].
[397] Migdon, *Philadelphia first major city to end minor traffic stops to cut down 'negative interactions' with police* (Nov. 1, 2021) The Hill <https://thehill.com/changing-america/respect/579410-philadelphia-first-major-city-to-end-minor-traffic-stops-to-cut-down> [as of Dec. 2, 2021].

marijuana.[398] The Board will follow these and other laws to learn more about the effectiveness of these changes.

Recommendations to Agencies, Municipalities, and the Legislature – Pretext Stops and Searches:

We are at a pivotal time where we can embrace change to remedy the disparities shown by the data. 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.

[398] Ibid.

RACIAL AND IDENTITY PROFILING POLICIES AND ACCOUNTABILITY

Police action that is based on racial and/or identity bias is illegal. Both the United States and California Constitutions provide for equal protection under the law and the right to be free from unreasonable searches and seizures conducted by the government. Many people have the misconception that profiling or bias-based policing is only about law enforcement's decision to initiate a stop of an individual; however, bias-based policing can occur at any time during an interaction with police. California law defines racial or 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. . . ."[399] The statute further delineates "activities include, but are not limited to, traffic or pedestrian stops, or actions during a stop, such as asking questions, frisks, consensual and nonconsensual searches or a person or any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest.[400]" Given that bias can permeate all law enforcement activities, it is imperative that agencies understand this to properly identify issues and take corrective action where needed.

A. Criteria Used to Evaluate Bias-Free Policing Policies

In its 2019 Report, the Board found that while most agencies did have a specific policy or portion of a policy addressing racial and identity profiling, there was little consistency across agencies in the substance of those policies. Based on this lack of consistency, the Board provided best practice recommendations for bias-free policing policies. In its 2020 Report, the Board built upon this finding and provided model language that law enforcement agencies could include in their bias-free policing policies. Since 2020, the Board reviewed bias-free policing policies for the eight Wave 1 agencies and the seven Wave 2 agencies based on the best practices outlined in the 2019 Report. Those best practice recommendations against which the agency policies were compared include the following:[401]

1. **Stand Alone Bias-Free Policing Policy**: each agency should have a separate policy dedicated to bias-free policing that expressly prohibits racial and identity profiling.

2. **Clearly Written Bias-Free Policing Policy**: an agency's bias-free policing policy should explicitly and strongly express the agency's core values and expectations when it comes to bias-free policing.

[399] Pen. Code, § 13519.4, subd. (e) (emphasis added).
[400] Ibid.
[401] See Racial and Identity Profiling Advisory Board, Annual Report (2021), *supra* note 199, at pp. 27-33.

3. **Easily Accessible Bias-Free Policing Policy**: the policy should be accessible in many formats, such as online, in person at the agency, at other governmental and non-governmental locations, and from agency personnel, if requested.

    A. When the Board began its review, the posting of policies on an agency website was a best practice recommendation by the Board. Now, California law requires law enforcement agencies to make their policies, including their bias-free policing policies, "easily accessible" to the public by "conspicuously" posting them on their agency websites.[402] Therefore, each agency identified below must immediately post their policies on their websites in a conspicuous location to comply with state law.

4. **Uses Concrete Definitions of Bias-Free Policing and/or Racial & Identity Profiling**: the agency's policy should include a robust list of concrete definitions of key terms – such as racial or identity profiling as defined in Penal Code 13519.4, protected classes, and characteristics to ensure principles are consistently applied.

5. **Includes a Component on the Limited Circumstances in which Characteristics of an Individual May be Considered**: the policy must be clear that officers may only take protected characteristics into account in establishing reasonable suspicion or probable cause when those characteristics are part of a specific suspect description based on trustworthy and relevant information that links a specific person to a particular unlawful incident.

6. **Includes a Component on Encounters with the Community**: an agency's bias-free policing policy should include statements that all personnel should treat all members of the public with courtesy, professionalism, and respect; personnel should not use harassing, intimidating, derogatory, or prejudiced language, particularly when related to an individual's actual or perceived protected characteristics; officers should introduce themselves to the person being stopped and provide an explanation for the stop as soon as is reasonable and practicable.

7. **Includes a Component on Racial and Identity Profiling Training**: the policy should provide that all agency personnel, including dispatchers and non-sworn personnel, should be educated on bias (explicit and implicit) and be expected to manage their biases so the biases do not affect their behavior; training should be adequate in quality, quantity, and scope and should be provided on a regular basis, consistently evaluated, and updated.

8. **Includes a Component on Data Analysis**: each agency collecting RIPA stop data should consider analyzing their data and civilian complaints; data should be reviewed to identify exceptional and deficient conduct, trends, unexplained disparities, compliance

[402] See Pen. Code, § 13650.

with policy, and training needs; data should be reviewed when relevant to investigating complaints of bias.

9. **Includes a Component on Requiring Accountability**: the bias-free policing policy should articulate that all agency personnel, including dispatchers and non-sworn personnel, are responsible for knowing and complying with the policy; personnel who engage in, ignore, or condone bias-based policing should be subject to discipline; personnel must report instances of bias they are aware of and the policy should provide details on how to report; retaliation should be prohibited.

10. **Includes Supervisory Review**: overseeing and reviewing the daily activities of police officers is essential to ensuring that the tenets of bias-free policing are integrated fully into the agency's culture. Agency policy should provide that supervisors will establish and enforce the expectation that officers will police in a manner consistent with law and policy; provide leadership, counseling, direction, and support; review documentation, including video from body-worn cameras, of investigatory stops, detentions, searches, and arrests; and take corrective action, requiring training or discipline where appropriate.

In the section below, the Board conducts its review of individual bias-free policing policies of the eleven Wave 3 agencies and twelve Wave 4 agencies that began collecting data in 2021.[403]

B. Wave 3 and 4 Agencies' Bias-Free Policing Policies Review

Davis Police Department (Davis Police): Davis Police has an 8-page policy that includes cross-references to other departmental policies. Uniquely, this policy states that members of the public may file complaints alleging bias-based policing and that the agency will investigate them all. This kind of cross-policy language is something the Board has not seen before. Moreover, the policy acknowledges that "explicit and implicit bias can occur at both an individual and institutional level" and provides that Davis Police "is committed to addressing and eradicating inappropriate use of biases."

The policy dedicates approximately three and a half pages to definitions beyond "bias-based policing" and/or "racial and identity profiling," including, for example, definitions of "explicit or conscious bias," "implicit or unconscious bias," "gender identity," and "discriminatory policing." Including these definitions helps ensure that Davis Police officers are knowledgeable about the different influences of bias and understand the connection to policing and interacting with the community. This policy also includes a section on "bias-by-proxy," which contains a definition and outlines responsibilities for officers and dispatchers to be mindful of bias by proxy and share relevant information, as well as giving them discretion to not respond to a bias-based call.

[403] The Board highlights all of the policy components reviewed in a matrix starting on page 153. The policies of these law enforcement agencies can be found in Appendix E.

The policy outlines various officer responsibilities, including referring "to all members of the public, including LGBT individuals, using the names, pronouns, and titles of respect appropriate to the individual's gender identity as expressed or clarified by the individual." Not only are officers given clear responsibilities to uphold individuals' constitutional rights but supervisors are provided several ways to review their supervisees' adherence to this policy. Supervisors are to review documentation, including video from body-worn cameras, of investigatory stops for accuracy, completeness, and adherence to law and departmental policy. Moreover, supervisors are to "lead efforts" to ensure that officers are "working actively to engage the community and increase public trust." This policy also aims to hold the entire department accountable to their commitment to this policy by including an annual review of public concerns, complaints, and analysis of stop data that will be reviewed to identify any changes in training or operations that should be made; most importantly, this annual review must be reviewed and discussed by supervisors with their supervisees.

Alameda County Sheriff's Office (Alameda Sheriff): This 2-page policy was last revised in February 2021. The policy includes definitions of "bias-based policing," "criminal profiling," and "racial or identity profiling." The policy provides that bias-based policing is prohibited and all agency "transactions or enforcement" must be based on "legal and articulable standards." Alameda Sheriff requires all personnel to immediately report incidents or complaints of bias-based policing to their supervisor. Any personnel who engage in bias-based policing will be subject to disciplinary action per policy. The agency's Law Enforcement Services Contract Services Commander is required to conduct an annual review of the agency's practices, report this to the Sheriff, and be responsible for taking any appropriate corrective action if bias-based policing is occurring. In addition to citing POST training on racial and identity profiling, the policy directs the Commanding Officer of the Regional Training Center to consult with several partners to ensure "all aspects of bias-based policing are addressed and current."

The agency provided the Board with a training bulletin on this policy. The bulletin lays out the legal considerations officers must take into account for stops, including the Fourth and Fourteenth Amendments. In addition to constitutional considerations, the bulletin mentions pretextual stops under *Whren v. United States*, noting that while the decision legalizes officer discretion to make pretext stops, race cannot be used as a predictor. Additionally, the bulletin reminds officers that while a stop may be legal under the Fourth Amendment, it may still be illegal under the Fourteenth Amendment.

Kern County Sheriff's Office (Kern Sheriff): On December 22, 2020, the California Attorney General's Office entered into a Judgment with Kern Sheriff to reform a wide range of practices, including bias-free policing and use of force. Kern Sheriff is in the process of updating its stand-alone Bias-Free Policing Policy and Use of Force Policies under the oversight of a police practices monitor and the California Department of Justice. Specifically, the Bias-Free Policing Policy is currently being reviewed by their Community-Wide Advisory Council for input from community stakeholders. The agency reported that it will also be developing and implementing further training on bias and laws of arrest principles. For this version of the report, Kern Sheriff provided its current Bias-Free Policing policy. The current 7-page policy includes several

definitions of key terms like "bias-based policing," "implicit bias," and "bias by proxy." There are a few instances where statements are repeated, which can make the policy difficult to follow. The policy also includes detailed information on RIPA. Additionally, the policy directs officers to follow certain strategies when engaging with the community during stops, such as introducing themselves, explaining the reason for the stop, and ensuring the length of the stop is no longer than necessary. Kern Sheriff reports it will be implementing an annual data analysis report that will be released to the public but this data analysis is not yet reflected in the policy still under review and development.

Los Angeles World Airport Police (LAX Police): The LAX Police's Racial Profiling policy was last revised in January 2014. It provides that all stops and other law enforcement activities must be unbiased and based on reasonable suspicion or probable cause. Racial profiling is defined in the policy. Moreover, the policy states that an officer may not use race or identity to conduct stops and any violation of the policy is "an act of serious misconduct." LAX Police require their employees to report any violations of this policy. The policy includes a single sentence about POST training and does not provide that officers are expected to learn about and manage biases.

Santa Clara County Sheriff's Department (Santa Clara Sheriff): The Santa Clara Sheriff adopted General Order 17.12 on March 26, 2021. The Order includes a statement of the agency's commitment to providing bias-free policing by expressly prohibiting racial and identity profiling. It also calls on officers to employ skills from their training and experience to be aware of implicit bias and bias-by-proxy when carrying out their duties. The Order includes definitions of racial or identity profiling, bias-based policing, explicit and implicit bias, and bias by proxy. The agency's General Order 11 outlines detailed standards for encounters with the community and expectations of deputies. For example, deputies are expected to treat the public with courtesy and respect; not use harsh, profane, or uncivil language; not discriminate; and promptly and politely provide their name, badge number, and assignment when asked. Santa Clara Sheriff's supervisory review is reported to be multifaceted and detailed in several General Orders. For example, General Order 10.06 requires supervisors to randomly review body worn camera recordings to ensure that the equipment is operating properly, deputies are using the devices appropriately, and in accordance with policy. The agency is currently evaluating different accountability options and tools specific to RIPA reporting.

Stockton Police Department (Stockton Police): The Stockton Police do not have a bias-free policing policy. In response to the Board's inquiry, the agency provided the Board with a document entitled "Conduct Toward the Public." This two-paragraph policy directs personnel to perform their duties in a manner consistent with the agency's principles as outlined in its mission statement and to adhere to the tenants of procedural justice. Absent from this policy is any mention of the prohibition on racial and identity profiling, discrimination, protected characteristics, training, supervision, or accountability.

Agencies with Lexipol Policies

Sixteen agencies[404] use policies purchased from Lexipol, which is a private corporation that offers policies through a paid subscription service to law enforcement agencies around the country. Most of the policies are 2-3 pages in length and include nearly identical language with few exceptions, likely because the agencies have not made any changes to the template provided by Lexipol. Lexipol entitles its policy as "Bias-Based Policing," which implies that the policy governs policing in a biased manner. The Board recommends that Lexipol consider changing its policy to "Bias-Free Policing" to more accurately reflect the goal of the policy to reduce and eliminate biased policing. Globally, these policies include the following components:

- **Purpose and Scope**
- **Definition(s)** – usually only "bias-based policing."
- **Policy** – a statement that the agency "is committed to providing law enforcement services to the community with due regard for the racial, cultural or other differences of those served. It is the policy of this department to provide law enforcement services and to enforce the law equally, fairly, objectively and without discrimination toward any individual or group."
- **Racial/Bias-Based Enforcement Prohibited** – a statement that bias-based enforcement is prohibited, with the caveat that the policy does not "intend[] to prohibit a deputy from considering protected characteristics in combination with credible, timely and distinct information connecting a person or people of a specific characteristic to a specific unlawful incident, or to specific unlawful incidents, specific criminal patterns or specific schemes."
- **California Religious Freedom Act** – prohibits personnel from assisting the federal government and collecting information from individuals based on their religious affiliation, beliefs, practices, national origin, or ethnicity.
- **Member Responsibilities** – a note that department members must report suspected or known bias-based enforcement and intervene when reasonable.
- **Reason for Contact** – a reminder that personnel must be able to articulate sufficient reasons for the contact independent from the protected characteristics of the person.
- **Reporting Stops** – a description of data collected under RIPA and any agency-specific documentation required.

[404] These agencies include Anaheim Police, Berkeley Police, Cotati Police, Sonoma State University Police, Culver City Police, Fresno Sheriff, Petaluma Police, Riverside Police, Rohnert Park, Santa Ana Police, Santa Rosa Police, San Francisco Sheriff, Sonoma Sheriff, Sonoma County Junior College Police, Ventura Sheriff, and Windsor Police.

- **Supervisor Responsibilities** – provides that supervisors will monitor those under their command, discuss and document any issues, periodically review contacts with the public to ensure they are within agency policy, initiate investigations for potential violations of the policy, and take prompt action to address any retaliation for reporting bias-based behavior.

- **Reporting to California Department of Justice** – outlines who within the agency will be responsible to submit the data to CA DOJ.

- **Administration** – states an annual review will be conducted by the person or unit identified by the agency, that this annual report will be shared with the leader of the agency, and that supervisors will review these reports with their supervisees.

- **Training** – requires officers to partake in POST training and encourages members to "familiarize themselves with and consider racial and cultural differences among members of [their] community."

Each section may have agency-specific edits, including different but similar titles or a different order than what is shown above. While each agency's policy may include the aforementioned pieces, it may also not include all of these or it may include additional pieces incorporated by the agency. The descriptions below note any difference from the standard Lexipol policy.

Berkeley Police Department (Berkeley Police): The agency changed the title to "Fair and Impartial Policing" and made some additions that speak specifically to bias-free policing. For example, under the "Policy" section, it states that all enforcement actions must be based on reasonable suspicion or probable cause and officers must be able to articulate specific facts and circumstances to establish this threshold. Following this requirement, the policy indicates that "discrimination or harassment based on a trait or class described above is considered a 'serious allegation' of misconduct." In the "Responsibilities to Report and Take Corrective Action" section, the policy notes that all reports of biased policing will be investigated.

Ventura County Sheriff's Department (Ventura Sheriff): This policy includes a section added by the Ventura Sheriff, which requires field supervisors to review and ensure there is no personally identifiable information included in the RIPA stop data submissions before their approval. The section on supervisory review is one sentence that requires cross-referencing to another policy.

Riverside Police Department (Riverside Police): Under the "Policy" section, Riverside Police includes the following: "Race, ethnicity or nationality, religion, sex, sexual orientation, economic status, age, cultural group, disability or affiliation with any other similar identifiable group shall not be used as the basis for providing differing levels of law enforcement service or the enforcement of the law." The section on limited characteristics provides officers can use individual characteristics to establish reasonable suspicion or probable cause in combination with other "legitimate factors" without providing those other factors.

Sonoma County Sheriff's Office (Sonoma Sheriff): The Sonoma Sheriff contractually conducts law enforcement for the Sonoma Police Department and Windsor Police Department. The Sonoma Police Department links to the Sonoma Sheriff's webpage for its policies. Their bias-based policing policy does not include a piece on "Administration."

Santa Ana Police Department (Santa Ana Police): The Santa Ana Police's Bias-Based Policing policy does not include a "component on encounters with the community"; however, this is addressed in the agency's Standards of Conduct policy that delineates what types of behavior against the public would be cause for discipline. This includes but is not limited to discourteous, disrespectful, or discriminatory treatment; use of obscene, indecent, profane, or derogatory language; and any other on- or off-duty conduct that is unbecoming, contrary to good order, efficiency, or morale, or tends to reflect unfavorably upon the agency.

The Board recommends that every law enforcement agency using Lexipol take a proactive role to ensure their policies meet the Board's and other best practice recommendations by critically reviewing the form policy provided to the agency by Lexipol and making revisions to the policies that best reflect the agency's values and incorporate community needs and input. For example, when using concrete definitions in the policy, it is important that agencies use the Penal Code's definition of racial and identity profiling verbatim rather than only citing to the code or summarizing the definition in a manner that does not fully capture the critical parts of the definition.

Wave 3 + 4 Agency	Stand-Alone Bias-Free Policing Policy?	Clearly Written?	Easily Accessible?[405]	Uses Concrete Definitions of Bias-Free Policing and/or Racial & Identity Profiling	Component on Limited Circumstances in which Characteristics of Individual May Be Considered?
Davis Police	✓	✓	✓	✓	✓
Kern Sheriff	✓	✓	✓	✓	✓
Anaheim Police	✓	✓	✓	✓	✓
Culver City Police	✓	✓	✓	✓	✓
Sonoma Sheriff, Sonoma Police, & Windsor Police[406]	✓	✓	✓	✓	✓
Fresno Sheriff	✓	✓	✓	✓	✓
Santa Ana Police	✓	✓	✓	✓	✓

Wave 3 + 4 Agency	Component on Encounters with Community?	Component on Racial and Identity Profiling Training?	Component on Data Analysis?	Component on Requiring Accountability?	Supervisory Review?
Davis Police	✓	✓	✓	✓	✓
Kern Sheriff	✓	✓	✗	✓	✓
Anaheim Police	✗	✓	✗	✓	✓
Culver City Police	✗	✓	✗	✓	✓
Sonoma Sheriff, Sonoma Police, & Windsor Police	✗	✓	✗	✓	✓
Fresno Sheriff	✗	✓	✗	✓	✓
Santa Ana Police	✗	✓	✗	✓	✓

[405] As of January 1, 2020, each law enforcement agency must conspicuously post on their website all current standards, policies, practices, operation procedures, and education and training materials that would otherwise be available to the public through a Public Records Act request. See Pen. Code, § 13650.
[406] Windsor Police does not have its policies online nor a link to the policies on the Sonoma Sheriff website.

Wave 3 + 4 Agency	Stand-Alone Bias-Free Policing Policy?	Clearly Written?	Easily Accessible?	Uses Concrete Definitions of Bias-Free Policing and/or Racial & Identity Profiling	Component on Limited Circumstances in which Characteristics of Individual May Be Considered?
CSU Sonoma Police	✓	✓	✓	✓	✓
Cotati Police	✓	✓	✓	✓	✓
Rohnert Park	✓	✓	✓	✓	✓
Petaluma Police	✓	✓	✓	✓	✓
Berkeley Police	✓	✓	✓	✓	✓
Ventura Sheriff	✓	✓	✓	✓	✓
Santa Clara Sheriff	✓	✓	✓	✓	✓

Wave 3 + 4 Agency	Component on Encounters with Community?	Component on Racial and Identity Profiling Training?	Component on Data Analysis?	Component on Requiring Accountability?	Supervisory Review?
CSU Sonoma Police	✗	✓	✗	✓	✓
Cotati Police	✗	✓	✗	✓	✓
Rohnert Park	✗	✓	✗	✓	✓
Petaluma Police	✗	✓	✗	✓	✓
Berkeley Police	✗	✓	✗	✓	✗
Ventura Sheriff	✗	✓	✗	✓	✗
Santa Clara Sheriff	✗	✓	✗	✓	✗

Wave 3 + 4 Agency	Stand-Alone Bias-Free Policing Policy?	Clearly Written?	Easily Accessible?	Uses Concrete Definitions of Bias-Free Policing and/or Racial & Identity Profiling	Component on Limited Circumstances in which Characteristics of Individual May Be Considered?
San Francisco Sheriff	✓	✓	✗[407]	✓	✓
Sonoma College Police	✓	✓	✗	✓	✓
Riverside Police	✓	✓	✓	✓	✗
LAX Police	✓	✓	✓	✓	✓
Santa Rosa Police	✓	✓	✓	✗	✓
Alameda Sheriff	✓	✓	✓	✓	✗
Stockton Police	✗	N/A	✓[408]	N/A	N/A

Wave 3 + 4 Agency	Component on Encounters with Community?	Component on Racial and Identity Profiling Training?	Component on Data Analysis?	Component on Requiring Accountability?	Supervisory Review?
San Francisco Sheriff	✗	✓	✗	✓	✓
Sonoma College Police	✗	✓	✗	✓	✓
Riverside Police	✗	✓	✗	✗	✓
LAX Police	✗	✗	✗	✓	✗
Santa Rosa Police	✗	✗	✗	✓	✓
Alameda Sheriff	✗	✓	✗	✓	✗
Stockton Police	N/A	N/A	N/A	N/A	N/A

[407] The agency reports its bias-free policing policy is currently undergoing review and approval and therefore it is not posted online.
[408] The agency does not have a bias-free policing policy to post on its website but its Conduct Towards the Public policy is online.

B. Wave 1 and 2 Agency Bias-Free Policing Policies Follow-Up

In an effort to meet its statutory mandate to "work in partnership with state and local law enforcement agencies,"[409] the Board followed up with the Wave 1 agencies that did not receive a checkmark on one or more of the best practices outlined above and reported updates in the 2021 Report. The Board continues this follow-up with the Wave 2 agencies; below are updates from the Wave 1 and Wave 2 agencies' bias-free policing policies.[410]

The Board appreciates that agencies have worked to revise their policies to be more in line with the best practices it recommended in 2019.

California Highway Patrol (CHP): CHP developed and published a stand-alone bias-free policing policy in December 2020. The 12-page policy's purpose "is to establish policy and procedures regarding the collection of demographic data, while emphasizing the Department's commitment to bias-free policing and the equitable treatment of all during public contacts." The policy includes definitions and provides that "CHP recognizes that implicit bias can occur at both an individual and institutional level and is committed to addressing and eradicating both." Additional language in the policy addresses how personnel should engage with members of the public and with each other in order to keep each accountable under this policy. The policy outlines RIPA reporting requirements and includes DOJ's CJIS 2000 form.

Los Angeles County Sheriff's Department (LA Sheriff): The LA Sheriff updated its Bias-Free Policing policy effective August 16, 2021. The policy now includes concrete definitions of "racial or identity profiling," "bias-based policing," "implicit bias," "bias by proxy," and "stop." The policy also includes a new section on data collection under RIPA and the agency is working on a process to enable auditing and analysis in the future.

San Jose Police Department (San Jose Police): The San Jose Police has not amended their bias-free policing policy since the Board's review last year. However, it did provide additional information. The policy did not and does not provide a component on the limited circumstances when characteristics can be used because, as reported to DOJ, there is not an exemption in their duty manual to use individual characteristics in policing. The policy does not include a section on training but the agency reports that every sworn member has been trained in Fair and Impartial Policing and Procedural Justice. The policy also does not discuss data analysis; however, the agency reports it participated in a Stop Demographic Study with the University of Texas, El Paso on traffic and pedestrian stops. Lastly, the policy does not discuss supervisory review but San Jose Police reports that any allegation of bias-based policing is investigated by Internal Affairs. Additionally, there is supervisory review of body-worn cameras in the Field Training Operations program, patrol, and when there are indications of civilian complaints.

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[409] See Pen. Code, § 13519.4, subd. (j)(3)(C).

[410] The policies of the California Highway Patrol, LA Sheriff, San Jose Police, Orange County Sheriff, and Fresno Police can be found in Appendix F.

Orange County Sheriff's Department (Orange County Sheriff): The Orange County Sheriff updated its bias-free policing policy in October 2021. The updated policy now includes components on encounters with the community and supervisory review, which were not included in the previous version. The agency also made updates to include more concrete definitions and a component on bias by proxy. The new section on encounters with the community includes direction to deputies to treat everyone with dignity and not engage in harassing or intimidating activities verbally, in writing, or by gesture. The new section on supervisory review requires supervisors to monitor their subordinates for compliance with the Bias-Free Policing policy and to take action when there are alleged or observed violations of the policy by following the procedure in the agency's Personnel Complaint policy. In addition to updating its Bias-Free Policing policy, the agency updated Policy 403 on RIPA to include a component on data analysis. This section details that the agency's Working Group will conduct data analysis on a quarterly basis and that it will be available to the public once it is posted to the agency's website.

Fresno Police Department (Fresno Police): The Fresno Police updated its Racial Biased Based Policing policy in October 2021 to incorporate a missing component on encounters with the community. The policy now reiterates in two places how personnel should treat those whom they serve. Specifically, under the "purpose and scope" section of the policy, it states that members should not use harassing, intimidating, derogatory, or prejudiced language in relation to an individual's actual or perceived protected characteristics.

C. Vision for Future Reports

In the coming years, the Board hopes to conduct more comprehensive research – examining both current agency policies and protocols and evidence-based research – into other areas of accountability systems to identify best practices. The Board is also committed to continuing a review of agency policies related to bias-free policing as it relates to various types of law enforcement activities.

D. Accountability Models and Best Practices

In its 2021 Annual Report, the Board identified ten components that make up accountability systems. In this section, the Board reviews policies and practices relating to several elements of accountability systems: auditing practices to enhance integrity of the stop data, use of data for policy change and staff supervision within agencies, and community-based accountability.

1. Auditing Practices to Enhance Integrity of the Stop Data

Auditing can benefit law enforcement agencies in a variety of ways. Audits can allow agencies to: assess the level of accuracy and completeness of data reporting; better understand policies or practices that lead to disparities across racial and other identity groups; assess causes of outlier patterns or unexpected changes in the data; and identify policy and training needs.

To better understand current law enforcement auditing practices in California, the Board reviewed audits of stop data by the Los Angeles Police Commission Office of the Inspector

General, the Oakland Police Department's Office of the Inspector General, and the Independent Monitor for the Oakland Police Department. Each of these audits included video analysis and, in one example, all agency documentation and video recordings for a subset of incidents were audited. The following section summarizes findings from audits conducted by these independent auditors.

The Los Angeles Police Commission Office of the Inspector General's Report, Review of Stops Conducted by the Los Angeles Police Department (LAPD), included review of the body-worn and in-car video footage from a small subset (190 stops, or 0.02%) of the 712,408 stops that LAPD reported in their 2019 stop data.[411] The OIG aimed to assess the accuracy of the stop data reporting, including the reasons officers reported for stops and searches. The OIG also wanted to better understand the policies and practices that led to racial disparities in officer actions during stops and stop outcomes.[412] The OIG found that about 61 percent of stop records appeared to be fully accurate.[413] The audit identified underreporting of stops and searches: officers did not report the stops they made in 10 percent of the cases reviewed and officers did not report all of their actions during stops – most often searches – in 18 percent of the stops reviewed.[414] To improve the accuracy of LAPD's stop data reporting, the OIG recommended that LAPD implement routine auditing, which should include evaluating compliance with reporting of searches, and continuing training about what constitutes a search under the law.[415] The OIG also recommended that, when practical, officers be required to complete their stop data reports immediately after a stop. The OIG recommended that, when this is not practical, officers should review associated video or take other measures to ensure the accuracy of their stop data reports.[416] The OIG's policy and staff supervision recommendations made as a result of this audit will be discussed in the next section of this chapter.

Assessing outlier patterns in stop data is another component of data validation. Based on observations of outlier patterns or significant unexplained changes in data over time, agencies and their oversight bodies may determine that specific types of auditing would be beneficial, as was the case with the Oakland Police Department OIG and the Independent Monitor for the Oakland Police Department (OPD). These bodies identified an unexplained pattern in the reduction of use of specific types of force across years, which prompted audits for validation purposes.[417] The Independent Monitor reviewed video recordings for 38 arrests that were

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[411] Office of the Inspector Gen., Review of Stops Conducted by the Los Angeles Police Department in 2019 (Oct. 27, 2020) pp. 1, 48 <https://a27e0481-a3d0-44b8-8142-1376cfbb6e32.filesusr.com/ugd/b2dd23_d3e88738022547acb55f3ad9dd7a1dcb.pdf> [as of Dec. 2, 2021].
[412] See *id.* at p. 1.
[413] *Id.* at p. 48.
[414] The audit identified this issue in 25 percent of pat-down searches, 25 percent of searches of a person, and 7 percent of property searches. The OIG suggested that officers may not have realized that pat-down searches were required to be reported and may not have understood that raising a person's clothing or asking an individual to raise their clothing to examine their tattoos constitutes a search. See *id.* at pp. 49-51.
[415] See *id.* at pp. 6, 51.
[416] See *id.* at p. 50.
[417] See Oakland Police Dept. Office of the Inspector Gen., Special Report: An Assessment of the Oakland Police Department's Use of Force Reporting, Usage of Portable Digital Recording Devices, and Supervision of Incidents During Arrests for Offenses Where There Is a Significant Chance that Force Would Be Used ("Special Report") (2019) <http://www2.oaklandnet.com/oakca1/groups/police/documents/report/oak072446.pdf> [as of Dec. 2, 2021] (This audit

likely to have involved a use of force and found underreporting of uses of force and a lack of consistency in video activation during arrests.[418] The audit resulted in recommendations that OPD consider policy revisions, training, and interventions to address the underreporting and video activation.[419] The OPD OIG reviewed all documentation and available video recordings of 47 incidents from 2018 to determine if additional types of force were underreported, identify any racial disparities in the underreporting of uses of force, and determine compliance with policies and procedures for using body-worn digital recording devices.[420] The OPD OIG found that uses of force involving weaponless defense techniques and the pointing of a firearm were not always reported in accordance with policy and procedures; of the 47 incidents reviewed, there were 18 incidents involving 31 officers not complying with reporting requirements.[421] The OPD OIG also found that while 60 percent of the individuals arrested were Black individuals, 89 percent of individuals who experienced the pointing of a firearm that officers failed to report were Black.[422] Of all individuals identified in the audit that experienced weaponless defense techniques that officers failed to report as a use of force, 80 percent were Black individuals.[423] Black individuals experienced 62 percent of the reported uses of force.[424] In September 2018, based on the OPD OIG's preliminary findings, OPD implemented refresher training on use of force reporting requirements and published a Special Order requiring supervisory review of video footage of arrests involving threatening an officer, resisting arrest, or battery on an officer.[425] Through the audit, the OIG was able to make specific recommendations for policy revisions and additional training.

Many agencies are beginning to conduct these types of audits. Effective use of body-worn camera footage in data auditing requires effective policies and practices in the use of body-worn cameras. Between 2015 and 2018, the U.S. Department of Justice awarded nearly $60 million in grant funding to more than 250 law enforcement agencies to deploy body-worn cameras.[426] In 2016, researchers found that 53 percent of 129 agencies that received U.S. DOJ grant funding to deploy body-worn cameras allowed supervisors to randomly or periodically review footage to ensure compliance with body-worn camera policy and procedures.[427]

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included review of all documentation and available video footage for 47 incidents from 2018 where there was a high probability that officers would use force.); Warshaw, Fifty-Eighth Report of the Independent Monitor for the Oakland Police Department (Nov. 28, 2018) <http://www2.oaklandnet.com/oakca1/groups/police/documents/agenda/oak071844.pdf> [as of Dec. 2, 2021] (This audit reviewed video recordings associated with 38 arrests that appeared likely to have involved a use of force occurring during 2016-2018).

[418] Warshaw, *supra* note 417, at pp. 2-3.

[419] See *id*. at p. 3.

[420] See Oakland Police Dept. Office of the Inspector Gen., *Special Report*, *supra* note 417, at pp. 3, 6.

[421] *Id*. at p. 2.

[422] *Id*. at pp. 14-15.

[423] *Id*. at p. 14.

[424] *Id*. at p. 15.

[425] See *id*. at p. 4.

[426] See White and Fradella, *The Intersection of Law, Policy, and Police Body-Worn Cameras: An Exploration of Critical Issues* (2018) 96 N.C. L.Rev. 1579, 1583 <https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=6685&context=nclr> [as of Dec. 2, 2021].

[427] See *id.* at p. 1635.

Legal scholars recommend that agencies adopt policy provisions specifying events that officers are required to record on their cameras and clear directives on which incidents must be reviewed by supervisors.[428] The Strategies for Change Report by Stanford University's Social Psychological Answers to Real-World Questions ("SPARQ") recommends that agencies improve systems for backing up and accessing body-worn camera footage and adopt policies requiring officers to tag footage with an incident number.[429] SPARQ also recommends that agencies require officers to self-audit their body-worn camera footage and identify two interactions each month that were especially tense. This practice would better position command staff to help solve problems and offer support.[430]

Additional best practice recommendations include the use of emerging technology, such as camera activation when an officer's car door is opened or camera activation when the lights or siren are turned on; establishing a training record; and policies establishing that failure to activate body-worn cameras is subject to discipline; and establishing a framework focused on training and education for initial infractions and providing for progressively more severe discipline when problems persist or worsen.[431]

As one example of an auditing policy involving body-worn cameras, the San Francisco Police Department's policy regarding body-worn cameras requires that officers are trained in the operation and care of body-worn cameras, including mandatory, permissible, and prohibited uses.[432] The policy also specifies that the Department's Risk Management Office is responsible for conducting periodic and random audits of body-worn camera equipment, the computer server, and body-worn camera recordings to assess officers' compliance with the policy.[433]

In 2020, the Center for Policing Equity (CPE) and the Policing Project[434] co-authored the Guidebook *Collecting, Analyzing, and Responding to Stop Data*, which includes recommendations regarding data auditing procedures. CPE and the Policing Project recommend that, at minimum, agencies require supervisors to randomly spot-check an officer's daily logs, arrest reports, field interview cards, dispatch logs, body-worn camera logs, civilian

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[428] See generally Murphy, *Is It Recording? – Racial Bias, Police Accountability, and the Body-Worn Camera Activation Policies of the Ten Largest Metropolitan Police Departments in the USA* (2018) 9 Columbia L.J., 141 <https://journals.library.columbia.edu/index.php/cjrl/article/view/2238/1148> [as of Dec. 2, 2021]; see also White and Fradella, *supra* note 426, at 1618-1619, 1635-1636.

[429] Stanford University SPARQ, *Strategies for Change*, *supra* note 341, at pp. 45, 48

[430] *Id*. at pp. 45-46.

[431] See generally Murphy, *Is It Recording? – Racial Bias, Police Accountability, and the Body-Worn Camera Activation Policies of the Ten Largest Metropolitan Police Departments in the USA*, *supra* note 428; see also Vallejo Police Department, *CALDOJ Collaborative Reform Progress: VPD Compliance Measures, Recommendations 1-45, Master Tracking* (Sept. 2, 2021) <https://p1cdn4static.civiclive.com/UserFiles/Servers/Server_16397369/Image/Public%20Information/Plans%20and%20Reports/VPD%20Compliance%20Measures%20Master%20Document,%20Sent%20to%20VPD.pdf> [as of Dec. 2, 2021].

[432] San Francisco Police Dept., General Order 10.11: Body Worn Cameras (Oct. 7, 2020) p. 1 <https://www.sanfranciscopolice.org/sites/default/files/2020-11/DGO10.11.BWC_.20201110.pdf> [as of Dec. 2, 2021].

[433] Ibid.

[434] The Center for Policing Equity is a research center that collects and analyzes data surrounding police interactions to diagnose and change disparities in policing. The Policing Project at New York University School of Law partners with communities and police to promote public safety through transparency, equity, and democratic engagement.

complaints, or a combination of these, against their stop data reports.[435] They recommend that agencies compare data errors across different units and work-shifts to identify training and policy needs.[436] They additionally recommend auditing to ensure that there have not been any glitches in the system that would omit or skew large amounts of data, such as a field defaulting to "no" for all stops.[437]

The Board recommends the following emerging practices and best practices to enhance the integrity of RIPA stop data. These practices were identified in the audits conducted by the LA OIG, the Independent Monitor for the OPD, the OPD OIG, and the *Collecting, Analyzing, and Responding to Stop Data* Guidebook.

Recommendations to Law Enforcement Agencies and their Oversight Bodies:

- Systematically audit stop data records to minimize the possibility of recording inaccurate or incomplete information;[438] implement cross-review of other records that agencies collect, such as daily logs, arrest reports, field interview cards, dispatch logs, body-worn camera logs, use of force reports, civilian complaints, or a combination of these, as a cross-compliance measure.[439]

- Incorporate video analysis as a component of stop data auditing.[440]

- Assess outlier patterns in the agency's stop data for validation purposes and follow up with focused audits to determine the causes for the patterns.[441]

- Compare data fields that correspond to overlapping subject matter to ensure consistency (e.g., ensure that officers indicate that they made an arrest in the Result of Stop field when officers indicate that they performed a search incident to arrest in the Basis for Search field).[442]

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[435] See Center for Policing Equity and Policing Project at N.Y.U. School of Law, Collecting, Analyzing, and Responding to Stop Data: A Guidebook for Law Enforcement Agencies, Government, and Communities ("Guidebook") (2020) p. 25 <https://policingequity.org/images/pdfs-doc/COPS-Guidebook_Final_Release_Version_2-compressed.pdf> [as of Dec. 2, 2021].
[436] See *id.* at p. 26.
[437] See *id.* at p. 27.
[438] See *id.* at p. 23; see also Office of the Inspector Gen., Review of Stops Conducted by the Los Angeles Police Department in 2019, *supra* note 145; Warshaw, *supra* note 417; Oakland Police Dept. Office of the Inspector Gen., *Special Report*, *supra* note 417.
[439] See, e.g., Center for Policing Equity and Policing Project at N.Y.U. School of Law, *Guidebook*, *supra* note 435, at p. 25; Oakland Police Dept. Office of the Inspector Gen., *Special Report*, *supra* note 417, at p. 4; Stipulated Judgment, *The People of the State of California v. County of Kern* (Super. Ct. Kern County, 2020, No. BCV-20-102971) pp. 15-16 <https://oag.ca.gov/sites/default/files/Judgment.pdf> [as of Dec. 2, 2021] (In the case of Kern County Sheriff's Office, the use of force reports for review may include the incident reports that deputies are required to complete if they use reportable force or witness higher-level use of force incidents).
[440] See, e.g., Office of the Inspector Gen., Review of Stops Conducted by the Los Angeles Police Department in 2019, *supra* note 145; Warshaw, *supra* note 417; Oakland Police Dept. Office of the Inspector Gen., *Special Report*, *supra* note 417.
[441] See, e.g., Warshaw, *supra* note 417; Oakland Police Dept. Office of the Inspector Gen., *Special Report*, *supra* note 417.
[442] Center for Policing Equity and Policing Project at N.Y.U. School of Law, *Guidebook*, *supra* note 435, at p. 25.

- Share data auditing findings with the public as a component of agencies' accountability systems.

Recommendations to Law Enforcement Agencies:

- Develop policies regarding how the agency will respond to recurring data reporting issues.[443]

2. Use of Stop Data for Policy Change within Agencies and Staff Supervision

In the previous section, the Board reviewed several examples where auditing was used to assess the accuracy of data reporting. In this section, the Board discusses efforts in the Los Angeles, San Diego, and Oakland Police Departments where agencies and their oversight bodies are using analysis of RIPA stop data and body-worn camera footage to identify how the agencies' policies and practices lead to disparities in policing and to develop targeted interventions. In two of these examples, agencies worked in partnership with an academic or research institution. Thereafter, the Board makes several recommendations to LEAs regarding stop data analysis for policy reform and staff supervision aimed at eliminating disparities.

Los Angeles Police Department

As discussed above, the Police Commission Office of the Inspector General audited LAPD stop data. As a part of this process, the Inspector General recommended several policy and practices changes in order to reduce racial disparities in officer actions during stops and stop outcomes and identified issues regarding compliance with policies and procedures. In 2019, individuals perceived to be Black were overrepresented in stops made by the LAPD, while those perceived to be White were significantly underrepresented.[444] Additionally, individuals perceived as Black or Hispanic were more likely to be the subject of all types of actions taken by officers during stops than were individuals perceived as White.[445] The video audit and stop data analyses both showed that officers in units focused on crime suppression were much more likely to take a significant number of actions during traffic stops than those specifically focused on traffic enforcement.[446]

Actions identified in the video audit involved prolonged questioning about a person's background, such as their probation or parole status and their criminal record; searches, including discretionary searches; handcuffing or having a person face a wall with their hands behind their back; checking for tattoos; and completing field interview cards.[447] The OIG concluded that some portion of the racial disparities in officer stops and post-stop actions, particularly in stops for traffic and other minor violations, were the result of officer strategies designed to use these violations as a pretext to identify more serious crimes. In 2019, traffic

[443] *Id*. at pp. 25-26.
[444] Office of the Inspector Gen., Review of Stops Conducted by the Los Angeles Police Department in 2019, *supra* note 145, at p. 2.
[445] *Id.* at p. 3.
[446] *Ibid*.
[447] *Id.* at pp. 4-5.

stops of White individuals by the LAPD were most likely to be based on moving violations, while traffic stops of Black and Hispanic individuals were most likely to be based on equipment or regulatory violations, such as expired vehicle registration.[448] The OIG noted that the data showed that these strategies were largely ineffective. Accordingly, the OIG recommended that LAPD refocus strategies away from the use of pretextual stops, particularly pretextual stops based on minor equipment or regulatory violations, to help reduce racial disparities in the frequency of stops.[449]

In a small number of the stops included in the video audit, the OIG identified areas of concern regarding compliance with policies and procedures. These areas of concern included officers failing to receive affirmative voluntary consent in searches officers reported as being consensual, officers moving or pulling up the clothes of people stopped without grounds for a search and failing to report that a search had occurred, officers taking photos while a person was handcuffed, officers failing to timely activate body-worn and in-car cameras, and officers inaccurately completing field interview cards.[450] The OIG recommended that LAPD limit discretionary actions taken during stops that are not directly related to officer safety or the reason for the stop and for the agency to establish clear guidelines and parameters in policies about actions that officers may take during stops.[451] The OIG identified significant racial disparities in actions taken by officers during stops, including removal of individuals from their vehicle, searches, handcuffing, and the completion of field interview reports. The OIG found that the racial disparities were greater for higher-discretion searches.[452] Because of this, the OIG further recommended that LAPD revise its bias policing policy to clearly indicate that officers are prohibited from using race and other identity characteristics as a basis for taking discretionary actions, such as consent searches, questioning, and removing individuals from vehicles.[453] The OIG recommended that LAPD conduct ongoing evaluation of its strategies and their impact on community members and perceptions of agency legitimacy.[454]

San Diego Police Department

While the Police Commission Office of the Inspector General's review of LAPD stop data is an example of audit by an oversight body, San Diego Police Department's work with CPE in the National Justice Database Project is an example of a partnership with an external research organization. CPE identified racial disparities in SDPD in the areas of traffic stops, non-traffic stops, and uses of force. People perceived as Black experienced non-traffic stops 3.5 times as often as people perceived as White. During traffic stops, officers searched people perceived as Black 2.5 times as often as people perceived as White and searched people perceived as Latine(x) 2.2 times as often as people perceived as White, taking into account the population size of each group. People perceived as Black were subjected to force five times as often as

[448] *Id*. at p. 3.
[449] See *id*. at pp. 4-5.
[450] *Id.* at p. 5.
[451] Ibid.
[452] *Id*. at pp. 3-4.
[453] See *id*. at pp. 5-6.
[454] See *id*. at p. 6.

people perceived as White and people perceived as Latine(x)were subjected to force 1.2 times as often as people perceived as White, taking into account the population size of each group.[455] CPE recommended that SDPD identify risk factors –including policies and practices – that lead to disparities and develop targeted interventions to address racial disparities in each area.[456] For example, CPE found a disparity in officers' use of force during vehicle stops of Black

> *"Evidence can prove liability or innocence in one specific case, but data can show patterns across incidents and possibly be used to change those patterns."* – see SPARQ, Strategies for Change, see footnote 341, at page 127.

individuals and indicated that reducing disparities in the frequency of vehicle stops may also reduce disparities in uses of force. CPE recommended that SDPD engage with community members to identify the outcomes that are priorities for the communities that SDPD serves and recommended periodic data analysis to measure the effectiveness of reforms.[457]

Oakland Police Department

Stanford University's SPARQ researchers worked with the Oakland Police Department to evaluate officers' language and communication in the body-worn camera footage. Researchers reviewed 380 stops of community members during April 2014 to better understand how officers typically interacted with community members and how those interactions might differ based upon the race of the community members involved.[458] SPARQ identified differences in the form and focus of the officers' conversations with Black versus White community members, finding that officers were more casual and asked more questions when speaking with Black community members and were more focused on elements of procedure, the actual offense, and more often explained the reason for the stop when speaking with White community members. SPARQ additionally found that officers asked Black community members about probation and parole more often than they asked White community members.[459] The researchers' use of body-worn camera video as data rather than evidence is innovative and allowed the researchers to identify patterns in the interactions.

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[455] Center for Policing Equity, Nat. J. Database City Report San Diego Police Department 2017-2020: Use of Force (June 2021) <https://public.tableau.com/views/SDCityCPE2021/1_SUMMARY?:embed=y&:showVizHome=no&:host_url=https%3A%2F%2Fpublic.tableau.com%2F&:device=desktop&:embed_code_version=3&:tabs=no&:toolbar=yes&:animate_transition=yes&:display_static_image=no&:display_spinner=no&:display_overlay=yes&:display_count=yes&:language=en-US&:loadOrderID=0> [as of Dec. 2, 2021].

[456] See Center for Policing Equity, Nat. J. Database City Report San Diego Police Department, 2017-2020 (June 2021) <https://justicenavigator.org/report/sandiego-city-ca-2021/summary> [as of Dec. 2, 2021]

[457] See The City of San Diego, *Tuesday Agenda Revised Added S500-S511 on 6/24/21 ("Tuesday Agenda")* (June 24, 2021) <http://sandiego.granicus.com/player/clip/8222?meta_id=842592&redirect=true> [as of Dec. 2, 2021] (the portion of this meeting dedicated to CPE begins at 4:34:43).

[458] Stanford University SPARQ, *Strategies for Change*, *supra* note 341, at pp. 14-15.

[459] *Id.* at pp. 16-18.

In addition to using the body-worn camera footage as Oakland PD did through the SPARQ review, agencies can take a similar approach to find innovative ways to evaluate and improve officer performance. In 2016 researchers found that 93 percent of 129 agencies that received U.S. DOJ funding to deploy body-worn cameras allowed supervisors to review footage for general performance purposes unrelated to the use of body-worn cameras.[460]

Board Recommendations

Based on the review of audits conducted by the LA OIG and SPARQ, and CPE's analysis of SDPD stop data, the Board recommends the following best practices:

Recommendations to Law Enforcement Agencies:

- Provide the public with better access to your stop data, which will allow community members to engage in decision-making and policy development with agencies.[461]
- Analyze stop data including body-worn camera footage to evaluate policies, identify performance issues, and inform both individual and department-wide training. The Board recommends that agencies analyze their stop data longitudinally and in relation to the introduction and implementation of reform measures, which will necessitate time stamping new directives, policies, and trainings.[462] Agencies should then evaluate those reform measures for effectiveness.
- Work in partnership with an academic or research institution to support analysis of patterns and trends in your stop data.[463]
- Implement routine review of service area data by command staff with agency leadership, such as the captain dedicated to the area, and compare stop data for the area to agency-wide stop data and data for other service areas.464
- Implement annual review of information about officers' individualized stop data by supervisors with each officer along with benchmarks, regardless of how they perform.465
- Identify officers with outlier trends in data regarding stops and searches and review this in conjunction with other performance metrics for the officers.[466]

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[460] White and Fradella, *supra* note 426, at pp. 1635-36.
[461] Center for Policing Equity and Policing Project at N.Y.U. School of Law, *Guidebook*, *supra* note 435, at pp. 27, 37-39 (CPE and the Policing Project recommend that agencies review their data for personally identifiable information that should not be included in data released to the public).
[462] Stanford University SPARQ, *Strategies for Change*, *supra* note 341, at p. 57; The City of San Diego, *Tuesday Agenda, supra* note 457.
[463] Center for Policing Equity and Policing Project at N.Y.U. School of Law, *Guidebook*, *supra* note 435, at p. 9.
[464] Stanford University SPARQ, *Strategies for Change*, *supra* note 341, at p. 54; The City of San Diego, *Tuesday Agenda, supra* note 457.
[465] Stanford University SPARQ, *Strategies for Change*, *supra* note 341, at p. 49.
[466] *Id.* at p. 54.

Community-based accountability is the final element of accountability systems that the Board began to review this year.

3. Community-Based Accountability

In this section, the Board will review several examples of community participation in oversight, advisory, and disciplinary boards. When institutions include communities in decision-making, they are investing their trust in those communities.

One form of community-based accountability is community oversight. Some of the goals of community oversight bodies are to ensure that law enforcement agencies can be held accountable for their actions, operate with maximum transparency, and perform their duties in a manner that is informed by community needs.467

There are many ways to establish community-based accountability. Public participation in determining law-enforcement agency policy, for instance, helps to build trust in the agency.468 In the Board's 2021 Report, it identified transparent and unbiased processes for selecting community members as a key principle for effective community participation in oversight bodies. The Community Oversight Task Force (COTF) charged with making recommendations to strengthen police accountability and police-community relations in Baltimore City recommended that civilian oversight bodies have original jurisdiction over any complaint – without limitations based on the type of allegation and with the ability to investigate any potential wrongdoing by officers even without a specific complaint.[469] COTF also recommended that civilian oversight bodies have the capacity to audit procedures, review training and policy, assess trends, and conduct research.[470] COTF specifically recommended that civilian oversight bodies review training and policies for their impact on racial equity, including the annual budget and the acquisition of military equipment.[471] COTF recommended that research and policy reviews undertaken by civilian oversight bodies be made publicly available and accessible to individuals with disabilities, and individuals for whom English is not their primary language.[472]

Critical Incident Review Boards

Generally speaking, Critical Incident Review Boards (CIRB), also referred to as Use of Force Review Boards in some agencies, evaluate cases involving officer shootings of community members and other serious incidents that have the potential to damage community trust or

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[467] See Chicago City Council, Ordinance Ch. 2-80: Community Com. for Public Safety and Accountability, pp. 1-2 <https://news.wttw.com/sites/default/files/article/file-attachments/Civilian%20Oversight%20%28FINAL%207.18%29.pdf> [as of Dec. 2, 2021].
[468] Ibid.
[469] See Community Oversight Task Force, The Community Oversight Task Force's Recommendations for Strengthening Police Accountability and Police-Community Relations in Baltimore City (Aug. 2018) p. 22 <https://www.baltimorepolice.org/sites/default/files/General%20Website%20PDFs/0909_COTF_Final_Web.pdf> [as of Dec. 2, 2021].
[470] *Id*. at p. 22.
[471] Ibid.
[472] *Id*. at pp. 22-23.

confidence in the agency with the purpose of identifying any administrative, supervisory, training, tactical, or policy issues that need to be addressed.[473] Many law enforcement agencies have a CIRB process in place, but they can vary widely in terms of scope and practice among agencies. In the U.S. DOJ's Final Report of the President's Task Force on 21st Century Policing, the task force recommended including community members on a CIRB.[474] The community representatives provide community voices on issues related to training and policy, provide important non-law enforcement perspectives on CIRB recommendations (including how recommendations regarding policy changes might be received by the community), and increase department transparency to the community. Recommendations for improving these boards include training (including for community representatives), the authority to review cases involving officer-involved shootings and other serious incidents, and opportunities to question for voting community members.

Denver, Las Vegas, Olympia, Phoenix, Portland, Seattle, Tucson, and Solano County Sheriff include community members in CIRB.[475] The Seattle CIRB includes a community member as a non-voting member, while all of the other Boards include voting community members.[476]

A researcher at the Naval Post Graduate School conducted a survey of nine Board members serving on six boards with voting community members and developed best practice recommendations for including community members in CIRB based on the survey findings and recommendations from literature. The researcher found that "people who participate in board operations believe that the involvement of community members benefits the departments"

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[473] Office of Community Oriented Policing Services, Final Report of the President's Task Force on 21st Century Policing (May 2015) <https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf> [as of Dec. 2, 2021].
[474] See *id.* at p. 22.
[475] See, e.g., Breckenridge, *Thesis: Civilians on Police Use of Force Review Boards: A Delphi Study Involving Six Police Departments* (Sept. 2018) Naval Post Graduate School p. 3 <https://www.hsdl.org/?view&did=818124> [as of Dec. 2, 2021] (listing Denver, Las Vegas, Olympia, Phoenix, Portland, and Tucson as cities with police departments that incorporate community members on their use-of-force review boards); Denver Police Department, Policy 105.05: Use of Force Review Board (Jan. 27, 2019) <https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSBook/OM_Book.pdf> [as of Dec. 2, 2021] (the Use of Force Board includes two community members as voting Board members, who have received training in Denver's use of force policy and an overview of the Crisis Intervention Team program); Las Vegas Metropolitan Police Dept., *Critical Incident Review Process* <https://www.lvmpd.com/en-us/InternalOversightConstitutionalPolicing/Pages/Critical-Incident-Review-Process.aspx> [as of Dec. 2, 2021] (soliciting community members to join the Use of Force Review Board team as voting members); Olympia Police Department, Policy 301: Use of Force Review Boards (June 25, 2021) <https://public.powerdms.com/OlympiaPD/tree/documents/1661375> [as of Dec. 2, 2021] (composition of the Use of Force Board includes a community member as selected by the Chief of Police); Phoenix Police Department, Operations Order 3.18: Discipline and Policy and Review Boards (Jun. 2021) <https://www.phoenix.gov/policesite/Documents/operations_orders.pdf> [as of Dec. 2, 2021]; Portland Police Department, Directives 0336.00: Police Review Board (Apr. 25, 2021) <https://www.portlandoregon.gov/police/article/759445> [as of Dec. 2, 2021]; Tucson Police Department, General Orders 3213: Board Membership and Responsibilities (Sep. 2020) <https://www.tucsonaz.gov/police/general-orders> [as of Dec. 2, 2021]; Solano County Sheriff Office Policy Manual, Policy 301.4.1 – Use of Force Review Boards Composition of the Board (Jan. 27, 2021) <https://public.powerdms.com/SolanoCounty/tree/documents/2027670> [as of Dec. 2, 2021] (listing "public representative" as a "mandatory attendee").
[476] Seattle Police Department, General Policy 8.500: Reviewing use of force (Apr. 2021) <https://www.seattle.gov/police-manual/title-8---use-of-force/8500---reviewing-use-of-force> [as of Dec. 2, 2021] (Seattle Police Department policy permits attendance by a non-voting "civilian observer" for any review of an officer involved shooting; the Mayor appoints this person).

and the procedure for selection of the community members varied across agencies.[477] There are Boards in which the Chief of Police, an independent police auditor, the mayor, or City Council select the community members.

After reviewing research and model policies, the RIPA Board makes the following recommendations for agencies regarding CIRB:

- Include at least one community member as a voting member of a CIRB.
- Ensure that community members serving on CIRB receive use-of-force law and policy training.[478]

Community Advisory Boards

Community accountability can also be achieved by Community Advisory Boards (CAB), which may also be known as police advisory boards or civilian advisory groups. These boards are groups of community representatives who meet with or report regularly to a policing agency to discuss public safety in a jurisdiction, and they are one of the most common ways U.S. policing agencies engage the public.[479] CAB's purposes can include "bridging the gap between the public and the police; advising and opining on various police policies and practices; and discussing neighborhood-specific issues. These bodies can be created by ordinance, by a policing agency, or by community initiative."[480]

The Policing Project at NYU Law conducted an in-depth national study of community advisory boards. The study revealed that CABs can be beneficial for law enforcement agencies and the communities they serve, but many of them suffer from deficiencies that prevent them from achieving their intended purpose.[481] Too often CABs can be "a result of pro forma efforts by policing agencies to signal a commitment to working with the public - without really working with the public."[482] The Policing Project offered key findings to guide policing agencies, community members, and advocates who seek to create or improve a CAB, including:

- Decide if forming a CAB actually is the best engagement strategy for your jurisdiction.
- Ensure the CAB is well-resourced.
- Create a clearly defined charter that establishes realistic expectations.
- Provide members with technical knowledge necessary to weigh in on policy matters.

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[477] Breckenridge, *supra* note 475, at p. 83.
[478] *Id*. at p. 84.
[479] See generally The Policing Project, Community Advisory Boards: What Works and What Doesn't <https://www.policingproject.org/cab#cab1> [as of Dec. 2, 2021].
[480] See Clark and Friedman, The Policing Project, *Community Advisory Boards: What Works and What Doesn't, Lessons from a National Study* (Jan. 21, 2020) p. 3 <https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/6009b0752b76712ea7ca955d/1611247735950/Clark+and+Friedman+-+Policing+Project+CAB+report-1-21-20.pdf> [as of Dec. 2, 2021].
[481] *Id.* at pp. 3-4.
[482] See *id*. at p. 1.

- Ensure membership diversity along several dimensions.
- Ensure members do not suffer from participation fatigue and burnout.
- Establish operating procedures and meeting protocols.[483]

The Board encourages law enforcement agencies and advocates to consider these guidelines when establishing CABs in their communities.

Examples of Community Accountability

The Board reviewed examples of community accountability efforts in San Francisco, Chicago, and Vallejo and highlights them here to demonstrate how community accountability may look different in different places. Each community should determine what form of community accountability would be best for them.

City and County of San Francisco

San Francisco is one agency that has implemented several different layers of civilian and community oversight. In October 2018, the City and County published the San Francisco Police Department Community Policing Strategic Plan,[484] which includes metrics for measuring the success of the Department's objectives. Metrics for objectives related to communication are:

- language assistance inquiries;
- time spent meeting with civilians; and
- average time to respond to non-emergency inquiries.[485]

Metrics for objectives related to education are:

- attendance at Community Police Academy;
- the number of community policing related trainings and the number of participants; and
- the number of trainings given by community instructors.[486]

Metrics for objectives related to problem solving are:

- the percentage reduction in calls for service;
- percentage of community members by demographic who rate high feelings of safety during night and day;
- percentage of respondents who give high rating to public transportation safety;

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[483] See generally The Policing Project, *Community Advisory Boards: What Works and What Doesn't, How to Create and Operate Effective CABs* <https://www.policingproject.org/cab#cab1> [as of Dec. 2, 2021].
[484] See City and County of San Francisco, SFPD Community Policing Strategic Plan: U.S. DOJ Recommendation 40.1 (Oct. 2018) <https://www.sanfranciscopolice.org/sites/default/files/2019-12/SFPDCommunityPolicingStrategicPlan.pdf> [as of Dec. 2, 2021].
[485] *Id.* at p. 6.
[486] *Id.* at p. 7.

- percentage of neighborhoods that have a designated officer to lead problem solving; and
- the number of violent and property crimes reported.[487]

Metrics for objectives related to relationship building are:

- the percentage of time officers spent on positive youth interaction and citizen/community engagement;
- percent change in number of use of force incidents by race/ethnicity;
- percent change in total encounters by race/ethnicity;
- number of officer involved shootings by race/ethnicity; and
- number and percent change in complaints by category of conduct.[488]

Metrics for Department organization include:

- the percentage of community policing strategies articulated in the annual district plan that were reported as implemented;
- percentage of individuals by demographic arrested versus offered alternative;
- rate of recidivism;
- percentage of time spent on administration;
- amount of funding dedicated to community policing programs;
- amount of funding provided to district stations in support of community policing goals;
- percentage of hires by demographic categories by division and district;
- retention rates across demographics;
- demographics of sworn officers;
- number of certified bilingual officers;
- percentage of new hires for whom jurisdiction is their community of origin or are current residents;
- the number of bilingual officers deployed to predominantly monolingual areas where the predominant language is not English; and
- the percentage of officers at different ranks that are from historically underrepresented groups.[489]

The City has a Department of Police Accountability as well as a Police Commission. The SFPD itself has created various community advisory and working groups, including the SFPD Chief's

[487] *Id.* at p. 8.
[488] *Id.* at p. 9.
[489] *Id.* at pp. 10-12.

Advisory Board, Executive Sponsor Working Groups, Community Police Advisory Boards broken down by district, and a Community Engagement Advisory Group, each of which has a different role in providing for community-based accountability.

The Department of Police Accountability handles civilian complaints regarding on-duty officers and conducts audits of the Police Department. Civilians who have never served as police officers in San Francisco staff the Department.[490] The Director of the Department of Police Accountability is also on SFPD's Firearm Discharge Review Board (a type of CIRB) in an advisory role.

The Police Commission sets policy for and oversees the Police Department and the Department of Police Accountability. The Commission conducts disciplinary hearings on charges of police misconduct filed by the Chief of Police or Director of the Department of Police Accountability and can impose discipline. The Commission also hears officers' appeals regarding discipline imposed by the Chief of Police. Commissioners are community members appointed by the Mayor and the Board of Supervisors.[491]

Community Police Advisory Board members are volunteers who live or work in a police district and meet with the district station captains monthly.[492] The Board members provide input regarding public safety, crime, and quality of life issues, as well as feedback on problem-solving efforts in their communities.

Chicago

In July 2021, the Chicago City Council voted to create three-member elected resident councils in each of the city's police districts and a seven-member resident Community Commission for Public Safety and Accountability to oversee the Chicago Police Department (CPD).[493] Chicago intends for the District Councils to ensure that within each police district there is a forum for residents to raise concerns about policing in the district and discuss ways to address those concerns. The District Councils will also participate in the selection of Commission members.[494]

The Commission for Public Safety and Accountability (Commission) will approve policies for the CPD and is charged with ensuring that CPD policies and practices are rooted in community needs and public input.[495] It will have the power to hire the head of the Civilian Office of Police Accountability (COPA), which investigates police misconduct. The Commission will also have the power to pass a resolution of "no confidence" in the police superintendent, the COPA head, or any member of the Chicago Police Board, which could result in City Council action. A council

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[490] City and County of San Francisco, Department of Police Accountability <https://sf.gov/departments/department-police-accountability/about> [as of Dec. 2, 2021].
[491] City and County of San Francisco, About the Police Commission <https://sfgov.org/policecommission/> [as of Dec. 2, 2021].
[492] San Francisco Police Department, Community Police Advisory Boards (CPABs) <https://www.sanfranciscopolice.org/community/stations-meetings/community-police-advisory-boards-cpabs> [as of Dec. 2, 2021].
[493] Chicago City Council, Ordinance Ch. 2-80: Community Com. for Public Safety and Accountability, *supra* note 467, at pp. 4-5.
[494] *Id*. at p. 2.
[495] *Id.* at p. 4.

made up of non-citizens will advise the Commission on issues affecting the city's immigrant and undocumented communities. The Mayor will appoint Commission members from applicants receiving a nomination by a Nominating Committee, who will then be confirmed by the City Council.[496] Candidates must meet nine qualifications in order to be eligible to serve on the Commission.[497] Commissioners will serve four-year terms, not to exceed not more than 12 years of service in total.

Vallejo

The Vallejo Police Department is in the first year of implementing a new Chief's Advisory Board (CAB). The ten to fifteen-member CAB was "created to act as a resource for the Chief of Police in the formation of strategies, development of policing concepts, and increasing public awareness regarding policy issues," with the goal of having a broad spectrum of viewpoints represented.[498] The Board meets monthly. The members, who serve two-year terms, must be Vallejo residents or business owners and are encouraged to attend the Vallejo Police Citizen's Academy.[499] The Chief of Police selects members and they serve at the Chief's discretion.[500] The CAB application form is provided on Department's webpage.[501] This Board serves an advisory function and does not have the authority to investigate or review personnel matters, civilian complaints, or specific police-related incidents.[502] The CAB has reviewed and commented on revisions to policies, provided updates on policing initiatives to share with the community, and informed the Chief of community needs and concerns.

Based on the review of examples of community accountability efforts in San Francisco, Chicago, and Vallejo, the Board recommends the following best practices to improve community-based accountability:

Recommendations to Law Enforcement Agencies:

- Use district councils – where residents can raise and work to address concerns about policing in the district – surveys, focus groups, and other sources of feedback from communities that show where to look for disparities in stops and analyze stop data in ways that will allow the agency to examine the areas of policing that are priorities for community members.[503]

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[496] *Id*. at pp. 6-7.
[497] *Id*. at pp. 5-6.
[498] Vallejo Police Dept., Police Chief's Community Advisory Board: Board Description and Expectations, pp. 1-2 <https://vallejopd.net/community/boards_programs/chiefs_advisory_board> [as of Dec. 2, 2021].
[499] *Id.* at pp. 2-3.
[500] *Id*. at p. 2.
[501] Vallejo Police Dept., Chief's Advisory Board <https://www.vallejopd.net/community/boards_programs/chiefs_advisory_board> [as of Dec. 2, 2021].
[502] *Id*. at p. 1.
[503] Stanford University SPARQ, *Strategies for Change*, *supra* note 341, at p. 50; The City of San Diego, *Tuesday Agenda, supra* note 457.

- Include civilian input in policy development processes.[504]

E. Vision for Future Reports

The Board may wish to examine additional California law enforcement agencies regarding their stop data auditing practices and policies regarding audits of body-worn camera footage in supervisory review of stop data reports and how this review relates to the agencies' disciplinary practices.

[504] City and County of San Francisco, SFPD Community Policing Strategic Plan: U.S. DOJ Recommendation 40.1, *supra* note 158, at p. 10.

CALLS FOR SERVICE AND BIAS BY PROXY

A. Introduction[505]

A call for service is a common term in policing that refers to when a public safety professional is dispatched to a call for assistance, typically prompted by a 911 call.[506] Public safety professionals can range from more traditional services such as police, fire department, and emergency medical services to more modern models such as mobile mental health evaluation teams and bias response teams. Public safety professionals are assigned typically through computer aided dispatch systems (CAD), which give a priority to the call and may assign a particular unit – such as the fire department – to the call.[507]

Dispatchers are generally the first point of contact in any call for service, playing a critical role in protecting both the public and officers. In 2021, the skill and instincts of dispatchers were on full display during the murder trial of Derek Chauvin. The very first witness the prosecution called was dispatcher Jena Scurry, who monitored the officers responding to the scene of George Floyd's arrest and reported to her sergeant when she saw excessive force being used that resulted in George Floyd's murder.[508] Dispatchers make critical lifesaving decisions every day, but the level of discretion and tools given to dispatchers throughout agencies vary significantly. As we continue to improve public safety, agencies should reflect on their own policies to find better ways to uplift the important work of dispatchers and use their wealth of knowledge as a resource for innovative ways to improve public safety.

Recent analysis conducted by the Center for American Progress and the Law Enforcement Action Partnership examined police calls for service from eight cities and found that 23 to 39 percent of calls were low priority or nonurgent, while only 18 to 34 percent of calls were life-threatening emergencies. While many 911 calls do merit an emergency police response, unnecessarily dispatching armed officers to calls where their presence is unnecessary is more than just an ineffective use of safety resources; it can also create substantially adverse outcomes for communities of color, individuals with behavioral health disorders and disabilities, and other groups who have been disproportionately affected by the American criminal justice system."

- Center for American Progress, see footnote 505

Knowing that calls for service are a critical component of police and community relationships, the Board and its Calls for Service Subcommittee has focused on several important issues surrounding calls for service.

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[505] Irwin and Pearl, *The Community Responder Model: How Cities Can Send the Right Responder to Every 911 Call* (Oct. 28, 2020) Center for American Progress <https://www.americanprogress.org/issues/criminal-justice/reports/2020/10/28/492492/community-responder-model/> [as of Dec. 2, 2021].
[506] *Calls for Service,* Police Data Initiative <https://www.policedatainitiative.org/datasets/calls-for-service> [as of Dec. 2, 2021].
[507] See generally Neusteter et al., *The 911 Call Processing System: A Review of the Literature as it Relates to Policing* (July 2019) Vera Inst. of Justice <https://www.vera.org/downloads/publications/911-call-processing-system-review-of-policing-literature.pdf> [as of Dec. 2, 2021].
[508] Bailey and Bellware, *Emotional first day of testimony at Derek Chauvin murder trial* (Mar. 29, 2021) Washington Post <https://www.washingtonpost.com/nation/2021/03/29/derek-chauvin-trial/> [as of Dec. 2, 2021].

(1) **Bias by Proxy** is when an individual calls the police and makes false or ill-informed claims about persons they dislike or are biased against.[509] Several years ago the Board began exploring best practices for addressing when a bias-based call for service is made by a member of the public and how to address it – from the moment the 911 call is made to when officers respond and interact with community members. The Board continues that work with its review of dispatcher training.

(2) **A Mental Health Call for Service** is a call for service for someone who is experiencing a behavioral health crisis and who may require clinical intervention or care coordination from a health professional.[510] The Board has focused on reviewing alternatives to police responses for individuals experiencing a crisis. Last year the report covered the history of mental health in America and examined developing crisis response models. This year the Board continues that work by exploring the success of crisis response pilot programs that emerged in 2020-21 and data-driven solutions to improve calls for service. Further, as we continue to reimagine public safety and alternatives to police responses, dispatchers will continue to play a critical role in identifying, triaging, and diverting calls for service that may be more appropriate for a community-based response.

The RIPA data provides a unique opportunity to identify trends and outcomes in calls for service to determine if some calls for service may be more appropriate for a community-based verses law enforcement response.

B. Data Analysis Write Up

Comparing officer-initiated stops to stops made in response to a call for service is a preliminary way to begin to identify potential sources of disparities related to calls for service. To illustrate how the racial/ethnic distribution of individuals stopped differed by whether or not stops were initiated in response to a call for service, the Figures 62 and 63 below show two different comparisons between the RIPA data and American Community Survey data collected by the United States Census Bureau. Figure 62 displays the racial/ethnic distribution of persons stopped by officers in response to a call for service in comparison to the weighted racial/ethnic distribution of individuals of residents in the jurisdictions where officers made these stops. Similarly, Figure 63 displays the racial/ethnic distribution of persons stopped during officer-initiated stops in comparison to the weighted racial/ethnic distribution of individuals of residents in the jurisdictions where officers made these stops.[511]

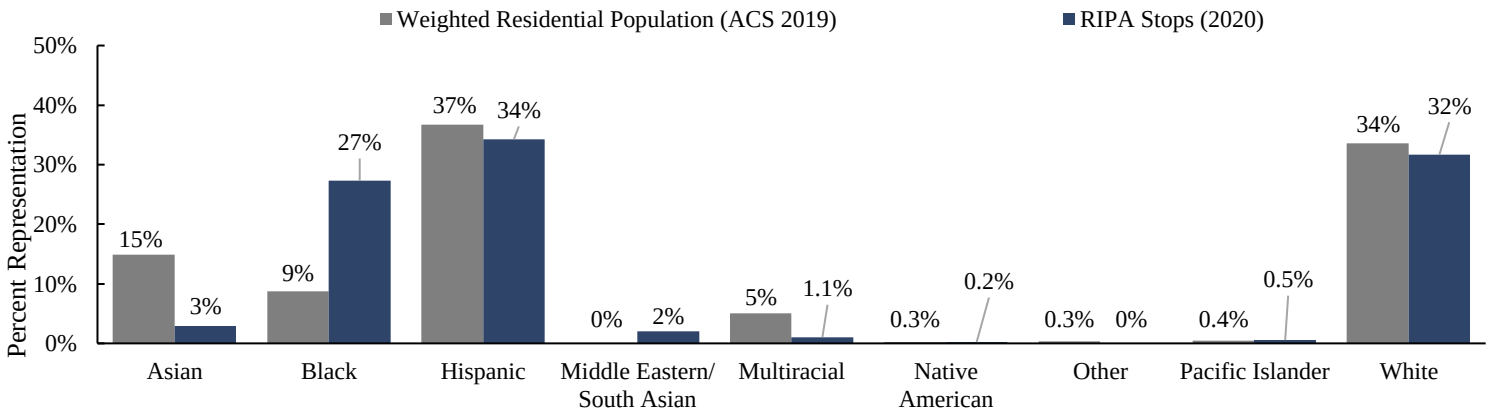
Compared to the analysis of all stops (please see page 32 for the all stop analysis), the analysis of calls for service stops (5.9% of all stops in 2020) showed slightly different results. Overall, results from the analysis of stops conducted in response to a call for service continued to show that the largest disparity of overrepresentation between the proportion of stops and the

[509] Fridell, Producing Bias-Free Policing: A Science-Based Approach (2017) Springer International Publishing, p. 90.
[510] See *Street Crisis Response Team Issue Brief,* Mental Health S.F. Implementation Working Group (Feb. 2021) S.F. Dept. of Health, p. 1 <sfdph.org/dph/files/IWG/SCRT_IWG_Issue_Brief_FINAL.pdf> [as of Dec. 2, 2021].
[511] For more information about analyses that compare stop data to residential population data, please see the discussion on pages 48-52 of this report and Appendix C.

proportion of residential population was for Black individuals; Black individuals were stopped 211.8 percent more frequently than expected. However, the largest disparity for underrepresentation was for individuals perceived to be Asian followed by individuals perceived to be Multiracial; Asian individuals were stopped 80.7 percent less frequently while Multiracial individuals were stopped 78.8 percent less frequently.

Results from examining only calls for service stops also differed from the analysis of all stops with the proportion of stops corresponding to White individuals, instead of Hispanic individuals, most closely matching estimates from residential population data (5.8% less frequently than expected). The disparity for Black individuals was 3.3 times as great as the disparity for White individuals. The disparity for Asian individuals was 0.21 times as great and for Multiracial individuals it was 0.22 times as great as the disparity for White individuals.[512]

Figure 62. Weighted Residential Population Comparison to Calls for Service Stops[513]



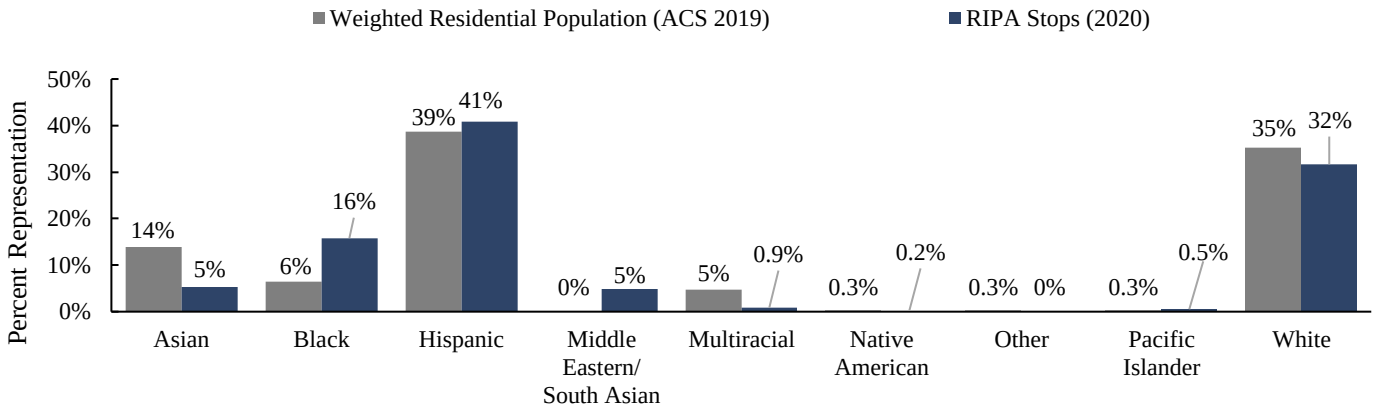
Results from the analysis of officer-initiated stops (94.1% of all stops in 2020) showed very similar patterns compared to results from the analysis of all stops. Overall, results from the analysis of officer initiated stops continued to show that the greatest disparity between the proportion of stops and the proportion of residential population was greatest for Multiracial and Black individuals. Multiracial individuals were stopped 81.8 percent less frequently than expected, while Black individuals were stopped 146.4 percent more frequently. The results also continued to show that the proportion of stops corresponding to Hispanic individuals most closely matched estimates from residential population data (5.4% more frequent than expected). Furthermore, the greatest disparities between stop data and residential population data estimates continued to be for Black and Multiracial individuals. The disparity for Black

[512] Please see Appendix D.1.2 for all disparity ratios and how the ratios are calculated.
[513] 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. This is why there is no residential population bar for this group in Figure 62. For more information about the ACS data used in this section, please see Appendix C.

individuals was 2.7 times as great as the disparity for White individuals. For Multiracial individuals, the disparity was 0.2 times as great as the disparity for White individuals.[514]

***Figure 63*. Weighted Residential Population Comparison to Officer Initiated Stops[515]**

The largest disparities that show overrepresentation in stops across types of stops are for



individuals perceived to be Black. Black individuals were stopped 211.8 percent more frequently than expected in response to a call for service and 146.4 percent more frequently in officer initiated stops. These preliminary analyses of calls for service data demonstrate stark disparities between who is stopped compared to residential population. And, these disparities exist regardless of whether the stops being examined were prompted by an officer or a community member. As we consider ways to address these disparities which suggest bias as a factor, dispatchers will be key in mitigating unlawful bias and diverting calls for service that do not require a police response.

C. Responding to Bias-Based Calls for Service[516]

"Becoming a public safety dispatcher means choosing dispatching not only as a career, but as a moral commitment to maintain public trust." - Commission on Peace Officer Standards and Training, see footnote 516

Dispatch is often the liaison between the public and the police; consequently, the policies and procedures surrounding dispatchers' work are critical to improving community relationships, especially when addressing bias by proxy. This year the Report reviews updated dispatcher trainings and policies from the Police Officer Standards and Training (POST) Commission, which sets the minimum guidelines and training for dispatchers. The Report also looks at developments in

[514] Please see Appendix Table D.1.3 for all disparity ratios and how the ratios are calculated.
[515] 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. This is why there is no residential population bar for this group in Figure 63. For more information about the ACS data used in this section, please see Appendix C.
[516] Cal. Comm. on Peace Officer Standards and Training, POST *Public Safety Dispatchers' Basic Course Training Specifications* (July 2011) p. 17 <https://post.ca.gov/Portals/0/Publications/Dispatcher_Basic_Course.pdf?ver=2019-07-12-131112-730> [as of Dec. 2, 2021].

technology that may help improve communications between dispatch and officers so they can live stream calls for service.

In addition to improving training for dispatchers and officers, the Board is also looking at ways to promote healing in communities affected by a bias-based incident and prevent future harm. This year the Board continues to explore restorative justice approaches to bias-based incidents that focus on accountability and education. Restorative justice "is a theory of justice that emphasizes repairing the harm caused by criminal behavior. It is best accomplished through cooperative processes that allow all willing stakeholders to meet, although other approaches are available when that is impossible. This can lead to transformation of people, relationships and communities."[517] Restorative justice is a training tool that law enforcement agencies in California have employed and found to be highly beneficial.

The Board is exploring several ways of implementing a restorative justice approach, including bias-response teams, or community-based teams that respond to a bias-based incident. In developing such approaches, it is imperative that communities continue to work together to develop creative alternatives to police responses.

1. Updates on Trainings, Policies, and Procedures for Dispatchers and LEAs

In reimagining public safety, it is important to explore how public safety is dispatched to a call for service. A Public Safety Dispatch Center is the central hub for aiding anyone who calls 911 for assistance with anything from a crime in progress to a medical emergency.[518] Dispatchers need the skills as well as tools to quickly assess a crisis and dispatch the appropriate first responders to the scene. In California, there are more than 400 Public Safety Dispatcher Centers, though they have struggled with adequate staffing for many years.[519] Presently there are only about 8,000 dispatchers, managers, and supervisors responsible for answering nearly 26 million calls for service with an additional 84,000 emergency text messages in 2020 alone.[520]

Given the important role dispatchers play in responding to calls, it is difficult to understand why there are no uniform policies and procedures to create standards for these centers. Some centers are completely independent while others work together. Most centers use computer-aided dispatch (CAD) systems that communicate the priority of the call, identify the status or

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[517] *Lesson 1: What Is Restorative Justice?* Center for Justice & Reconciliation: Prison Fellowship International <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/> [as of Dec. 2, 2021].

[518] See California Governor's Office of Emergency Services, *Public Safety Communications* <https://www.caloes.ca.gov/cal-oes-divisions/public-safety-communications> [as of Dec. 2, 2021].

[519] See generally California Governor's Office of Emergency Services, *CA 9-1-1 Emergency Communications Branch: State 9-1-1 Advisory Board Meeting Materials* (Feb. 17, 2021) <https://www.caloes.ca.gov/PublicSafetyCommunicationsSite/Documents/9-1-1AdvisoryBoardFeb2021.pdf> [as of Dec. 2, 2021]; see also California Governor's Office of Emergency Services, *CA 9-1-1 Emergency Communications Branch – CA 9-1-1 Strategic Plan 2021 – DRAFT* (Oct. 20, 2021) <https://www.caloes.ca.gov/individuals-families/ca-9-1-1-emergency-communications-branch> [as of Dec. 2, 2021].

[520] See generally California Governor's Office of Emergency Services, CA 9-1-1 Emergency Communications Branch: State 9-1-1 Advisory Board Meeting Materials, supra note 519; see also French, Calif. Governor Signs Bill Classifying Dispatchers as First Responders (Sept. 14, 2020) <https://www.ems1.com/communications-dispatch/articles/calif-governor-signs-bill-classifying-dispatchers-as-first-responders-3f997PZ11E2DYHVm/> [as of Dec. 2, 2021].

location of first responders in the field, and dispatch responder personnel.[521] Usually the call is prioritized based on the nature of the 911 call, with life-threatening calls taking the highest priority.

Individual agencies also dictate how call priorities are assigned and there are many variations. Some CAD agencies have a predetermined computer program that assigns priority based on the radio or Penal Code the dispatcher enters.[522] Depending on the agency's policies, some dispatchers may have the ability to override the priority based on the information solicited from the caller, while other agencies rely primarily on the computer program to prioritize the calls.[523] Some CAD systems have as few as four priorities, while others have many more priority codes. Another variation is the volume of calls – some dispatch centers receive only a few calls each hour, while others received hundreds.[524]

POST and the Dispatcher Advisory Council are responsible for establishing the minimum guidelines and training for the Public Safety Dispatcher Program.[525] By law, every public safety dispatcher must complete the Public Safety Dispatcher Basic Course – a 3-week course – within 12 months after being hired by an agency. Currently, as long as the dispatcher completes the course within the first year of employment, they may start dispatching calls despite not having completed probation or basic training.[526] With a shorter training program, dispatchers receive a majority of their training "on the job."

POST does not mandate bias training for dispatchers and it is not a part of the academy course.[527] Any anti-bias training is currently done at the agency itself. POST is presently in the process of updating their academy trainings, and the Board recommends to POST that they add a required course on bias to the basic training for dispatchers. Such a mandatory course would ensure that all dispatchers receive training on bias that is relevant to their position and would eliminate disparities in the foundational training dispatchers receive from their own agencies.

In the academy, dispatchers are trained on how to respond to "suspicious" person calls and to ask questions until they understand the situation. One such question they ask is "what makes that person suspicious?" Dispatchers are trained to continue to ask questions until they understand the situation. Once they understand the situation, dispatchers may be limited with respect to how to resolve the call, depending on the individual agency. For example, some agencies have a policy that they cannot refuse any call for service and will always send an

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[521] See Dept. of Homeland Security, *Computer Aided Dispatch Systems* (2011) <https://www.dhs.gov/sites/default/files/publications/CAD_TN_0911-508.pdf> [as of Dec. 2, 2021].
[522] See Warner et al., *Characterization of Call Prioritization Time in a Police Priority Dispatch System* (Aug. 10, 2014) Annals of Emergency Dispatch Response (AEDR) J., 2(2) <https://www.aedrjournal.org/characterization-of-call-prioritization-time-in-a-police-priority-dispatch-system> [as of Dec. 2, 2021].
[523] See *Ibid*.
[524] See *ibid*.
[525] See Cal. Code Regs., tit. 11, § 1018.
[526] See *id*.
[527] See Cal. Comm. on Peace Officer Stds. and Training, POST *Public Safety Dispatchers' Basic Course Training Specifications* (July 2011) <https://post.ca.gov/Portals/0/Publications/Dispatcher_Basic_Course.pdf?ver=2019-07-12-131112-730> [as of Dec. 2, 2021].

officer to the scene, while other agencies afford the dispatcher more discretion regarding when or how to dispatch a public safety professional.[528]

In Aurora, Colorado, Elijah McClain was killed during an interaction with the police that began when a man called 911 to report Elijah walking with a mask on. The caller reported to 911 that ". . . . when I passed by him, he puts his hands up and does all these kinds of signs. I don't know. He looks sketchy." When the police officer stopped Elijah, the officer told him "I have a right to stop you, because you're being suspicious." Elijah was doing nothing wrong, but police quickly escalated the situation and Elijah was placed in a chokehold and then injected with ketamine, a powerful sedative. The 23 year old Black man went into cardiac arrest on the way to the hospital and died a few days later. Absent that police contact, he would be alive today.[529]

Sometimes suspicious calls are the result of bias, and both officers and dispatchers face significant challenges when responding to such a call for service. One way to mitigate bias by proxy is allowing for better communication between the dispatcher and officers in the field, since "officers who know ahead of time that the complaint or allegation is the result of bias are best-positioned to respond properly."[530] There are new tools available for agencies that allow them to livestream 911 calls directly to first responders in the field.[531] This gives officers and first responders significantly more details about the call, including the tone and demeanor of the 911 caller.[532] Officers are able to hear the questions and responses the dispatchers receive via radio and can decide to dismiss a call themselves.

"Caller expectations, PSAP trainings and protocols that overly emphasize customer service, and risk aversion may encourage call-takers to request and dispatchers to send police for most calls, however innocuous the situation may seem. But improved call-taker training and clearer protocols for handling potentially problematic calls—by, for example, encouraging callers to articulate their underlying suspicions—as well as public awareness campaigns to redefine expectations between callers and call-takers could help preserve both scarce police resources and community well-being." - Rebecca Neusteter Vera Institute of Justice, see footnote 528

[528] See Neusteter et al., The 911 Call Processing System: A Review of the Literature as it Relates to Policing, *supra* note 507.
[529] *Elijah McClain Killing 911 Call & Police Body Cam Footage Transcript* (Aug. 25, 2019) <https://www.rev.com/blog/transcripts/elijah-mcclain-killing-911-call-police-body-cam-footage-transcript> [as of Dec. 2, 2021]; see also Tompkins, *Here's What You Need to Know About Elijah McClain's Death* (Oct. 19, 2021) The New York Times <https://www.nytimes.com/article/who-was-elijah-mcclain.html> [as of Dec. 2, 2021].
[530] See The Leadership Conf. on Civil and Human Rights, *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing* (2019) <https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf> [as of Dec. 2, 2021].
[531] See Live 911, *How it Works* (2021) <https://live911.com/how-it-works.html> [as of Dec. 2, 2021].
[532] See *id.*

New technology may assist in dealing with bias by proxy, but there are other important circumstances – such as responding to mental health crises – to which dispatchers need to respond. Some of the response is learned in training, but some is set by policy. Policies related to dispatch can be developed in one of two ways: (1) the head of the law enforcement agency can regulate when or how calls are handled, or (2) POST has the ability to create regulations as well as mandate certain trainings by a vote of the POST Commission.

The ACLU sent the Board a letter expressing concerns that POST, as a law enforcement agency, may not have the capacity or the expertise to design dispatcher trainings related to non-law enforcement responses to – for example – a mental health crisis.[533] The Board is interested in learning whether alternative sources exist that are better suited to provide guidance and training on these issues. In order to better understand the quality of trainings POST produces regarding dispatch, the Board would also like to further explore not only the basic training course produced by POST, but also any regulations and procedures related to dispatch.

2. Bias Response Teams: Implementing Restorative Justice Approach to Bias-Based Calls for Services

A bias-based call for service causes a ripple effect – not only does it harm the direct victim, but it also deeply affects entire communities. For example, the Central Park incident involving Amy Cooper[534] brought up deep historical and present harms for many people. Sadly, walking while Black, being in the park while Black, and driving while Black are commonly used terms that reflect the broad experience of Black individuals who often cannot walk down the street without being stopped and harassed regardless of what they are doing at the time.[535] Officers and law enforcement agencies must have an intimate understanding of both the present and historical harms Black, Indigenous, and people of color face, both in their interactions with law enforcement and more broadly with the compounding effects of structural racism.[536] If an officer responds to a "suspicious circumstance" call motivated by bias, the officers become a proxy or a representation of that bias when they initiate a stop. Thus, a bias-based call for service can cause fear about police interactions and affect the public's view of the legitimacy of the entire department.[537]

A restorative justice approach to bias-based incidents works to address this ripple effect and goes beyond punishing the offender; instead, it focuses on the harm caused, creates a system of accountability, and takes steps to prevent future harm.[538] This approach "can be applied both reactively in response to conflict and/or crime, and proactively to strengthen community

[533] See ACLU Comment Letter to RIPA Board (Aug. 24, 2021), Appendix G.
[534] Amy Cooper made a false police report against Christian Cooper, a Black man who was birdwatching in Central Park. See Nir, *How 2 Lives Collided in Central Park, Rattling the Nation* (June 2020) The New York Times <https://www.nytimes.com/2020/06/14/nyregion/central-park-amy-cooper-christian-racism.html> [as of Dec. 2, 2021].
[535] See *id*.
[536] See *Proactive Policing: Effects on Crime and Communities* (2018) Nat. Academies of Sciences, Engineering, and Medicine <https://doi.org/10.17226/24928> [as of Dec. 2, 2021].
[537] See *id*.
[538] See *What is Restorative Justice?*, Restorative Justice Initiative <https://restorativejustice.nyc/what-is-restorative-justice/> [as of Dec. 2, 2021].

by fostering communication and empathy."[539] A community-based response to a bias-biased call for service that focuses on responding to the harm caused by the biased caller promotes healing and justice within affected communities.

In order to address these types of issues, numerous organizations and colleges have created bias response teams to address acts of hate. One such organization is the New York Commission on Human Rights, which launched its Bias Response Team in 2016.[540] The Commission is staffed by "legal, community relations, policy, communications, and human resources" personnel from "across the City's rich and diverse communities and beyond, representing many languages, cultures, and backgrounds."[541] The Bias Response Team works to "support and stabilize communities after incidents of bias have occurred" and respond directly to needs identified by the harmed communities.[542]

The Bias Response Team will do everything from distributing literature to local businesses about protections under human rights laws, partnering with schools and youth to provide people with the tools to recognize and stand up to bias, canvassing neighborhoods with informational literature, and educating impacted community members about their rights, as well as providing direct support to affected victims.[543] In 2019, they responded to 235 alleged incidents of bias.[544] They work independently from the police department and are contacted directly when an incident occurs (though they may refer incidents to law enforcement if there is a suspected hate crime).[545] Participation in response to team outreach efforts is voluntary for parties. Further, the function of the Bias Response Team – in addition to other restorative justice approaches – is not to punish, but to educate, promote healing within communities, and prevent any future harm.[546]

Another approach to bias-based calls for service and stops by police officers is proactively causing friction.[547] This means taking a moment to pause and think prior to making a stop or a call to 911.[548] If a dispatcher or officer follows the questions in this flow chart or simply asks the caller to slow down to think about what makes someone suspicious, it may interrupt the caller's bias and instead ask them to point to objective signs that criminal activity may be taking place.[549]

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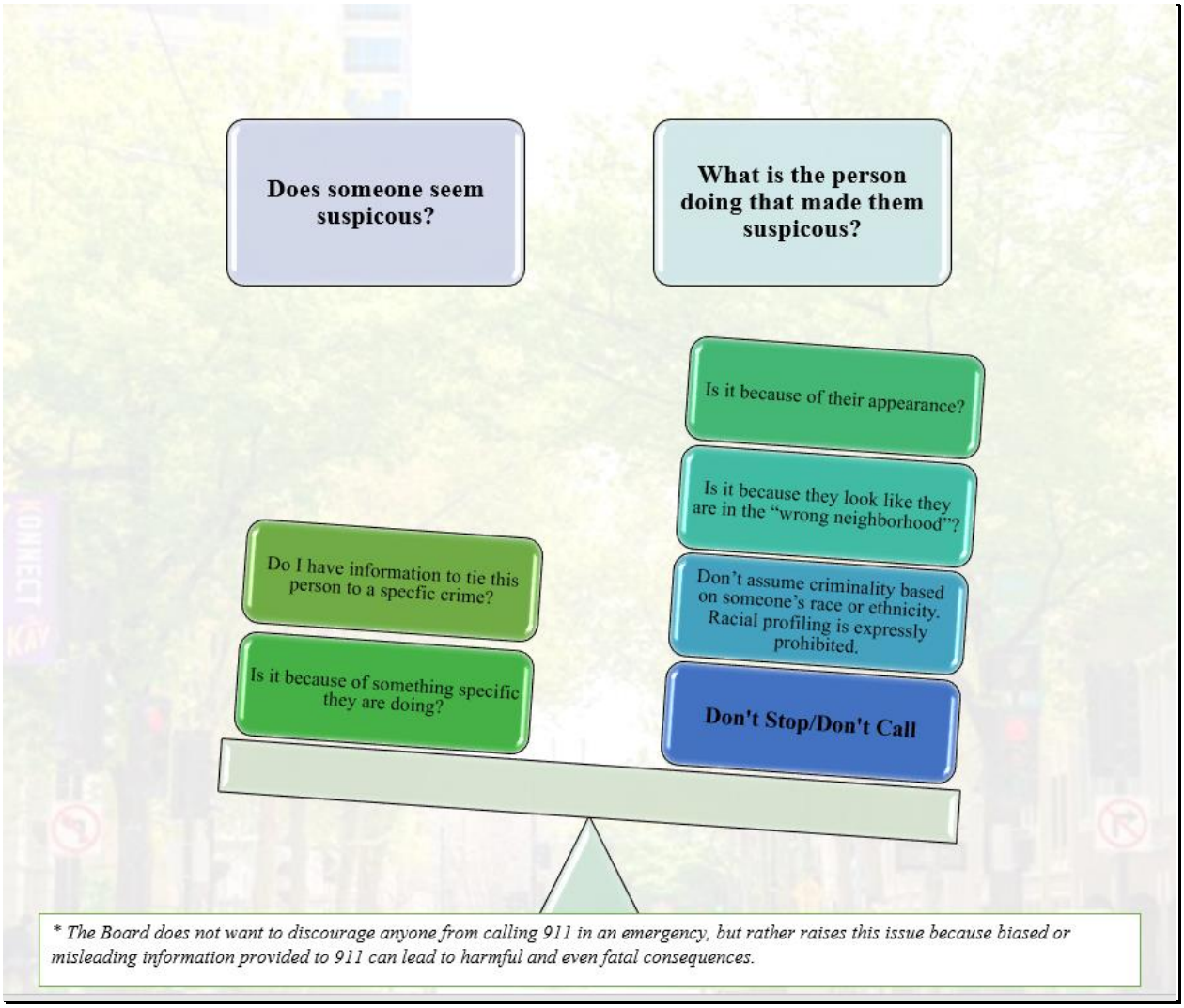
[539] *Id*.
[540] *Bias Response Team*, New York Com. on Human Rights <https://www1.nyc.gov/site/cchr/community/bias-response.page> [as of Dec. 2, 2021].
[541] *Id*.
[542] *Id*.
[543] Ibid.
[544] Ibid.
[545] Ibid.
[546] Ibid.
[547] See Eberhardt, *How racial bias works -- and how to disrupt it* (June 2020) TED <https://www.ted.com/talks/jennifer_l_eberhardt_how_racial_bias_works_and_how_to_disrupt_it/transcript?language=en.> [as of Dec. 2, 2021].
[548] Ibid.
[549] *Ibid*.



3. Alternatives to Police Responses and Diverting Calls for Service

Another important step in diverting calls for service is establishing protocols for circumstances when officers are not immediately necessary. As an example of this, due to high call volume and limited resources, the Tucson (AZ) Police Department and Camden (NJ) Police Department both began diverting calls for service to non-law enforcement personnel out of necessity in 2018.[550]

In response to large call volumes, the Camden Police Department also implemented a protocol where dispatchers instruct callers under certain circumstances to fill out a report at the station

[550] See Neusteter, The 911 Call Processing System: A Review of the Literature as it Relates to Policing, *supra* note 507, at pp. 31-32.

or online rather than dispatching an officer. Calls that are diverted include vehicle accidents without injury, non-drivable cars, theft reports, or an unverified burglary alarm.[551]

Similarly, the Tucson Police Department developed several initiatives to expand alternatives to police response, including: (1) using nonsworn personnel to handle issues such as code enforcement, traffic collisions with no injuries, or shoplifting; (2) encouraging the community to report alleged low-level crimes or minor collisions through the agency website; and (3) eliminating police responses to certain calls for service and transferring them to a more appropriate agency, including issues like a barking dog, stalled cars, lost electronic devices, theft related crimes, and status offenses such as a runway child or underage drinking.[552]

As we continue to rethink public safety, communities should also have easily accessible information on alternatives to police services. For example, some calls for service are more appropriate for a community first response, such as someone experiencing a medical emergency like a mental health crisis. In June 2020, an online database called "Don't Call the Police: Community-Based Alternatives to Police in your City" launched; it contains vetted local resources and alternatives to police responses, categorized by city.[553] The resources address everything from "housing, mental health, domestic violence & sexual assault, LBGTQ+, youth, elders, crime and substance use."[554] Presently the database contains resources for over 80 cities throughout the nation and 13 cities and counties in the state of California.[555] As municipalities continue to develop alternatives to armed police responses by funding community-based care, a key component will be ensuring the public knows about and can access these community-based lifesaving resources.

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[551] Ibid.
[552] *Ibid*.
[553] See *Alternatives to Calling the Police in a Crisis*, Mental Health in America <https://screening.mhanational.org/content/alternatives-calling-police-crisis/> [as of Dec. 2, 2021]; see also Don't Call the Police, *Community-based alternatives to police in your city* <https://dontcallthepolice.com/about/> [as of Dec. 2, 2021].
[554] See *Alternatives to Calling the Police in a Crisis, Mental Health in America*, supra note 553; see also *Don't Call the Police, Community-based alternatives to police in your city*, supra note 553.
[555] Those 13 cities and counties include: Livermore, Los Angeles, Morongo Basin, Oakland, Orange County, Redding, Riverside, Sacramento, San Diego, S.F., San Jose, Santa Barbra, and Sonoma County. See *Alternatives to Calling the Police in a Crisis*, Mental Health in America, *supra* note 553; see also Don't Call the Police, *Community-based alternatives to police in your city, supra* note 553.)

D. Responding to a Mental Health Crisis[556]

> *"Because the police are not set up to provide the necessary quality of service, police response can create negative outcomes for people with disabilities and those with chronic or acute behavioral health conditions. Often, these individuals are arrested and booked into jail, which can exacerbate their medical needs."*
> *– Center for American Progress,* see footnote 505

The Board has been evaluating the diversion of calls for service involving someone in a mental health crisis from police to healthcare providers. A mental health episode is not a crime and should not have an armed law enforcement response. Yet nearly 1 in 4 individuals killed by police have been diagnosed with a mental health disability, 2 in 5 people who are incarcerated have a history of a mental health disability, and 70 percent of youth in the court system have been identified as having a mental health disability.[557] A recent study also found "police are more likely to shoot and kill Black men who exhibit mental health conditions than White men with similar behaviors."[558] Given these powerful statistics, policymakers should rethink, reimagine, and redefine what calls for service look like in our communities in order to reduce the criminalization of individuals who have a mental health disability.

> *I speak as a brother to Jazmyne Ha Eng, and as an advocate for compassion and community restoration. Jazmyne was killed on January 4, 2012 in a tragic encounter during a call for service. While experiencing mental crisis, four Los Angeles Sheriff's Deputies responded to a non-emergency call involving my sister Jazmyne. This took place in the lobby of a mental health facility where Jazmyne was a known patient. Negligence and choices made outside of protocol resulted in her tragic and preventable death. This transpired in under 12 minutes from when the call was placed. The actual physical interaction between Jazmyne and the four deputies took place in under two minutes. I believe that in order for us to move our communities forward, we must advance dignity for individuals impacted by police violence, we must center them and their families in policy formation*
>
> *- Vinny Eng, Community Organizer and Mental Health Advocate* [559]

Responding criminally to a mental health crisis only further exacerbates the stigma around receiving treatment. Nearly 1 in 5 adults has a mental health disability, yet nearly 60 percent of those with a mental health disability are not receiving treatment.[560] Destigmatizing mental health care is a racial justice issue; Black and Hispanic/Latine(x) individuals use mental health

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[556] See Irwin and Pearl, The Community Responder Model: How Cities Can Send the Right Responder to Every 911 Call, *supra* note 505.
[557] See *Mental Illness and the Criminal Justice System*, Nat. Alliance on Mental Illness (NAMI), <https://www.nami.org/NAMI/media/NAMI-Media/Infographics/NAMI_CriminalJusticeSystem-v5.pdf> [as of Dec. 2, 2021].
[558] See Thomas, et al., Black and unarmed: statistical interaction between age, perceived mental illness, and geographic region among males fatally shot by police using case-only design (Jan. 2021) Annals of Epidemiology, vol. 53, pp. 42-49 <https://doi.org/10.1016/j.annepidem.2020.08.014> [as of Dec. 2, 2021].
[559] Eng, *Speakers for the Mental Health and Law Enforcement-Community Interaction Panel* (June 4, 2020) RIPA Calls for Service Subcommittee <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/speaker-materials-060420.pdf?> [as of Dec. 2, 2021].
[560] See Nat. Alliance on Mental Illness (NAMI), *Mental Health Facts in America* <https://www.nami.org/nami/media/nami-media/infographics/generalmhfacts.pdf> [as of Dec. 2, 2021].

services at about half the rate of White individuals and Asian Americans at about one-third the rate.[561] "Marginalized, oppressed, and disenfranchised people have unique concerns, trauma, stress, obstacles, and challenges because of historical experiences, cultural differences, and social disparities."[562] Law enforcement and municipal and community leaders must prioritize having a non-law enforcement response to a mental health crisis and also appropriately funding community-based care.

1. Fundamental Principles of Community-Based Crisis Response

One aspect of improving public safety and destigmatizing mental health care is funding community-based treatment and developing comprehensive crisis response systems for those experiencing a medical emergency. As cities strive to improve their crisis response systems to better protect everyone in their communities, the RIPA Board recommends that municipalities and communities keep certain fundamental principles in mind. The three common components of any effective crisis care model that provides a continuum of care include: (1) a regional crisis call center, (2) a crisis mobile response team, and (3) crisis receiving and stabilization facilities "providing shorter term care in a home-like, non-hospital environment."[563]

Further, when establishing crisis response models, communities should consider certain guiding principles. This list is by no means exhaustive and should be seen as a starting point for communities, leadership, and law enforcement to have a discussion about how they can improve a community-first response to calls for services.

- **Care First Response / Least Criminalizing Response:** Communities should prioritize responses by trained mental health professionals and center the well-being of people whose mental health needs are not being met.[564] Agencies should also emphasize a preference for relying upon a community-based crisis response when they receive calls involving a person in mental health crisis or with a mental health disability.[565]
- **Anti-Bias Training:** All dispatchers, responders, and healthcare workers should consider implementing extensive training on explicit and implicit bias. This could include ongoing training on structural racism and bias and "the unique strengths and needs of Black,

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[561] Ibid.

[562] See MindSpring: Mental Health Alliance, *Minority Mental Health Month* (July 2021) <https://mindspringhealth.org/documents/news/61921_July_is_National_Minority_Men_0F6107ADC76F0.pdf> [as of Dec. 2, 2021].

[563] See Substance Abuse and Mental Health Services Admin., *Nat. Guidelines for Behavioral Crisis Care: Best Practices Toolkit* (2020) p. 12 <https://www.samhsa.gov/sites/default/files/national-guidelines-for-behavioral-health-crisis-care-02242020.pdf> [as of Dec. 2, 2021].

[564] See The Leadership Conf. on Civil and Human Rights, New Era of Public Safety: An Advocacy Toolkit for Fair, Safe, and Effective Community Policing, *supra* note 530.

[565] *Ibid*.; see also Lindsay-Poland, *A local victory in California's East Bay: Care First, Jails Last,* American Friends Service Committee (June 22, 2021) <https://www.afsc.org/blogs/news-and-commentary/local-victory-californias-east-bay-care-first-jails-last> [as of Dec. 2, 2021].

Indigenous, and People of Color (BIPOC) youth and families, and how those intersect with behavioral health crises."[566]

- **Trauma-Informed Care:** When developing a response team, the training for team members (e.g. dispatchers, first responders) should employ trauma-informed care strategies.[567] This is an approach to mental health care that requires "sensitivity to the prevalence and effects of trauma in the lives of people accessing services."[568] This type of training can equip responders with the understanding that the effects of "poverty, class, racism, social isolation, past trauma, sex-based discrimination, and other social inequalities affect people's vulnerability to and capacity" for getting treatment.[569]
- **Peer Intervention:** Peers (for example, those who have experienced mental health crises themselves or survived a suicide) can be a crucial part of crisis response teams. The use of peers as a member of the crisis team "supports engagement efforts through the unique power of bonding over common experiences while adding the benefits of the peer modeling that recovery is possible."[570]
- **Harm Reduction:** This principle aims to reduce the sometimes harmful effects of untreated mental health disabilities by prioritizing the autonomy of an individual to choose a treatment plan.[571] Providing non-judgmental, non-coercive, compassionate care that seeks to reduce harms associated with those who have an untreated mental health disability or substance abuse disorder is an important principle for communities to keep in mind. Communities must be willing and open to meet the person "where they are" and work to minimize the harmful effects rather than simply ignoring or condemning them.[572]
- **Voluntariness:** Crisis response systems should consider voluntariness as a cornerstone to any crisis response model.[573] This includes using clear communication to the individual in crisis regarding treatment options available; allowing the person time to understand those options and space for them to express their treatment preferences; engaging the family, where appropriate, to educate about ways to provide support to

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[566] Hoover, et al., Improving the Child and Adolescent Crisis System: Shifting from a 9-1-1 to a 9-8-8 Paradigm in Substance Abuse and Mental Health Services Admin., Crisis Services Meeting Needs, Saving Lives (2020) p. 238 <https://store.samhsa.gov/sites/default/files/SAMHSA_Digital_Download/PEP20-08-01-001%20PDF.pdf> [as of Dec. 2, 2021].
[567] Substance Abuse and Mental Health Services Admin., *Nat. Guidelines for Behavioral Crisis Care: Best Practices Toolkit* (2020) p. 28 <https://www.samhsa.gov/sites/default/files/national-guidelines-for-behavioral-health-crisis-care-02242020.pdf> [as of Dec. 2, 2021].
[568] Isobel et al., *What is needed for Trauma Informed mental health services in Australia? Perspectives of clinicians and managers* (Feb. 2020) Internat. J. of Mental Health Nursing, 30(1), pp. 72-82 <doi:10.1111/inm.12811> [as of Dec. 2, 2021].
[569] Nat. Harm Reduction Coalition, *Principles of Harm Reduction* <https://harmreduction.org/about-us/principles-of-harm-reduction/> [as of Dec. 2, 2021].
[570] See Substance Abuse and Mental Health Services Admin., *Nat. Guidelines for Behavioral Crisis Care: Best Practices Toolkit*, *supra* note 567, at p. 28.
[571] Hawk et al., *Harm Reduction Principles for Healthcare Settings* (2017) Harm Reduction J. <https://doi.org/10.1186/s12954-017-0196-4> [as of Dec. 2, 2021].
[572] Nat. Harm Reduction Coalition, *Principles of Harm Reduction, supra* note 569.
[573] Substance Abuse and Mental Health Services Admin., *Nat. Guidelines for Behavioral Crisis Care: Best Practices Toolkit*, *supra* note 567, at 28.

their family member in crisis;[574] and aiding the person in crisis to participate in their treatment and the development of a safety/recovery plan.[575]

- **Violence Free:** In providing services to the community, law enforcement agencies and community responders should consider a commitment to a no-force-first approach to crisis care and implement policies that prioritize the use of engagement, collaboration, and de-escalation.[576]
- **Zero Suicide Aspiration:** Suicide prevention and awareness is a core component of health care services. Both crisis responders and law enforcement agencies may want to explore how to implement policies to prevent suicide, which can range from negotiation strategies to a no-force first approach. [577]
- **Least Restrictive Intervention:** When agencies are connecting a person in crisis with services, they should use the least restrictive intervention, such as using home-like crisis stabilization facilities over traditional hospitalization.[578]
- **Short-Term and Long-Term Connection to Care:** A robust crisis response system offers both immediate connection to community-based care to address the specific crisis in the short term and aids the person in developing strategies for long-term treatment.[579]
- **Housing First:** Communities should consider how to establish permanent housing for those experiencing homelessness without a requirement to accept mental health treatment. This approach recognizes that housing is one of the greatest barriers to individuals achieving remission,[580] which is a significant reduction in signs or symptoms related to a psychiatric disorder.[581] Access to housing should not be contingent on participating in services, sobriety, lack of criminal record, or completion of a treatment program.[582]

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[574] *Id*. at p. 20.
[575] *Id*. at p. 28.
[576] *Id*. at p. 33.
[577] *Id*. at pp. 29-30.
[578] *Id*. at p. 31.
[579] Pinals, et al., *Legal Issues in Crisis Services* in Substance Abuse and Mental Health Services Admin., *Crisis Services Meeting Needs, Saving Lives* (2020) p. 176 <https://store.samhsa.gov/sites/default/files/SAMHSA_Digital_Download/PEP20-08-01-001%20PDF.pdf> [as of Dec. 2, 2021].
[580] See U.S. Interagency Council on Homelessness, *Housing First Checklist* (Sept. 2016) <https://www.usich.gov/resources/uploads/asset_library/Housing_First_Checklist_FINAL.pdf> [as of Dec. 2, 2021].
[581] See Salzer et. al, *Nat. Estimates of Recovery-Remission From Serious Mental Illness* (2018) Psychiatric Services, 69(5), pp. 523-528 <https://doi.org/10.1176/appi.ps.201700401> [as of Dec. 2, 2021].
[582] See U.S. Interagency Council on Homelessness, *Housing First Checklist*, *supra* note 580.

". . . Homeless people being fined for holding out their hand. I have been charged with trespassing for digging in a restaurant garbage can. Just last week my companion was arrested for seeking help, they treated him so terrible out of fear I say to myself . . . to be included in society, why must it be so tough? I mean damn, a little humanity, are we asking too much? Hot soup, socks and a kind human touch. It would be cheaper to give us house keys, not handcuffs." - Douglas Levon Dawkins, Narrative Poem: House Keys, Not Handcuffs, April 7, 2021."[583]

These principles reflect a community-based approach to care that focuses on some of the main barriers to accessing treatment and achieving long term stability.[584] Policymakers and community leaders should embrace these principles when developing a comprehensive crisis response system and incorporate them into every aspect of a crisis intervention model –from mobile response teams to dispatch centers. These principles demonstrate the path forward for implementing a community-based crisis response.

2. Lessons Learned from Emerging Crisis Response Models

In its 2021 Report, the Board considered the history of crisis response in America and the difficulties in obtaining funding for community-based mental health care. The Board also began reviewing several developing crisis response models throughout California and the nation. This year, the Board continues to review response models, with a focus on emerging programs that have begun or completed pilot programs. As communities continue to explore these models, the Board would like to highlight implementation successes, ranging from saving money to even saving lives.

i. San Francisco: Street Crisis Response Teams (SCRT)

One of the pilot programs the Board highlighted in its 2021 report is the SCRT. The program began its planning phase in the summer of 2020 and launched its first crisis response team in November 2020.[585] By March 2021, the SCRT had 6 total teams and 24/7 citywide coverage, including care support staff who provide follow-up care and linkage to programs within 24 hours of the initial contact with SCRT.[586] This year, the Board invited the leadership of SCRT to

[583] Dawkins, *Narrative Poem: House Keys, Not Handcuffs* (Apr. 2021*)* The Street Spirit <https://thestreetspirit.org/2021/04/07/narrative-poem-house-keys-not-handcuffs/> [as of Dec. 2, 2021].
[584] See Substance Abuse and Mental Health Services Admin., *Nat. Guidelines for Behavioral Crisis Care: Best Practices Toolkit*, *supra* note 563, at p. 26.
[585] San Francisco Dept. of Public Health Com., *Street Crisis Response Team Presentation to Health Commission* (Mar. 16, 2021) <https://sf.gov/sites/default/files/2021-03/SCRT%20Presentation%20to%20Health%20Commission%203.16.21%20%282%29.pdf> [as of Dec. 2, 2021].
[586] *Id*.

give a presentation on their program development and lessons learned in implementing and creating a community-based crisis response.

After a review of the 911 dispatch data, the SCRT teams identified the highest-need regions in the city based on volume of call and call type. The program launched with a focus on calls for service regarding a "mentally disturbed person" where no weapon or violence is involved.[587] The teams plan to expand the types of calls they respond to as the program grows and develops.[588]

> *"Addressing racial equity and reducing institutional racism that is often reflected by overrepresentation of incarcerated Black/African Americans is a key object of the SCRT. The program will be closely monitoring its ability to reduce incarceration, emergency room use and involuntary detentions, especially through the lens of race and ethnicity."*
> – *STAR,* see footnote 591

Each SCRT team includes an emergency services vehicle staffed with a community paramedic, a behavioral health clinician, a peer support specialist, and a staff member dedicated to linking the person in crisis to follow-up care.[589] The teams primarily respond to calls through the 911 dispatch but also respond to people they encounter between calls who are in visible need of support or "special calls" from other agencies.[590] As part of their on-boarding and continuous learning, each team member receives extensive training on racial equity.

In their first two months of operation, the teams responded to almost 200 calls for service and successfully diverted 20 percent of these calls from law enforcement.[591] None of these calls during the first two months required law enforcement to respond and only seven calls resulted in emergency room admissions or Penal Code section 5150 psychiatric holds.[592]

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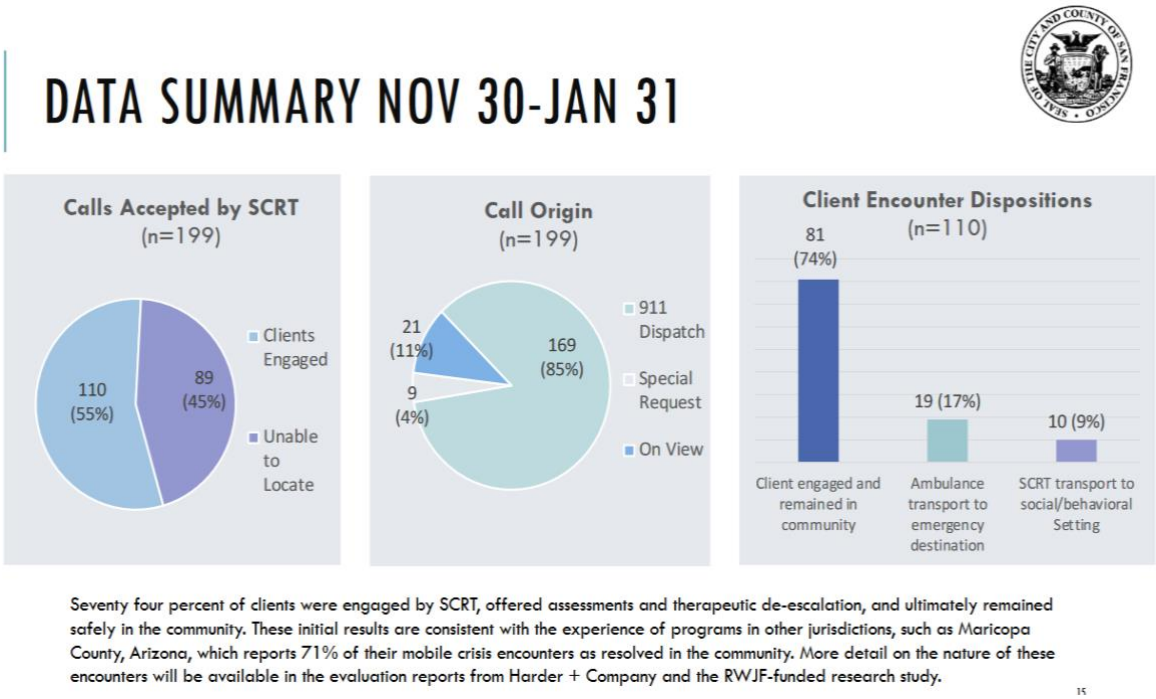
[587] Ibid.
[588] Ibid.
[589] Ibid.
[590] Ibid.
[591] *Street Crisis Response Team Issue Brief*, Mental Health S.F. Implementation Working Group, *supra* note 510.
[592] Ibid.



At the close of September of 2021, SCRT responded to 3,834 crisis calls with a remarkable average response time of 15 minutes.[593] A majority of these calls began with a 911 call for service (83%), while other contacts were either self-initiated (10%) or dispatched from a non-crisis community support line (4%).[594] The teams have also been successful at resolving over 60 percent of the crises on the scene with the person remaining safely in the community. Only a small percentage of clients were transported to a hospital (15%) or placed on a 5150 hold (7%).[595]

From their experience in developing their program, the SCRT has identified several lessons learned for policymakers to consider when creating their own programs:

> (1) Engagement with community stakeholders is key to providing a robust crisis response system that is responsive to the community's needs. The community should play an active role in the planning, implementation, and continuous evaluation of the effectiveness of these teams.[596]
>
> (2) Collaboration between the community, law enforcement, and the Department of Emergency Management is imperative to the success of this program. For example, the city reviewed 911 dispatch data, identified calls for service that should have a

[593] City and County of San Francisco, *Street Crisis Response Team (SCRT) Pilot – September 2021 Update* (Sept. 2021) <https://sf.gov/sites/default/files/2021-10/SCRT%20September%20Update%20%281%29.pdf> [as of Dec. 2, 2021].
[594] Ibid.
[595] Ibid.
[596] Almeida et al, *Panel Presentation on Responses to Calls for Service and Crisis Intervention* (Mar. 9, 2021) RIPA Calls for Service Subcommittee <https://www.youtube.com/watch?v=AChglCEXo3E> [as of Dec. 2, 2021].

community-based response, and worked with public safety dispatchers to determine appropri gate aid to a person in crisis.[597]

(3) Peer intervention specialists embedded in the crisis teams are an important aspect of this program. The SCRT teams have found that someone with lived experience can play a key role in deescalating a crisis.[598]

(4) Team members – from officers to peer intervention specialists – should receive extensive training on explicit and implicit bias.[599]

(5) Crises do not always happen during business hours (9 a.m. to 5 p.m. Monday through Friday), so citywide coverage 24/7 is vital to providing consistent care to the community.[600]

ii. Denver: Support Team Assistance Response (STAR)[601]

The STAR team is a community-based mobile crisis response team that launched its pilot program in June 2020. They work in collaboration with the Caring for Denver Foundation, Denver Police Department, Mental Health Center of Denver (MHCD), Denver Health Paramedic Division, Denver 911, and community supports and resources.

During the 6-month pilot program, the mobile teams responded to several types of calls including: "assist, intoxicated persons, suicidal series, welfare check, indecent exposure, trespass, and syringe disposal." The teams were staffed Monday through Friday from 10 a.m. to 6 p.m. and only responded to a specific geographic area; in the next phase of the project they hope to have 24/7 coverage throughout the city. The teams are dispatched in three different ways: (1) 911 call takers flagging calls or dispatching STAR (41.8%); (2) officers requesting STAR to respond (34.8%); and (3) STAR self-initiating a response or contacting someone in crisis in the field (23.4%).[602]

> *"In 748 calls handled by the STAR van during the pilot program, no calls required the assistance of the Denver Police Department and no individuals were arrested."*
> *– STAR Program Evaluation,* see footnote 601

In their first 6 months of service, the mobile teams responded to 748 calls, and none of those calls resulted in calls for police back-up or led to arrests.[603] The team attributes this success to being dispatched to the right calls and more importantly the right people on the STAR response

[597] *Ibid*.
[598] *Ibid*.
[599] *Ibid*.
[600] *Ibid*.
[601] *Star Pilot 6 Month Program Evaluation* (Jan. 8, 2021) p. 5 <https://wp-denverite.s3.amazonaws.com/wp-content/uploads/sites/4/2021/02/STAR_Pilot_6_Month_Evaluation_FINAL-REPORT.pdf> [as of Dec. 2, 2021].
[602] See Star Pilot 6 Month Program Evaluation, *supra* note 601, at p. 4.
[603] See *id*.

teams.[604] Responders know someone who is in crisis or has a mental health disability is not inherently threatening and as such are equipped to aid the person in resolving the crisis.[605] The program is also not constrained by time, in that they do not need to rush to the next call as officers do, so they can spend as much time as needed with the person to help them resolve the crisis.[606]

The STAR program also successfully diverted nearly 3 percent of all calls for service. Of those who were contacted by the STAR teams, "approximately 68% of people contacted were experiencing homelessness, and there were mental health concerns in 61% of cases."[607] The teams have responded to more than 1,800 calls for service since STAR's launch in June of 2020, and for 33 percent of those calls a person was transported to a community-based care provider.[608] Notably the average call time or response time to a scene was about 5 minutes faster than a typical police response for that type of call.[609]

By the close of 2021, the STAR program will be providing citywide coverage seven days a week. The program has been so successful that the city of Denver is investing 3.4 million dollars to expand the program throughout the city. Michael B. Hancock, the Mayor of Denver, remarked on the success of the program: "We know that alternative response works. It works at getting people the help they truly need, and it works at keeping our officers focused on preventing crime. It's a fundamental issue of equity in the pursuit of justice."[610]

The STAR program identified a number of lessons learned to provide guidance to other cities looking to implement similar programs. Their recommendations include the following:

> (1) It is important to identify what calls for service will be diverted to a community-based response and collaborate with community partners – including law enforcement – so there is effective communication as to who should be responding to each call.[611]
>
> (2) Mobile teams should ensure their vans are wheelchair-accessible and may need resources on hand such as cleaning products, food, clothing, and blankets to provide to individuals they encounter.[612]

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[604] See City of Denver, *STAR Community Advisory Committee Meeting* (Oct. 2021) <https://www.denvergov.org/Government/Agencies-Departments-Offices/Public-Health-Environment/Community-Behavioral-Health/Behavioral-Health-Strategies/Support-Team-Assisted-Response-STAR-Program> [as of Dec. 2, 2021].
[605] *Ibid.*
[606] *Ibid.*
[607] See Hauck, *Denver successfully sent mental health professionals not police to hundreds of calls* (Feb. 6, 2021) USA Today <https://www.usatoday.com/story/news/nation/2021/02/06/denver-sent-mental-health-help-not-police-hundreds-calls/4421364001/> [as of Dec. 2, 2021].
[608] See McRae, *STAR Program In Denver Expands to Respond to Calls Seven Days A Week* (Aug. 31, 2021) CBS Denver <https://denver.cbslocal.com/2021/08/31/star-program-mental-health-denver-police/> [as of Dec. 2, 2021]; see also City of Denver, *STAR Community Advisory Committee Meeting, supra* note 604.
[609] See McRae, STAR Program In Denver Expands to Respond to Calls Seven Days A Week, *supra* note 608.
[610] *Ibid.*
[611] See Star Pilot 6 Month Program Evaluation, *supra* note 601.
[612] See *id.*

(3) In developing the program, STAR teams consulted a diverse community advisory committee dedicated to ensuring the program is engaging the community and embracing its core values, reviewing outcome data, and providing feedback from the community on the program.[613]

iii. Sacramento and Oakland: Mental Health First (MH First)

MH First is comprised of mobile crisis response teams that are independent from the police department and traditional 911 dispatch centers. The nonprofit launched its pilot program in Sacramento, California in January 2020 and has now expanded its operations to Oakland, California. The teams respond to "mental health crises including, but not limited to, psychiatric emergencies, substance use disorder support, and domestic violence situations that require victim extraction."[614] The purpose is to provide peer-based support – through de-escalation assistance –to help decriminalize and end the stigma against those in a mental health crisis.

The teams can be contacted directly through a crisis line and will respond to the person's location if needed. MH First teams consist of approximately 30 volunteers who are health experts, doctors, EMTs, nurses, and safety liaisons.[615] MH First in Sacramento currently operates from 7 pm to 7 am on Friday, Saturday, and Sunday. Since its launch in Sacramento, it has responded to an average of 30 to 40 calls per month.[616] With additional funding and support, the program hopes to expand its operations to be available 24/7.

MH First teams not only respond to crises but also conduct proactive street outreach to promote harm reduction and build community relationships with those who are at risk. MH First is a bridge to a larger community of care and works with other community-based organizations to provide support to the person in crisis. The ultimate goal is to aid the person in crisis to participate in their treatment and the development of a safety/recovery plan.[617] MH First is entirely voluntary, violence free, and provides trauma-informed care to its participants.

There are several lessons learned from the implementation of MH First program that policymakers and communities may also wish to consider.

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[613] See Denver Community and Behavioral Health, *Support Team Assisted Response (STAR) Program: The STAR Community Advisory Committee* (2020) <https://www.denvergov.org/Government/Agencies-Departments-Offices/Public-Health-Environment/Community-Behavioral-Health/Behavioral-Health-Strategies/Support-Team-Assisted-Response-STAR-Program> [as of Dec. 2, 2021].
[614] Anti-Police Terror Project, *MH First Sacramento* <https://www.antipoliceterrorproject.org/mh-first> [as of Dec. 2, 2021].
[615] See Nonko, *A Volunteer-Run Program Could Be Model for Mental Health Response Without Police Intervention* (Oct. 1, 2020) Next City <https://nextcity.org/daily/entry/volunteer-run-program-model-mental-health-response-police-intervention> [as of Dec. 2, 2021].
[616] See Buxbaum, *California Initiatives Moves Away from Policing Mental Health Crises* (July 23, 2020) ShadowProof <https://shadowproof.com/2020/07/23/california-initiative-moves-away-from-relying-on-police-to-address-mental-health-crises/> [as of Dec. 2, 2021].
[617] See Ross, *The Abolitionist Project: Building Alternatives to Policing* (Nov. 4, 2020) <https://www.essence.com/essence-policylink/the-abolitionist-project-building-alternatives-to-policing/> [as of Dec. 2, 2021].

(1) One of the key takeaways from the launch of the MH First is the importance of shifting funding from law enforcement to community-based care providers.[618]

(2) City governments and policymakers must be willing to work in partnership with the community they serve and listen to their needs. Leadership must understand a robust crisis response system means properly funding social services so they can provide the care so greatly needed to community members.[619]

iv. Los Angeles: Community Alternatives to 911 or CAT-911

CAT-911 is another entirely community-based crisis response model and alternative to calling emergency dispatch services. CAT-911 was established over three years ago and consists of a network of 15 teams spread throughout Southern California, from the county of Los Angeles to the cities of Riverside and Long Beach.[620] The teams respond to a variety of community needs including conflict resolution between individuals or groups in neighborhoods, police violence, domestic violence, sexual violence, mental health crises, and acute first aid needs when either paramedics are not responding or there is a concern about police involvement.[621] CAT-911 is able to address these issues through the action teams, but it also has several committees dedicated to organizing alternatives to police services. The committees focus on aspects such as creating a rapid response network to address immediate crises, developing community care infrastructure that can help prevent a crisis from occurring, establishing alternatives to police in K-12 schools and university settings, creating a local network to provide emergency first aid for drug overdoses or wound care, and mobilizing faith communities to support alternatives to 911.[622]

Both MH First and CAT-911 are founded on the principle of transformative justice. Transformative justice has similarities to restorative justice, but it goes further in that it (1) aims to transform the system that is the root cause of harm rather than focusing on a specific instance and (2) acknowledges this transformation cannot occur within the existing system and must be done outside of the state, i.e. that community-based solutions come from the community.[623] Transformative justice teaches us that true healing comes from the community itself and not from an outside actor.

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[618] See generally Anti-Police-Terror Project, *MH First Oakland* (2021) <https://www.antipoliceterrorproject.org/mh-first-oakland> [as of Dec. 2, 2021].
[619] See Buxbaum, California Initiatives Moves Away from Policing Mental Health Crises, *supra* note 616.
[620] Teams are currently located in North East Los Angeles, Riverside, Greater Long Beach/South Bay, East Los Angeles/Boyle Heights, Echo Park, West Los Angeles, San Fernando Valley, South Central Los Angeles, Downtown Los Angeles, San Gabriel Valley, Koreatown, and Orange County. See *Local Cat Teams*, CAT-911.org <https://cat-911.org/local-cat-teams/> [as of Dec. 2, 2021].
[621] See generally Community Alternatives to 911 <https://cat-911.org/> [as of Dec. 2, 2021].
[622] See *id.*
[623] See, e.g., *id*.; Center for Justice and Reconciliation, *Restorative justice and transformative justice: definitions and debates* (Mar. 2003) <http://restorativejustice.org/rj-library/restorative-justice-and-transformative-justice-definitions-and-debates/11558/#sthash.Axi3qAdT.dpbs> [as of Dec. 2, 2021].

There are several lessons learned from the implementation of CAT 911 that communities should also consider.

> *Marginalized communities have long relied on support practices at the very local level for sharing resources and skills. These practices are now often referred to as mutual aid, and historically range from indigenous lifeways to mutual support in enslaved communities, to the Black Panthers community support programs, to queer communities surviving the AIDS crisis, to pod mapping for chronically ill people.*
> *– Mutual Aid NYC,* see footnote 626

(1) Through numerous decentralized neighborhood action teams, the organizations are able to draw from a broad array of experiences as well as skills of different community members to provide a wide range of services to a large geographic region.[624]

(2) By creating various committees, the teams are not only able to respond to a person in acute crisis, but also can address broader issues such as building the necessary infrastructure to support the community-based care.[625]

(3) When supporting and uplifting the work of community-based crisis response, leaders should consider ways in which they can increase financial and other support to their local mutual aid programs.[626]

v. Community-Based Crisis Response Saves Lives and Money

Data shows that community response models to mental health crises can save lives and reduce use of force incidents. Since 2015, 1,400 people in the United States have been killed by police when responding to a person in crisis, and these troubling trends are seen in California as well.[627] In California, the Legislature has declared that "individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers."[628]

For example, in 2019 researchers reviewed data showing the San Diego Sheriff's Department and Police Department were more likely to search and use force against those perceived to have a mental health disability.[629] Further, more than one quarter of arrests of youths by San Diego Police involved a child with a mental health disability.[630] Over-incarceration and lack of

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[624] See Community Alternatives to 911, *supra* note 621; see also ACLU Comment Letter to RIPA Board (Aug. 24, 2021), Appendix G.
[625] See Community Alternatives to 911, *supra* note 621; see also ACLU Comment Letter to RIPA Board (Aug. 24, 2021), Appendix G.
[626] See *Mutual Aide NYC: About* (2021) <https://mutualaid.nyc/about/> [as of Dec. 2, 2021].
[627] See *Fatal Force: Police Shootings Database* (2021) The Washington Post <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> [as of Dec. 2, 2021].
[628] See Pen. Code, § 835, subd. (a).
[629] See Singyawe, *Evaluating Police in San Diego* (2019) Campaign Zero <https://policescorecard.org/sandiego> [as of Dec. 2, 2021]; see also ACLU Comment Letter to RIPA Board (Aug. 24, 2021), Appendix G.
[630] See Singyawe, *Evaluating Police in San Diego*, *supra* note 629; see also ACLU Comment Letter to RIPA Board (Aug. 24, 2021), Appendix G.

meaningful community-based treatment are thought to be contributing factors in San Diego having the highest reported number of suicides in its jail system through the state.[631] Advocacy organization Disability Rights California found:

> *"The County's mental health care system, both inside and outside of the jail, has long operated in a way that leads to the dangerous, costly, and counter-productive over-incarceration of people with mental health-related disabilities. This includes a historical failure to provide sufficient community-based mental health services and supports that help individuals with mental health needs to thrive and avoid entanglement with the criminal justice system and incarceration."*[632]

For individuals experiencing mental health crises, having unarmed community responders trained to provide a mental health response can reduce death, serious injury, and incarceration.[633]

By diverting non-violent calls for service involving a wide range of social issues – from mental health care to being unhoused – officers can focus their efforts on the most serious crimes. Community-based response programs have already been successful at diverting nearly 20 percent of all police calls for service, giving officers more time to investigate the most serious crimes.[634] Only 4 to 10 percent of calls for service involve a report of a violent crime.[635] In last year's report, the Board highlighted a study's findings that "every 10 additional organizations focusing on crime and community life in a city with 100,000 residents leads to a 9% reduction in the murder rate, a 6% reduction in the violent crime rate, and a 4% reduction in the property crime rate."[636]

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[631] Disability Rights Cal., *Suicides in San Diego County Jail: A System Failing People with Mental Illness* (Apr. 2018) <https://www.disabilityrightsca.org/system/files/file-attachments/SDsuicideReport.pdf> [as of Dec. 2, 2021].
[632] Ibid.
[633] See Gerety, *An Alternative to Police that Police Can Get Behind* (Dec. 28, 2020) The Atlantic <https://www.theatlantic.com/politics/archive/2020/12/cahoots-program-may-reduce-likelihood-of-police-violence/617477/> [as of Dec. 2, 2021].
[634] See, e.g., Crisis Assistance Helping Out On the Streets (CAHOOTS) White Bird Clinic, Media Guide 2020 <https://whitebirdclinic.org/wp-content/uploads/2020/06/CAHOOTS-Media-Guide-20200626.pdf> [as of Dec. 2, 2021]; *Street Crisis Response Team Issue Brief*, Mental Health S.F. Implementation Working Group, *supra* note 510.
[635] See, e.g., Asher and Horwitz, *How Do the Police Actually Spend Their Time?* (June 2020) New York Times <https://www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html> [as of Dec. 2, 2021]; Rubin and Poston, *LAPD responds to a million 911 calls a year but relatively few for violent crimes* (July 5, 2020) Los Angeles Times <https://www.latimes.com/california/story/2020-07-05/lapd-911-calls-reimagining-police> [as of Dec. 2, 2021].
[636] In reaching these conclusions, researchers reviewed crime rates and treads in 264 cities spanning a period of 20 years. See Sharkey et. al, *Community and the Crime Decline: The Causal Effect of Local Nonprofits on Violent Crime* (2017) American Sociological Review, 82(6), pp. 1214-1240 <doi:10.1177/0003122417736289> [as of Dec. 2, 2021].

Not only can community first responses to mental health crises save lives, but they can also save time and money. The Health Care Financial Management Association estimates that by providing comprehensive community-based crisis services, the U.S. could save as much as $4.6 billion annually.[637] Several communities have already seen significant cost savings by investing in their crisis response systems.

> *"Police themselves have been saying for years that they are asked to do too much. Why do we continue to ask them to respond to crisis calls that health professionals could address more safely and effectively?"*
> *– Beck, Reuland, and Pope, Vera Institute of Justice,* see footnote 639

Maricopa County Arizona has an established crisis response system that, by their calculations, in one year alone saved the county "$260 million in hospital spending, $37 million in emergency department spending, 45 years of emergency department psychiatric boarding hours, and 37 full-time equivalents (FTEs) of police officer time and salary."[638] Eugene, Oregon's community-based crisis response teams have been in place for over 30 years, and they serve as a model for a number of the pilot programs, including SCRT, and STAR. Not only do the crisis teams handle about 20 percent of the calls for service throughout the city, they also save the city about $8 million dollars annually on public safety and $14 million in emergency rooms costs.[639]

Law enforcement, policymakers, and communities have agreed for years that police should not be the first responders to someone experiencing a mental health crisis.[640] Yet, presently people who are in a mental health crisis are more likely to see the police than get medical attention.[641] With widespread agreement that armed peace officers should not be responding to these calls, it is the responsibility of policymakers and community leaders to fund the necessary infrastructure to provide compassionate stigma-free community-based care.

Robust crisis response systems benefit the entire community. The Board hopes that all stakeholders will continue to rally together to end these practices. Both community, municipal, and law enforcement leadership have the ability to end dangerous responses to mental health calls for service by (1) shifting calls related to mental health crises to community responders and (2) prioritizing and funding community-based care.

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[637] See Balfour, et al., Cops, Clinicians, or Both? Collaborative Approaches to Responding to Behavioral Health Emergencies in Substance Abuse and Mental Health Services Admin., Crisis Services Meeting Needs, Saving Lives, *supra* note 242, at p. 289.
[638] Ibid.
[639] See CAHOOTS White Bird Clinic, Media Guide 2020, *supra* note 634; Beck, et al., *Behavioral Health Alternatives: Shifting from Police to Community Responses* (Nov. 2020) Vera Inst. of Justice < https://www.vera.org/behavioral-health-crisis-alternatives> [as of Dec. 2, 2021].
[640] See Wiener, *Who Responds to Nonviolent Crises? New Urgency to Remove Police from the Equation* (July 2020) Capital Public Radio <https://www.capradio.org/articles/2020/07/02/who-responds-to-nonviolent-crises-new-urgency-to-remove-police-from-the-equation/> [as of Dec. 2, 2021].
[641] See Butler and Sheriff, *Innovative Solutions to Address the Mental Health Crisis: Shifting Away from Police as First Responders* (Nov. 2020) Brookings Inst. <https://www.brookings.edu/research/innovative-solutions-to-address-the-mental-health-crisis-shifting-away-from-police-as-first-responders/> [as of Dec. 2, 2021].

E. Vision for Future Reports

In the future, the Board will begin to review agency-specific policies and training surrounding dispatch procedures related to bias by proxy as well as mental health calls for service. The Board hopes to examine the different policies and protocols for responding to bias-based calls for service. The Board would like to examine the dispatcher trainings provided by POST and research evidence-based best practices for designing trainings related to mental health crises and bias-based calls. The Board will also continue to review best practices, measurements of effectiveness, and measurable impacts of community-based crisis response models. The Board would like to invite leaders from the community response teams to upcoming subcommittee or Board meetings to discuss both obstacles in implementation and successes or lessons learned.

CIVILIAN COMPLAINTS: POLICIES AND DATA ANALYSES

State law has required California law enforcement agencies to submit civilian complaint information to the Department for the past 40 years. In 2015, RIPA required law enforcement agencies to submit the total number of complaints alleging racial or identity profiling, along with the number of complaints with dispositions of "sustained," "exonerated," "not sustained," and "unfounded."[642] Furthermore, RIPA requires this data to be disaggregated and analyzed for inclusion in the Board's annual report. Included below is an overview and analysis of the civilian complaint data submitted to the DOJ, a review of the civilian complaint forms of Wave 3 and Wave 4 agencies that started reporting in 2021, and the Board's recommendations to standardize California law on civilian complaints to ensure a uniform and equitable system.

Because law enforcement agencies have discretion to implement their complaint processes and outreach differently,[643] comparisons across law enforcement agencies should be made with care, as disparities may be the result of a variety of factors. The Board has identified the following factors as important to consider in analyzing complaint data: 1) distinct definitions of "civilian complaint" and inconsistencies in how complaints are categorized; 2) different civilian complaint intake and investigation processes; 3) varying outreach and education to members of the public about an agency's complaint process; 4) variable accessibility for people with disabilities; and 5) the potential deterrent impact of language from Penal Code section 148.6 on complaint forms.[644]

A. Overview of Civilian Complaint Data

In 2020, 692 agencies employing peace officers in California collected and submitted civilian complaint data. The agencies reported 16,547 complaints across three categories: non-criminal, misdemeanor, and felony. The majority of complaints (15,826, or 95.6%) alleged non-criminal conduct; complaints alleging behavior constituting a misdemeanor offense accounted for 2.4 percent (404) of complaints, and allegations of behavior constituting a felony represented 1.9 percent (317) of complaints.

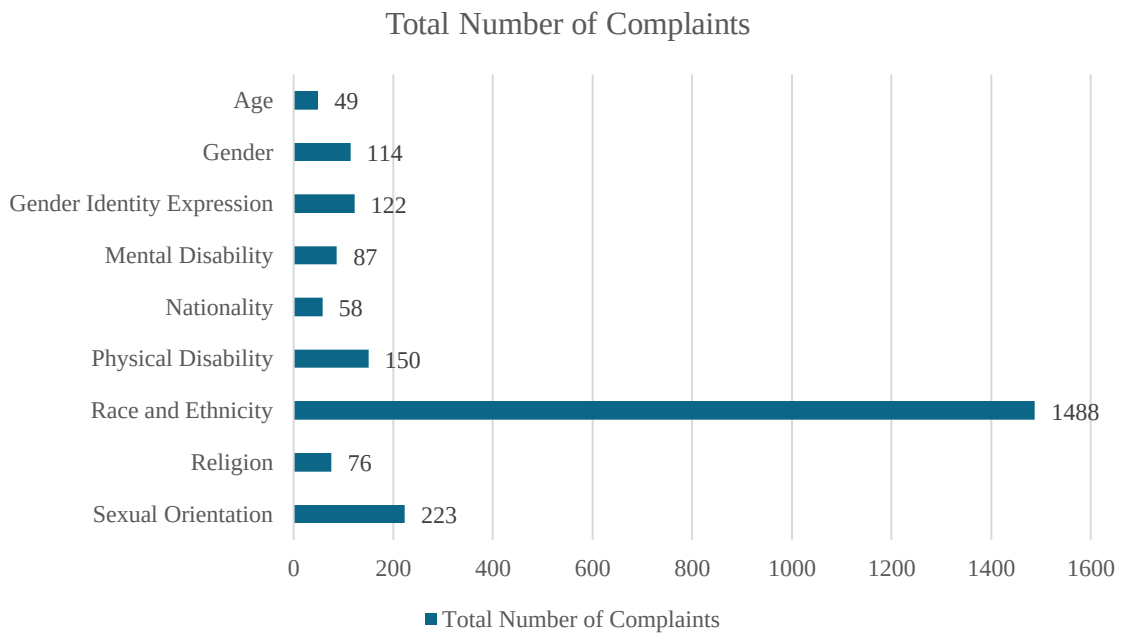
Law enforcement agencies are also required to report the number of complaints that contain an allegation of racial or identity profiling.[645] Specifically, agencies submit data to the Department detailing profiling complaints that fall into nine categories: age, gender, gender

[642] "Sustained" means the investigation disclosed sufficient evidence to prove the truth of the allegation in the complaint by a preponderance of the evidence. "Exonerated" means the investigation clearly established that the employee's actions that formed the basis of the complaint were not a violation of law or agency policy. "Not sustained" means the investigation failed to disclose sufficient evidence to clearly prove or disprove the complaint's allegation. "Unfounded" means the investigation clearly established that the allegation is not true. (Pen. Code, § 13012, subd. (a)(5)(B).)
[643] See Pen. Code, § 832.5.
[644] Racial and Identity Profiling Advisory Board, Annual Report (2020) pp. 64-75 <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2020.pdf> [as of Dec. 2, 2021].
[645] Pen. Code, § 13012, subd. (a)(5)(A).

identity/expression, mental disability, nationality, physical disability, race, religion, sexual orientation.

Agencies reported 2,033 complaints alleging an element, or elements, of racial or identity profiling, constituting 12.3 percent of total complaints reported in 2020. Those 2,033 complaints consisted of 2,367 identity profiling allegations as, in some cases, civilians alleged experiencing more than one type of profiling. Accordingly, Figure 64, below, displays the number of reported allegations in each of the nine identity groups.

Figure 64. Total allegation of Racial and Identity Profiling Reported in 2020



Analysis of Racial and Identity Civilian Complaint Data Submitted by RIPA Agencies

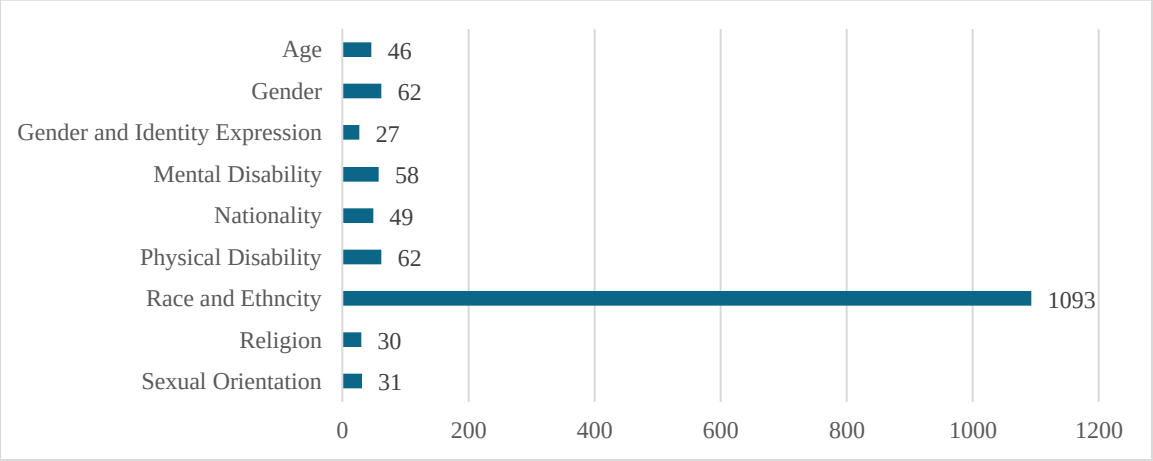
Of the 692 agencies employing peace officers in California that reported civilian complaint data in 2020, 444 agencies are subject to RIPA's stop data reporting requirements (hereafter RIPA agencies). These 444 RIPA agencies include municipal and district police departments, county sheriff's departments, the California Highway Patrol, and the law enforcement agencies of the University of California, California State Universities, California Community Colleges, as well as K-12 school district police departments.[646] The sections that follow examine only the data submitted by the 444 RIPA agencies that are currently or will soon begin collecting RIPA stop data.

[646] For more information on the law enforcement agencies that are required to report under RIPA, see Cal. Code Regs., tit. 11, § 999.225.

RIPA agencies reported a total of 10,648 civilian complaints in 2020. Most complaints alleged noncriminal conduct (10,043, or 94.3%), followed by complaints alleging misdemeanor offenses (378, or 3.5%); approximately two percent of complaints (227) alleged felony conduct.

Of the 10,648 complaints reported by RIPA reporting agencies, 1,259 (11.8%) complaints alleged an element, or elements, of racial or identity profiling. Those 1,259 complaints consisted of 1,458 identity profiling allegations, since in some cases civilians alleged experiencing more than one type of profiling. For example, a civilian may file a complaint alleging they experienced profiling based on both their age and mental disability. This example would count as a single complaint with two types of alleged identity profiling. Of the nine identity categories, complaints alleging race and ethnicity profiling were the most common and constituted 75 percent of complaints alleging profiling.[647] Conversely, gender and identity expression was the least common profiling category at 1.9 percent. Figure 65 displays the 1,259 allegations of racial or identity profiling reported by RIPA reporting agencies in 2020 broken down by the nine identity types.

Figure 65. Total Racial and Identity Profiling Complaints Reported by RIPA agencies



[647] The nine categories include: age, gender, gender identity/expression, mental disability, nationality, physical disability, race, religion, sexual orientation.

Dispositions of Civilian Complaints for RIPA Agencies

Of the 10,648 complaints reported by RIPA agencies, 9,878 (92.8%) reached a disposition in the 2020 calendar year. Of the 9,878 complaints that reached a disposition, 933 (9.4%) were sustained, 3,313 (33.5%) were exonerated, 996 (10.1%) were not sustained, and 4,636 (46.9%) were unfounded.[648]

Ninety RIPA agencies (19.5%) reported that they did not receive any complaints in the 2020 calendar year.[649] The remaining 354 (79.7%) RIPA agencies reported they received one or more civilian complaints; of the RIPA agencies that reported having at least one complaint in 2020, 147 (33.1 %) reported one or more civilian complaints alleging racial or identity profiling.

Those 147 agencies reported a total of 1,259 complaints alleging racial or identity profiling, 729 of which reached disposition in 2020. Of these 729 racial and identity profiling complaints which reached disposition, 14 (1.9%) were sustained, 132 (18.1%) were exonerated, 80 (11%) were not sustained, and 503 (69%) were determined to be unfounded. Figure 66 displays the distribution of disposition types within the 2020 data for (1) all complaints that reached disposition and (2) complaints of racial and identity profiling that reached disposition.[650]

DISPOSITION KEY TERMS

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.

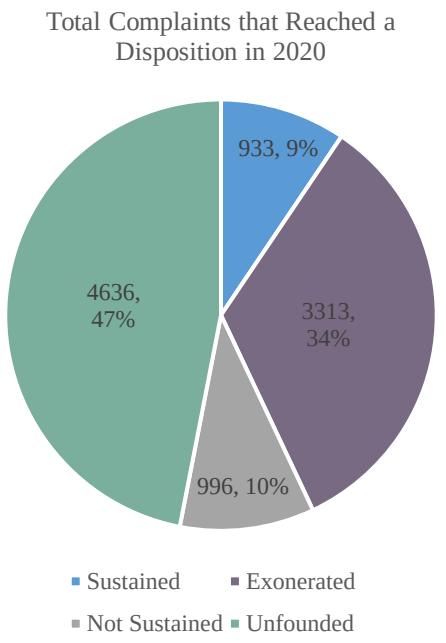
Pending: number of complaints reported in the current year that are currently awaiting disposition.

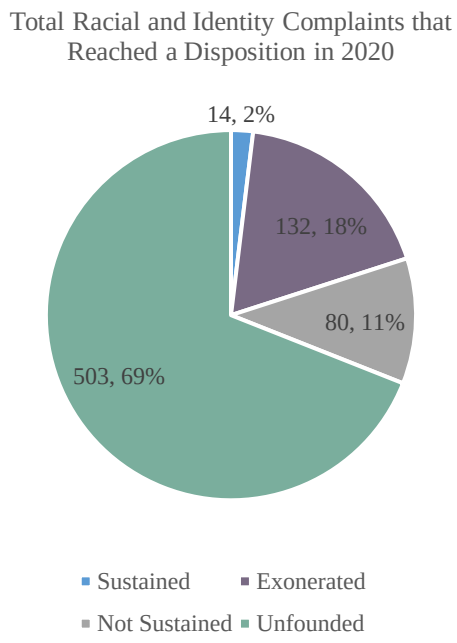
[648] It is important to note that not every complaint reaches a disposition during the same year it is initially reported. Accordingly, it is possible that some complaints that appeared in the 2020 disposition categories were first reported in 2019 or earlier.

[649] In 2019, 84 agencies reported zero complaints.

[650] For an agency-level breakdown of how many profiling complaints reached each disposition type in 2019, see Appendix Table H.1.

Figure 66. Disposition Distribution of 2020 Complaints





Agency-Level Data Snapshot: 2020 Civilian Complaints for Wave 1, 2, and Early Reporting Agencies

Table 1 displays civilian complaint totals broken down for agencies that collected stop data in 2020. 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 reported employing in 2020.[651]

[651] Sworn personnel totals are calculated from the information contained within the Law Enforcement Personnel file available at <https://openjustice.doj.ca.gov/data>. The Department of Justice collects the Law Enforcement Personnel data through a one-day survey taken on October 31st of each year.

Table 9. Total Sworn Personnel and Civilian Complaints for Wave 1, 2, and Early Reporting Agencies

Wave	Agency	Total Complaints Reported	Total Racial and Identity Complaints Reported	Total Sworn Personnel
1	California Highway Patrol	295	42	7,001
1	Los Angeles County Sheriff's Department	985	71	9,933
1	Los Angeles Police Department	2,097	389	9,863
1	Riverside County Sheriff's Department	33	0	1,779
1	San Bernardino County Sheriff's Department	118	71	1,985
1	San Diego County Sheriff's Department	204	44	2,582
1	San Diego Police Department	194	31	1,846
1	San Francisco Police Department	842	44	2,239
2	Fresno Police Department	146	12	788
2	Long Beach Police Department	157	7	809
2	Oakland Police Department	1414	112	740
2	Orange County Sheriff's Department	61	9	1,879
2	Sacramento County Sheriff's Department	191	4	1,333
2	Sacramento Police Department	238	14	684
2	San Jose Police Department	247	44	1,170
3	Bakersfield Police Department	44	5	403
4	Davis Police Department	7	3	56
4	Los Angeles Schools Police Department	7	0	-

Cross-Year Comparisons

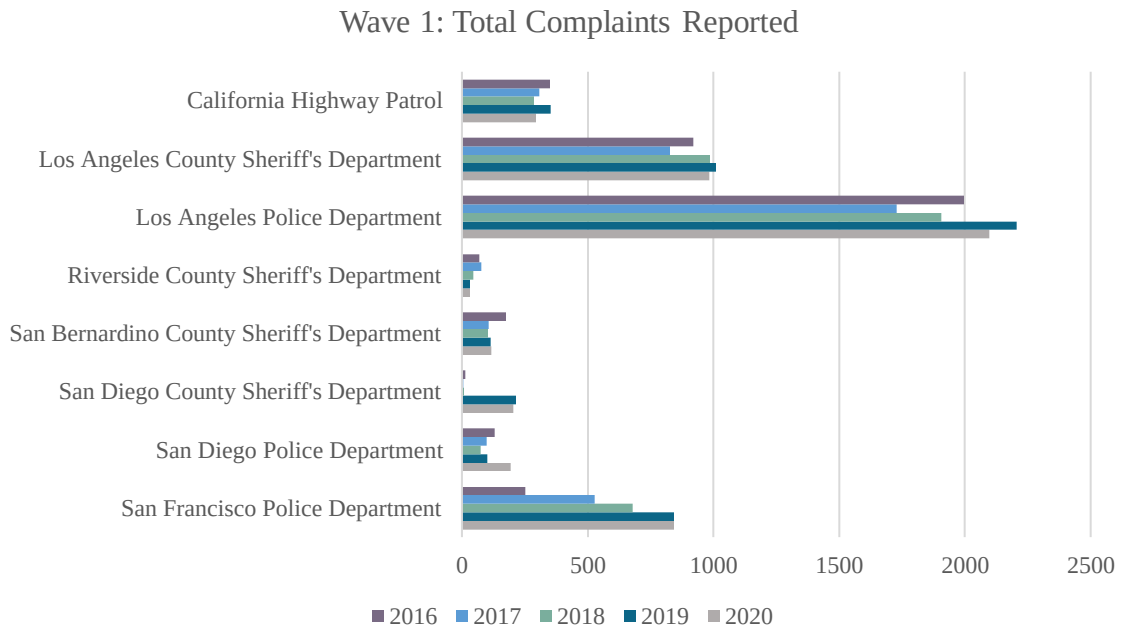
The following sections cover the total number of complaints and total number of racial and identity profiling complaints submitted by year since 2016 for agencies that collected RIPA stop data in 2020.

Wave 1 Agency Complaints Reported (2016-2020)

In 2020, the eight largest law enforcement agencies in the state (hereafter referred to as Wave 1 agencies) reported a total of 4,768 civilian complaints; this constituted a 2.1 percent decrease relative to the total number of civilian complaints reported in the prior year (4,872). Of the

past five reporting years (2016-2020), agencies received the second highest number of complaints in 2020.

Half of Wave 1 agencies reported a decrease in total complaints in 2020, relative to the number of complaints in 2019. The agency that experienced the largest decrease was California Highway Patrol (16.4%, 353 to 295). Two agencies, the San Diego Police Department and the San Bernardino Sheriff's Department, reported an increase in complaints; the San Diego Police Department experienced the largest increase (90.2%, 102 to 194) in complaints from 2019 to 2020. Two Wave 1 agencies, the Riverside County Sheriff Department and San Francisco Police Department, reported having the same total number of complaints in 2020 as they reported in 2019.

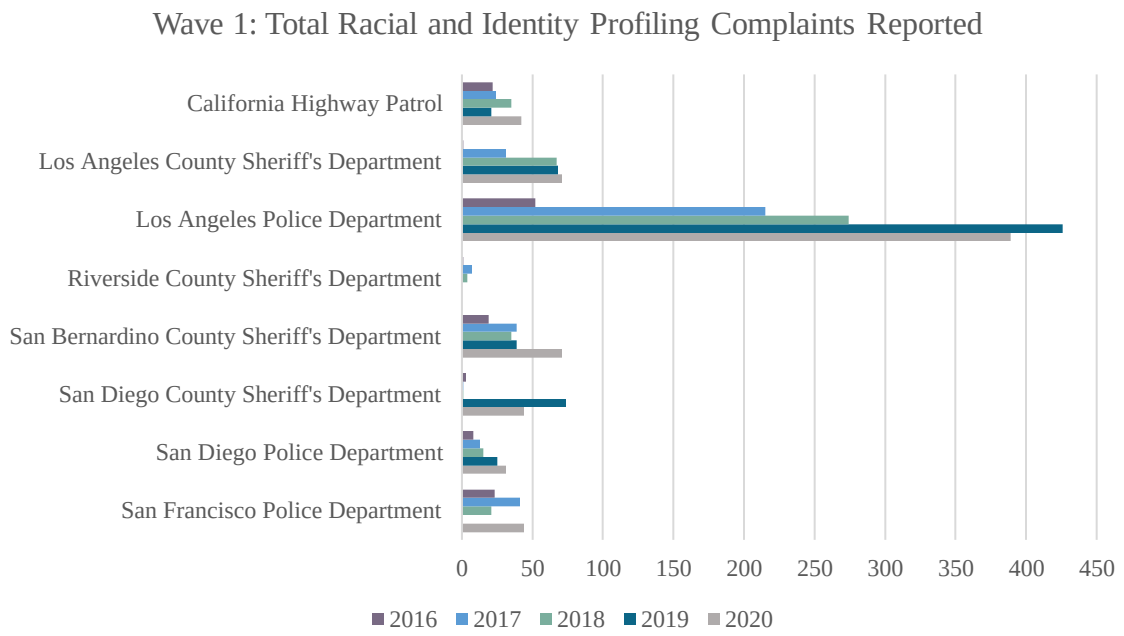


Wave 1 Total Racial and Identity Profiling Complaints

Figure 66 displays the total number of racial and identity profiling complaints Wave 1 agencies reported by year from 2016 to 2020. The total number of racial and identity profiling complaints was 692 in 2020, a six percent increase from 2019. The total number of profiling complaints reported by Wave 1 agencies has increased each year over the past five years; as such, in 2020, Wave 1 agencies reported the highest number of racial and identity profiling complaints since agencies first started collecting this information in 2016.

Half of the Wave 1 agencies experienced an increase in the number of racial and identity profiling civilian complaints between 2019 and 2020, while two experienced a decrease and two reported the same number across both years. The San Francisco Police Department reported the largest relative increase in racial and identity profiling complaints, with 44

complaints in 2020 after reporting zero racial and identity profiling complaints in 2019. Conversely, the San Diego Sheriff's Department had the largest relative decrease (40.5%, 74 to 44) in the number of racial and identity profiling complaints reported from 2019 to 2020. The Riverside Sheriff Department did not report having any racial and identity profiling complaints in both 2019 and 2020.

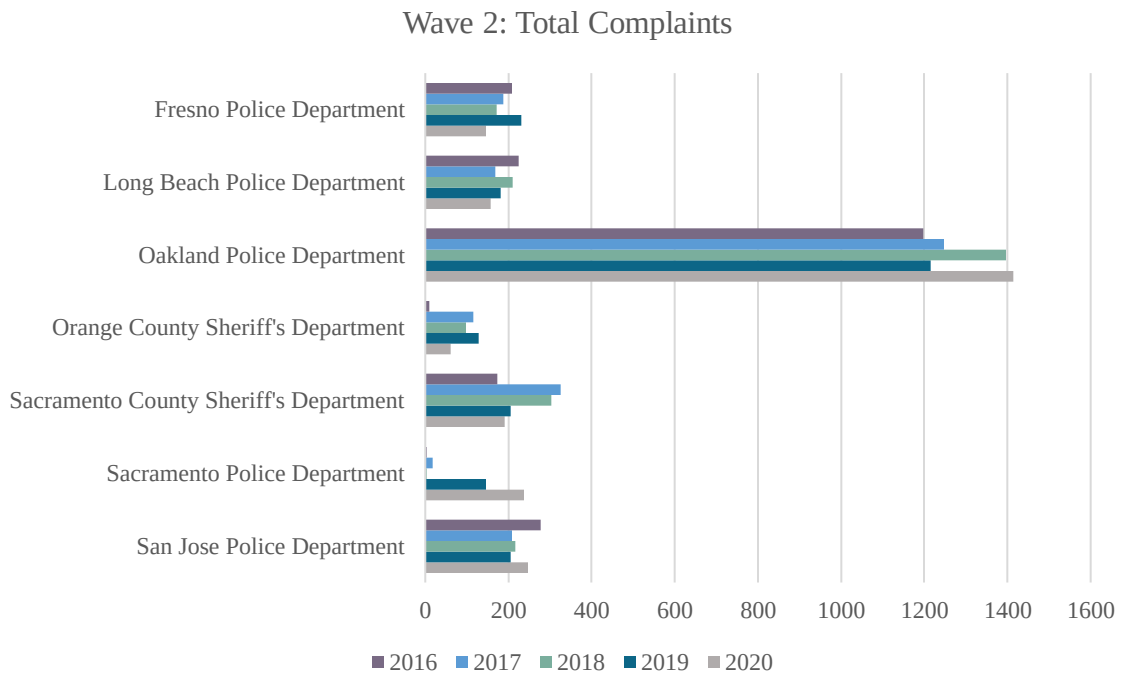


Wave 2 Agency Complaints Reported (2016-2020)

Agencies that began collecting RIPA data in 2019 (hereafter referred to as Wave 2 agencies) reported 2,454 complaints in 2020, the highest number of complaints these agencies have reported in the previous five years. This was a 6.1 percent increase from 2019 (2,313).

The majority of Wave 2 agencies (four out of seven) experienced a decrease in the total number of civilian complaints reported between 2019 and 2020. The agency that experienced the largest decrease was the Orange County Sheriff's Department (129 to 61, 52.7%). While the majority of Wave 2 agencies experienced a decrease in complaints from 2019 to 2020, the Sacramento Police Department experienced a substantial increase (146 to 238, 63%). This increase was smaller than the increase in complaints the agency reported between 2018 and 2019 (4 to 146, 3,550%); however, the cross-year increase between 2018 and 2019 was largely attributed to the policy change in August 2019, which ended the Sacramento Police Department's practice of categorizing certain complaints as "inquiries" to be resolved informally at the precinct/watch level. This policy change was the result of a Department of Justice review of Sacramento Police Department's practices and its recommendation that all personnel complaints be tracked uniformly and classified by type of alleged misconduct.[652]

[652] See Racial and Identity Profiling Advisory Board, Annual Report (2020), *supra* note 644, at pp. 68-69.

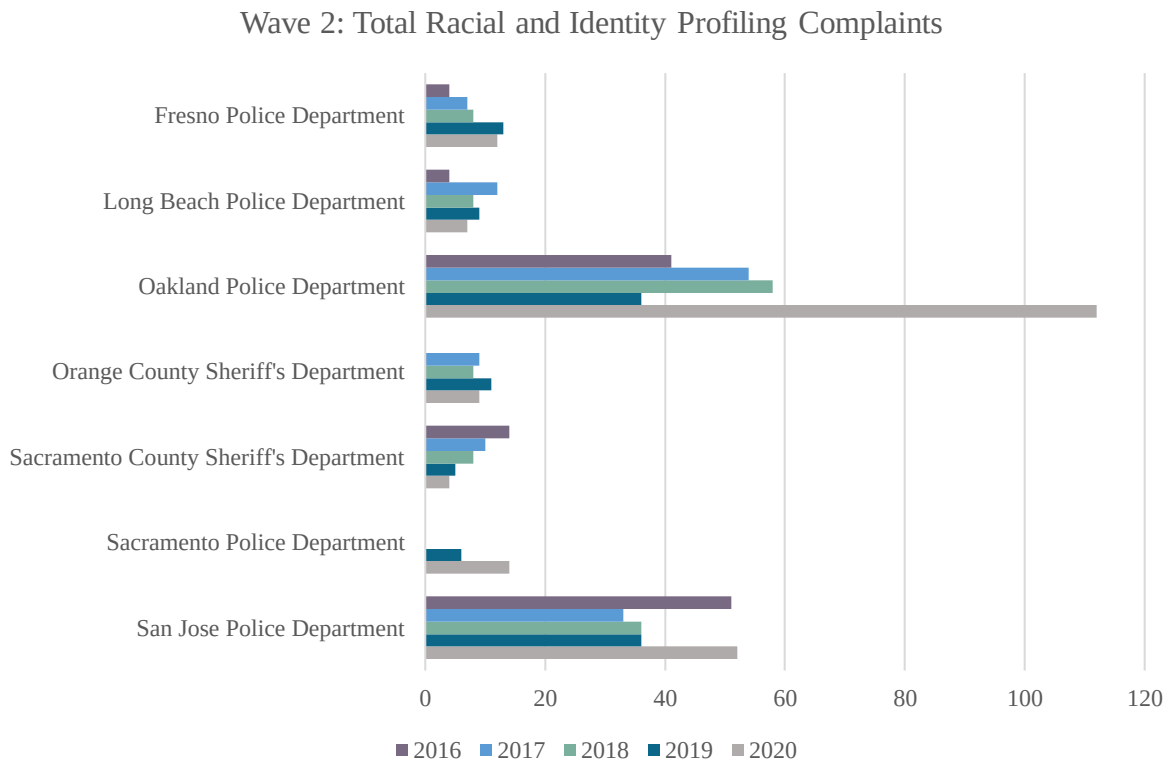


Wave 2 Racial and Identity Profiling Complaints

Wave 2 agencies reported an 81 percent increase in civilian complaints from 2019 to 2020 (116 to 210). As was the case with Wave 1 agencies, Wave 2 agencies reported increases in the number of profiling complaints each year over the past five years, meaning that 2020 was the year that Wave 2 agencies reported the highest number of racial and identity profiling complaints since agencies first began transmitting this information to the Department of Justice.

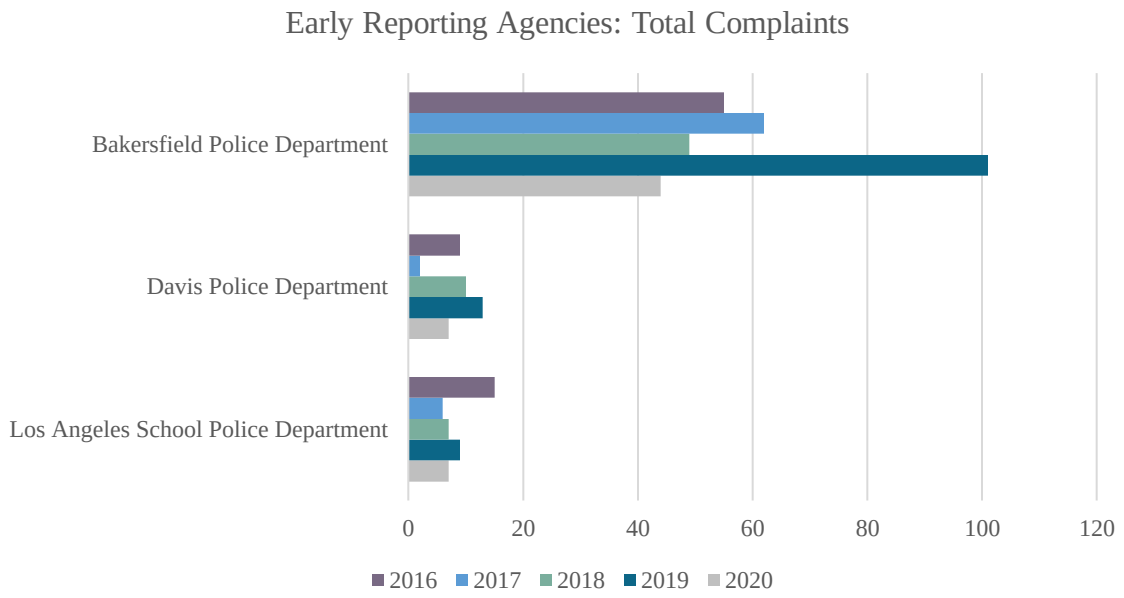
The majority of Wave 2 agencies (4 out of 7) experienced an increase in the number of racial and identity profiling complaints between 2019 and 2020. The Oakland Police Department experienced the largest relative increase (36 to 112, 211.1%) with more than triple the number of profiling complaints in 2020 than in the previous year. The Long Beach Police Department experienced the largest relative decrease between 2019 and 2020 (9 to 7, 22.2%).[653]

[653] The Orange County Sheriff's Department also reported a decrease of two complaints (9 from 11) between 2020 and 2019.



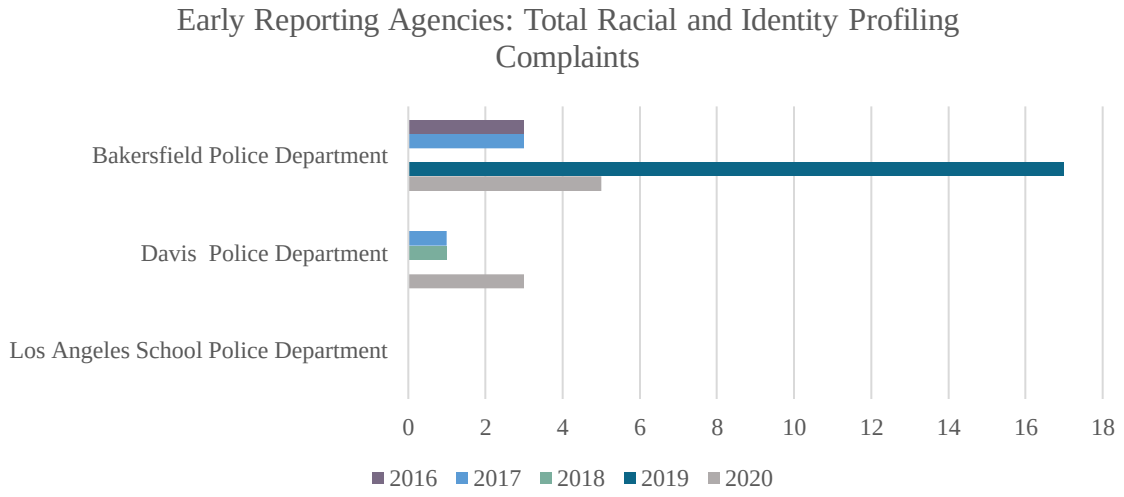
Early Reporting Agencies Total Complaints

In 2019, three agencies began reporting RIPA data earlier than they were required to under statute: Bakersfield Police Department, Los Angeles School Police Department, and Davis Police Department. These three agencies are referred to as early reporting agencies, since they began collecting prior to their statutorily mandated year. In 2020, a total of 58 complaints were reported by the three early reporting agencies, which constituted a substantial decrease from the year prior (123). This large reduction is primarily explained by the difference in the number of total complaints reported by the Bakersfield Police Department, which reported 101 complaints in 2019 and 44 complaints in 2020, a 56.4 percent decrease. The Los Angeles School Police Department also saw a decrease in complaints between 2019 and 2020 (9 to 7, 22.2%). The Davis Police Department reported seven complaints in 2020, which constituted a 46.2 percent decrease in total complaints from 2019 (13).



Early Reporting Agencies Racial and Identity Profiling Complaints

Early reporting agencies saw a 70.6 percent decrease in profiling complaints from 2019 (17) to 2020 (5). The Bakersfield Police Department reported five racial and identity profiling complaints in 2020, which was 70.6 percent fewer profiling complaints than the agency reported in 2019. The Davis Police Department reported three racial and identity profiling complaints in 2020. In the past five years, it had reported one in 2017 (200% increase) and one in 2018 (200% increase), but did not report any racial and identity profiling complaints in 2016 or 2019. The Los Angeles School Police Department has not reported any racial and identity profiling complaints in the five years since agencies were required to collect this information.



B. Wave 3 and 4 Agencies' Civilian Complaint Form Review

In its 2019 report, the Board made recommendations for best practices for civilian complaint procedures and policies.[654] In its 2020 report, the Board built upon this review and made evidence-based best practice recommendations regarding civilian complaint forms.[655] Last year, the Board conducted an initial review of the Wave 1 and Wave 2 agencies' civilian complaint forms; the Board is now extending that review to the Wave 3 agencies and those Wave 4 agencies that began reporting in 2021.[656]

Alameda County Sheriff's Office (Alameda Sheriff)

Methods of Submission

Complaints may be submitted in person at any Alameda Sheriff's station, by phone to the Internal Affairs (IA) Office, or by mail.

Telephone Access

The Alameda Sheriff's website provides several phone numbers to call to file a complaint. Members of the community can call IA directly, the Personnel Complaints phone lines for submitting a complaint during the day or nighttime, or the Emergency/Hearing Impaired phone line if needed. The agency reports that when a complainant uses the phone to file a complaint, it also recommends the complainant send a confirming e-mail to the employee who took their complaint.

Deterrent Language

The agency's website, complaint form, and brochure include language from Penal Code 148.6 and Cal. Civil Code 47.5.

Translation

The complaint form is only offered in English. Alameda Sheriff has a translation line and certified bilingual staff available to assist with translation of the form.

Anonymous/Third Party Complaints

The current policy states that the Alameda Sheriff accepts anonymous complaints. The agency reports that it does not accept third-party complaints.

Complaint Procedure Information

The agency's website and complaint brochure provide specific information on the civilian complaint procedure and investigation process. This information is also summarized on the complaint form itself.

[654] See Racial and Identity Profiling Advisory Board, Annual Report (2019) pp. 41-44 <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2019.pdf> [as of Dec. 2, 2021].
[655] See Racial and Identity Profiling Advisory Board, Annual Report (2020) *supra* note 644, at pp. 58-80.
[656] See Appendix I for these law enforcement agencies' civilian complaint forms.

Anaheim Police Department (Anaheim Police)

Methods of Submission

Complaint forms may be retrieved online, at any police station, the City Clerk's Office, any Anaheim public library, or the Community Services Office. The form can then be submitted in person, by mail, or online. Additionally, members of the public may submit their complaint through an online form.

Translation

The online and print or PDF complaint forms are available in English and Spanish. The agency reports it provides forms in these two languages based on the demographics of the community they serve.

Complaint Form Details

The online and printed or PDF forms are nearly identical except for a question about whether or not the complaint is based on racial or identity bias; this question is only included on the printed or PDF form and not the online form.

Complaint Procedure Information

The complaint form includes some information about the civilian complaint process, such as whether the complainant will be informed of the results of the investigation, but it does not describe the investigation process or provide a timeline.

Anonymous/Third Party Complaints

The current policy states that the Anaheim Police accepts both anonymous and third-party complaints.

Deterrent Language

Both the online and printed forms include nearly verbatim language from Penal Code section 148.6.

Fresno County Sheriff's Department (Fresno Sheriff)

Methods of Submission

Members of the public may file a civilian complaint with the Fresno Sheriff by completing a form or calling Internal Affairs during business hours. If the call is made after hours, the complainant must contact the Watch Commander.

Deterrent Language

The complaint form includes nearly verbatim language from Penal Code section 148.6 and cites to Penal Code section 129, which references criminal liability for perjury.

Complaint Form Details

The complaint form details information that is "needed to process [a] complaint," including: 1) the complainant's name, address, and telephone number; 2) the location, date, and time of the alleged incident; 3) the name, address, and telephone number (if available) of all witnesses; 4) the names or other identification of Sheriff's Office personnel involved; 5) all details of the alleged incident prompting the complaints; and 6) a signature on both sides of the complaint. The form does not explain that a complainant only need to provide as much information that is known to them.

Complaint Procedure Information
Information about the civilian complaint process is attached to the complaint form.

Translation
The complaint form is only available in English.

Anonymous/Third Party Complaints
Because the form states the aforementioned details are "needed to process a complaint" without an additional disclaimer, a complainant may think they cannot submit a complaint unless they provide every item of information listed above. Moreover, couching the complaint as requiring the six areas of information, including a name and signature, suggests that anonymous complaints may not be processed. Therefore, it is unclear whether the Fresno Sheriff will accept anonymous complaints.

Kern County Sheriff's Office (Kern Sheriff)

The agency reports that their current complaint form and associated policies are under review and in the process of significant updates to incorporate the best practices contained within the RIPA Board's 2019 and 2020 Annual Reports.

Translation
The complaint form is available in English and Spanish. Kern Sheriff is currently assessing what other translations it may be required to have for its forms under the Stipulated Judgment with California Department of Justice filed in December 2020. At this time, the agency's practice is to use telephonic translation services available through their 9-1-1 system and through the use of certified bilingual employees.

Methods of Submission
Complaints against Kern Sheriff employees may be submitted in person at the Personnel Division or any substation and by mail. The agency's website encourages members of the community to call and speak with an investigator. Kern Sheriff reports that it is currently developing an online submission method.

Complaint Procedure Information
The complaint form includes some information about the civilian complaint process.

Anonymous/Third Party Complaints
Kern Sheriff accepts anonymous and third-party complaints.

Deterrent Language
The complaint form includes nearly verbatim language from Penal Code section 148.6.

Los Angeles World Airport Police (LAX Police)

Methods of Submission
Complaints may be submitted online or in-person.

Translation
The online and PDF complaint forms are only offered in English.

Deterrent Language
The printed or PDF complaint form includes nearly verbatim language from Penal Code section 148.6.

Anonymous/Third Party Complaints
The agency reports it accepts anonymous and/or third-party complaints.

Complaint Procedure Information
The agency's website does not provide information on the complaint process. The printed or PDF complaint form does include details about the complaint procedure attached to it.

Riverside Police Department (Riverside Police)

Methods of Submission
Complaint forms are available online and at all Riverside Police Stations. Complaints are accepted in person, by phone, or by mail. Members of the community can submit their complaint to Riverside Police and/or the Civilian Police Review Commission (CPRC).

Complaint Form Details
All complaints submitted within six months of the allegations are investigated by the CPRC.

Translation
The complaint form is available in English and Spanish, which the agency reports are the two languages spoken by most of the population they serve.

Anonymous/Third Party Complaints
The Riverside Police accept anonymous and third-party complaints. They are investigated to the extent that sufficient information is available. Complainants' signatures are optional.

Complaint Procedure Information
The Riverside Police provide a detailed description of the Personnel Complaint Process, Investigation Process, and the Disposition on their website. All complainants receive a letter from the Internal Affairs bureau advising them that their complaint was received and is being investigated. They will also receive further notice if the investigation is extended beyond 120 days. At the conclusion of the investigation and review process, they will receive a final notification of the disposition within 30 days. It is unclear if this process information is provided to complainants who receive the complaint form in person or by mail.

San Francisco County Sheriff's Department (San Francisco Sheriff)

Methods of Submission
Complaints may be filed with the San Francisco Sheriff by mail, by phone, by e-mail, or in person at the Internal Affairs unit.

Deterrent Language
The complaint form includes language from and cites to Penal Code section 148.6.

Translation

The complaint form is offered in English, Spanish, and Cantonese. San Francisco Sheriff determines the languages needed for translating its complaint form by doing a bi-annual tracking of a two-week period of non-English speaking public contacts. This information is provided to the City to ensure the proper languages are being offered. Translations are provided by the City and County of San Francisco Department of Human Resources in accordance with the city and county Language Access Ordinance.

Complaint Form Details

The complaint form makes it optional to release medical records from the complainant to assist in the investigation.

Anonymous/Third Party Complaints

The agency reports that is accepts third party and anonymous complaints.

Complaint Procedure Information

The agency's website provides details on the civilian complaint procedure and investigation. This information is not attached to the complaint form itself.

Santa Ana Police Department (Santa Ana Police)

Methods of Submission

Santa Ana Police accept complaints either in person or by mail.

Deterrent Language

The agency's complaint form includes near verbatim language from Penal Code section 148.6.

Complaint Procedure Information

A detailed description of the purpose and procedure of the civilian complaint process is posted on their website and attached to the civilian complaint form. The description includes a general timeframe for the review and information about what the complainant can expect if the complaint alleges criminal behavior.

Translation

The complaint form is available in English and Spanish. Santa Ana Police report that these languages were chosen by City leadership. City staff perform the translations.

Anonymous/Third Party Complaints

The Santa Ana Police accept anonymous and third-party complaints.

Santa Clara County Sheriff's Department (Santa Clara Sheriff)

Complaint Procedure Information

Both the website and the PDF complaint form have information on the complaint process and investigation. The website also lists the name and contact information of other organizations

Translation

The PDF complaint form is available in English, Mandarin, Vietnamese, and Spanish; the online form is available in English only.

that a complainant may go to if they are unsatisfied with the investigation outcome, including DOJ and the Santa Clara ACLU chapter.

Methods of Submission

Civilian complaints may be filed at any Santa Clara Sheriff's facility, online, by phone, or mail.

Complaint Form Details

The two complaint forms are generally the same, except the online form asks for the "associated police report."

Deterrent Language

The Santa Clara Sheriff's website has a specific note to complainants that their investigation of officer conduct is wholly separate from any connected criminal prosecution and will not affect the prosecutor's decision. Following this note, it provides:

> "A complaint which is false, however, and made with knowledge of its falsity, and made with spite, hatred, or ill will, which accuses an officer of misconduct, criminal conduct, or incompetence, will expose the maker of such false complaint to a civil action brought by the officer. This advisement is not made to dissuade the making of a bona fide complaint, for such complaints should be made and investigated. It is directed only to those few individuals who believe that false complaints against officers can be made with impunity."

Stockton Police Department (Stockton Police)

Methods of Submission

Stockton Police receive complaints by phone, in person, or by mail. Civilian complaint forms can be found at Stockton public libraries, the City Clerk's Office, or any Stockton Police station.

Translation

The complaint form is offered in English and Spanish.

Complaint Form Details

At the top of the complaint form, it states "if your concern stems from an arrest or citation issued, it may not be investigated until the legal matter has been resolved."

Deterrent Language

While the complaint form does not include language from Penal Code section 148.6, the signature block of the complaint form references Civil Code section 47.5 regarding an officer's ability to file a civil claim against the complainant for a false complaint.

Anonymous/Third Party Complaints

The current policy states that the Stockton Police accept anonymous and third-party complaints.

Complaint Procedure Information

The agency's website does not explain the civilian complaint process or procedure. It is unclear whether a complaint brochure or something similar exists and is provided to complainants. The agency has its civilian complaint policy on its website.

Ventura County Sheriff's Department (Ventura Sheriff)

Methods of Submission
Civilian complaints are accepted in person, by phone, or by mail. The forms can be found at any Ventura Sheriff station.

Deterrent Language
Penal Code section 148.6 is directly quoted and cited to in the signature block of the form. There is also an advisory about Civil Code 47.5 and Penal Code 148.5.

Anonymous/Third Party Complaints The agency reports that it accepts anonymous and third-party complaints.

Complaint Procedure Information
The agency's website has two separate places where civilian complaints are discussed. One webpage provides links to the complaint forms with no additional information about the complaint process. The other webpage – connected to Internal Affairs – provides details on the process and types of dispositions. More detailed information about the process is attached to the civilian complaint form.

Translation
The complaint form is offered in English and Spanish. Ventura Sheriff provides its complaint form in these languages because they are the primary languages spoken in Ventura County. If any other language assistance is needed, the agency reports that it has access to translation services.

Berkeley Police Department (Berkeley Police)

Methods of Submission
Berkeley Police accepts complaints by phone, by e-mail, or in person at the Public Safety Building. Complaints may also be submitted to and reviewed by the Police Review Commission.

Complaint Form Details
The complaint form lists ten types of department policy violations a complainant may allege, including "other." The form also includes a space for specifying the type of discrimination the complainant alleges.

Deterrent Language
The complaint form includes the following language before the open narrative space for a complainant to describe their allegation, "[i]f your complaint is more than 30 days from the date of incident upon which the complaint is based, please explain in your synopsis the circumstances that caused a delay in filing."

Translation
The complaint form is offered in English and Spanish. The agency informed DOJ that the form is translated by a translator service.

Anonymous/Third Party Complaints
The form includes a field for "victim" and specifies "if other than the complainant," suggesting that the agency accepts third-party complaints.

Complaint Procedure Information
The agency's website and the complaint form do not have information on the civilian complaint process or procedure. There is some information on who investigates the complaints.

Culver City Police Department (Culver City Police)

Methods of Submission
Members of the public can submit civilian complaints by phone, by mail, in person, or electronically.

Deterrent Language
The form includes near verbatim language of Penal Code section 148.6.

Anonymous/Third Party Complaints
The agency makes clear on its website that anyone may file a complaint, including a parent or representative of an involved party. It is not clear if the complaint may be anonymous.

Complaint Procedure Information
The agency's website provides detailed information about the complaint process and procedure, including what the investigation may entail and what the disposition could be.

Translation
Culver City Police offers its complaint form in English and Spanish. The agency informed DOJ that Culver City Police command staff decide what languages are needed for translation and the translation is done by a certified translator.

Data
In addition to covering details about the civilian complaint process and procedure, Culver City Police provides complaint statistics on its website. The statistics include the total number of complaints and the number of sustained complaints for both external and internal complaints since 2015.

Davis Police Department (Davis Police)

Methods of Submission
Complaints may be submitted to the Davis Police by mail, in person, by e-mail, by phone, or by contacting the City Manager's Office or the Independent Police Auditor.

Anonymous/Third Party Complaints
The agency accepts anonymous and third-party complaints.

Complaint Procedure Information

The agency's webpage explains the civilian complaint process or procedure. Additionally, there is a link to the PDF complaint form, which also includes two pages of information regarding the civilian complaint process and procedure. Complainants also have the option to resolve the complaint through the "Community-Police Alternative Conflict Resolution Program" process.

Translation

The form is also available in Spanish and Russian. The agency informed DOJ that it provides translation services for most languages. The agency reported that it determined the languages needed for translating the complaint form from reviewing census data and other local resources.

Petaluma Police Department (Petaluma Police)

Methods of Submission

Petaluma Police accept complaints by mail, phone, fax, e-mail, and in person.

Deterrent Language

The form includes nearly verbatim language from Penal Code 148.6.

Complaint Form Details

The agency's complaint form does not include an open narrative field for the complainant to write a summary of their allegations; instead, they are required to attach a summary of the allegations on an additional sheet.

Complaint Procedure Information

Information on the agency's civilian complaint process or procedure is available on its website and attached to the complaint form.

Anonymous/Third Party Complaints

The agency's website makes clear that anyone can file a civilian complaint – even those under 18 years of age – as long as they are accompanied by an adult.

Translation

The complaint form is available in English and Spanish. Petaluma Police reports it determines the languages for translation of its civilian complaint form based on community needs. In this case, 76% of the community speaks English and the second most common language in Petaluma is Spanish. The agency uses an outside translation service to complete the translation of its form.

Rohnert Park Department of Public Safety (Rohnert Park)

Methods of Submission

Complaints to Rohnert Park can be submitted by phone, by mail, or in person.

Deterrent Language

The complaint form can be used for both a commendation and complaint, and it includes nearly verbatim language of Penal Code section 148.6.

Complaint Procedure Information

The complaint process is detailed on its website and on the complaint form. There is one difference between the two: the agency's website includes an FAQ titled "What if I File a False Criminal Complaint?"

Anonymous/Third Party Complaints

The complaint form makes clear that anyone can file a civilian complaint – even those under 18 years of age – as long as they are accompanied by their parent or an adult.

Translation

The form is available in English and Spanish. Rohnert Park informed DOJ that if a member of the community requests translation in another language, a certified bilingual employee would translate the text. In the event they do not have a certified bilingual employee for that language, they would use a third-party translation service.

Santa Rosa Police Department (Santa Rosa Police)

Methods of Submission

A civilian complaint may be made in person or by phone, e-mail, or fax.

Deterrent Language

The complaint form includes language verbatim to what is found in Penal Code section 148.6.

Complaint Form Details

The form does not include an open narrative field so the complainant must attach additional sheets. The form includes the following language:

> "We invite citizens to bring their concerns regarding police practices and services to our attention. If you have a complaint and are not sure how to proceed, a telephone call to any on-duty watch commander will provide you the options available."

Anonymous/Third Party Complaints

The complaint form makes clear that anyone can file a civilian complaint – even those under 18 years of age – as long as they are accompanied by their parent or an adult. A complainant has the option to remain anonymous.

Complaint Procedure Information

The Santa Rosa Police website and civilian complaint form include information on its civilian complaint process or procedure.

Translation

The form is available in English and Spanish. Santa Rosa Police reports it translates its civilian complaint forms into certain languages based on community needs. In this case, 68% of the community speaks English and the second most common language in Santa Rosa is Spanish. The agency uses an outside translation service to complete the translation of its form.

Sonoma County Sheriff's Office (Sonoma Sheriff), Sonoma Police Department (Sonoma Police), and Windsor Police Department (Windsor Police)

These agencies are reviewed together because Sonoma Police and Windsor Police are staffed by the Sonoma Sheriff on a contract basis and therefore use the same civilian complaint form governed by the same policies and procedures.

Methods of Submission

The agencies accept complaints by phone, by mail, or in person at any station or a mutually convenient location. Complaints may also be filed with the Independent Law Enforcement Review and Outreach.

Deterrent Language

The forms include nearly verbatim language from Penal Code section 148.6.

Anonymous/Third Party Complaints

The agencies report to DOJ that they accept third-party and anonymous complaints.

Translation The complaint forms are available in English and Spanish

Complaint Form Details

Community members who file complaints are provided the opportunity to indicate what type of complaint they are filing. There are six options in addition to "other" including: discourtesy, improper procedure, neglect of duty, bias policing, conduct unbecoming, and unnecessary/excessive use of force. The complaint form includes language noting the agencies do not tolerate any "intimidation or retaliatory action against any person who files a complaint against a member of this office."

Complaint Procedure Information

Information on the civilian complaint process or procedure is available on the Sonoma Sheriff's and the Windsor Police's websites. Sonoma Police does not have any information about civilian complaints on its website. The civilian complaint form used by the agencies does include details on the complaint investigation procedure. Both the agency's website and the complaint form include the FAQ titled "What if I File a False Criminal Complaint?"

Sonoma State University Police Department (CSU Sonoma Police)

Methods of Submission

Civilian complaints may be submitted to the CSU Sonoma Police online, in person, by phone, by fax, or by mail.

Anonymous/Third Party Complaints

The CSU Sonoma Police reports it accepts anonymous and/or third-party complaints.

Complaint Form Details

CSU Sonoma Police reports its complaint form, policy, and procedures are largely dictated by the CSU system at large. The current form includes the agency's mission.

Complaint Procedure Information
Information on the agency's civilian complaint process or procedure is available on its website and attached to the complaint form. There is a complaint process brochure that also explains details of the investigation process including possible dispositions.

Translation
The complaint form is currently only available in English. The agency informed DOJ that it will determine what other languages may be necessary based on the most common languages spoken in the area. Additionally, if a complainant requires translation services, the agency reports they will be provided.

Sonoma County Junior College District Police Department (Sonoma College Police)

Methods of Submission
Sonoma College Police accept complaints by telephone, by mail, and in person. The complaint may be made at the Police Department or another mutually convenient location.

Complaint Procedure Information
Information on the agency's civilian complaint process and procedures is available on the complaint form.

Deterrent Language
The complaint form includes language from Penal Code section 148.6.

Translation
The complaint form is available in English and Spanish.

Anonymous/Third Party Complaints
The agency accepts anonymous and third party complaints.

Complaint Form Details
The agency's printed complaint form includes an open narrative field for the complainant to write a summary of their allegations. The form states that the agency is "primarily interested in learning of your concerns about law enforcement conduct or a need for improvement in our delivery of services.

Cotati Police Department (Cotati Police)

Methods of Submission
Cotati Police accept complaints by mail, by phone, online, and in person. The complaint may be made at the Police Department or another mutually convenient location.

Complaint Procedure Information
Information on the agency's civilian complaint process and procedures is available on the complaint form and online.

Deterrent Language
The complaint form includes language from and cites to Penal Code section 148.6.

Translation
The complaint form is available in English and Spanish.

Complaint Form Details

The agency's printed complaint form does not include an open narrative field for the complainant to write a summary of their allegations; instead, they are required to attach a summary of the allegations on an additional sheet. The online complaint form does include an open narrative field.

Anonymous/Third Party Complaints

The agency reports that is accepts anonymous and third party complaints; however, if the complaint is vague or contains little to no information it would be difficult for them to conduct follow-up.

Wave 3 + 4 Agency	Form Accessible Online?	Can Submit Online?	Multiple Methods of Submission?	Available in Multiple Languages?[657]
Davis Police	✓	✓	✓	✓
CSU Sonoma Police	✓	✓	✓	✗
Santa Clara Sheriff	✓	✓	✓	✗ OS ✓ PV
Berkeley Police	✓	✓	✓	✓
Ventura Sheriff	✓	✗	✓	✓
Kern Sheriff	✓	✗	✓	✓
Riverside Police	✓	✗	✓	✓
Rohnert Park	✓	✗	✓	✓

Wave 3 + 4 Agency	Third Party Complaints Allowed?	Includes Narrative Field for Description of Complaint?	Does Not Include Language from PC §148.6?[658]	Complaint Process Information Attached to Form?
Davis Police	✓	✓	✓	✓
CSU Sonoma Police	✓	✓	✓	✓
Santa Clara Sheriff	N/A	✓	✓	✓
Berkeley Police	✓	✓	✓	✗
Ventura Sheriff	✓	✓	✗	✓
Kern Sheriff	✓	✓	✗	✓
Riverside Police	✓	✓	✓	✗
Rohnert Park	✓	✓	✗	✓

[657] Federal and state law require federally and state assisted law enforcement agencies to provide meaningful access to Limited English Proficient (LEP) individuals. Under federal law, to determine the extent of its obligation to provide services to the LEP population, the Federal Coordination and Compliance Section recommends that law enforcement agencies engage in a four-factor analysis. (See U.S. Dep't of Justice, Federal Coordination and Compliance Section, Planning Tool: Considerations for Creation of a Language Assistance Policy and Implementation Plan for Addressing Limited English Proficiency in a Law Enforcement Agency <https://www.justice.gov/crt/fcs/Law_Enforcement_Planning_Tool> [as of Dec. 2, 2021].) California state law also requires local agencies that receive state funding to provide language access services to LEP populations. (See Gov. Code, § 11135, subd. (a); Gov. Code, § 7290). Law enforcement agencies may ask local community-based organizations to help translate complaint forms or create a database of qualified interpreters for speakers of any language, including sign language.

[658] The Ninth Circuit and California Supreme Court have come to opposite conclusions regarding whether Penal Code section 148.6 is constitutional. (Compare *People v. Stanistreet* (2002) 29 Cal. 4th 497, 510 [Section 148.6 is a permissible regulation of prohibited speech, namely, false allegations against peace officers, which, on its face, does not violate the First Amendment to the United States Constitution] with *Chaker v. Crogan* (9th Cir. 2005) 428 F.3d 1215, 1222, cert. denied, 547 U.S. 1128 (2006) [Penal Code section 148.6's criminal sanction violates the First Amendment of the United States Constitution because it regulates content-based speech on the basis of that speech's content].) As such, many California law enforcement agencies have removed the warning from their civilian complaint forms and accept anonymous complaints. The California Attorney General's Office has also determined that a law enforcement agency can investigate allegations of police misconduct, even if the complainant did not sign the admonition as required by Penal Code section 148.6. (79 Ops. Cal.Atty.Gen. 1631 (1996).) **For purposes of this review, a checkmark denotes that an agency does *not* include Penal Code section 148.6 language on their form.**

Wave 3 + 4 Agency	Form Accessible Online?	Can Submit Online?	Multiple Methods of Submission?	Available in Multiple Languages?
LAX Police	✓	✓	✓	✗
Stockton Police	✓	✗	✓	✓
Santa Ana Police	✓	✗	✓	✓
Sonoma Sheriff, Sonoma Police, & Windsor Police	✓[659]	✗	✓	✓
Anaheim Police	✓	✓	✓	✓
Santa Rosa Police	✓	✓	✓	✓
Petaluma Police	✓	✓	✓	✓

Wave 3 + 4 Agency	Third Party Complaints Allowed?	Includes Narrative Field for Description of Complaint?	Does Not Include Language from PC §148.6?	Complaint Process Information Attached to Form?
LAX Police	✓	✓	✓	✗ OS ✓ PV
Stockton Police	✓	✓	✓	✗
Santa Ana Police	✓	✓	✗	✓
Sonoma Sheriff, Sonoma Police, & Windsor Police	✓	✓	✗	✓
Anaheim Police	✓	✓	✗	✗ OS[660] ✓ PV[661]
Santa Rosa Police	✓	✗	✗	✓
Petaluma Police	✓	✗	✗	✓

[659] This rating does not apply to the Sonoma Police as it does not have the civilian complaint form available on its website nor any information on the civilian complaint process.
[660] "OS" refers to the online submission form.
[661] "PV" refers to the printed or PDF version of the complaint form.

Wave 3 + 4 Agency	Form Accessible Online?	Can Submit Online?	Multiple Methods of Submission?	Available in Multiple Languages?
San Francisco Sheriff	✓	✓	✓	✗ OS ✓ PV
Fresno Sheriff	✓	✗	✓	✗
Culver City Police	✓	✗	✓	✓
Cotati Police	✓	✓	✓	✓ PV ✗ OS
Alameda Sheriff	✗	✗	✓	✗
Sonoma College Police	N/A	N/A	✓	✓

Wave 3 + 4 Agency	Third Party Complaints Allowed?	Includes Narrative Field for Description of Complaint?	Does Not Include Language from PC §148.6?	Complaint Process Information Attached to Form?
San Francisco Sheriff	✓	✓	✗	✗
Fresno Sheriff	N/A	✓	✗	✓
Culver City Police	✓	✓	✗	✗
Cotati Police	✓	✓ OS ✗ PV	✓ OS ✗ PV	✓
Alameda Sheriff	✓	✓	✗	✓
Sonoma College Police	✓	✓	✗	✓

C. Standardizing California LEA Civilian Complaint Processes and Procedures

California law sets out limited requirements for law enforcement agencies to follow with respect to their civilian complaint processes and procedures. In its 2019 Report, the RIPA Board provided best practice recommendations regarding standardizing the civilian complaint intake and investigation process.[662] The Board also separately wrote a letter to the legislature concerning the potential deterrent effect of Penal Code section 148.6 and the conflict between state and federal law around potential violations of the First Amendment in regulating speech about peace officers.

This year the Board is recommending changes to state law to ensure best practices are codified to create a more uniform and equitable civilian complaint procedure across the state. These changes will also ensure more accurate and comparable civilian complaint data. The Board recognizes that its mandate to "eliminate racial and identity profiling in policing" necessitates that members of the public feel welcome to submit their concerns and confident that their concerns will be taken and investigated seriously.

1. Current State Law

Law enforcement civilian complaint processes and procedures are governed by the State's Penal Code. Each law enforcement agency is required to establish a civilian complaint investigation procedure, but the law does not detail specific steps for agencies to include in the procedure.[663] State law requires this procedure must be made available to the public.[664]

State law requires agencies to retain civilian complaints and any reports or findings related to the complaint for a minimum of five years.[665] However, there is a gap in the law because it does not provide a uniform definition of what constitutes a "civilian complaint." This means that each agency has discretion to decide what community concerns are officially labeled "civilian complaints" and thus what incidents will be investigated, reported, and retained as required.

State law requires agencies to retain civilian complaints and any corresponding documentation in either the officer's personnel file or in a separate file.[666] However, if the agency chooses to retain them in an officer's personnel file, the law requires the agency to remove the complaint and corresponding documentation *before* any "official determination" of promotion, transfer, or disciplinary action.[667]

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[662] See Racial and Identity Profiling Advisory Board, Annual Report (2019) *supra* note 654, at pp. 41-44.
[663] Pen. Code, § 832.5, subd. (a)(1).
[664] Ibid.
[665] *Id*. at § 832.5 subd. (b).
[666] Ibid.
[667] Ibid.

Although state law does not provide law enforcement with instructions on *how* to assess and investigate civilian complaints, it requires agencies to report the outcome under the four categories of "frivolous,"[668] "unfounded,"[669] "exonerated,"[670] or "sustained."[671]

If an agency determines that a complaint or any portion of a complaint is "frivolous, or unfounded or exonerated," the law prohibits those complaints and corresponding documentation from being saved in the officer's personnel file. Nevertheless, the agency is still required to save these documents in a separate file which, by law, are deemed "personnel records."[672] While agencies must retain these complaints and corresponding documentation, state law does not permit their disclosure to members of the public.[673] State law specifies that officers named in these complaints may be required to do counseling or additional training but no reference to the complaint may be made in their personnel file.[674] This concerns the RIPA Board: if an officer may be in need of counseling or additional training, why are these complaints determined to be frivolous, unfounded, or exonerated and agencies permitted to obscure the complaints and findings from public inspection?

Personnel files are generally confidential in both civil and criminal proceedings, with specific and limited exceptions outlined in state law under the Evidence Code, Penal Code, and the California Public Records Act.[675] Some exceptions are triggered by the subject matter or finding of an investigation. For example, records relating to "discharge of a firearm at a person by an officer" and incidents of use of force that resulted in death or great bodily injury must be disclosed regardless of whether there is an investigation or an investigation outcome,[676] whereas other subject matters may be kept confidential unless there is a certain outcome to an investigation. Current state law only requires disclosure of records involving matters of "sustained" findings of sexual assault involving a member of the public and dishonesty by the officer.[677]

Penal Code section 832.7 also outlines the specific narrow disclosures regarding civilian complaints. Law enforcement agencies are required to provide a complainant with the complainant's own statement(s) *at the time the complaint is filed*.[678] It is unclear whether this requirement extends to any additional statements the complainant may provide throughout the investigation. The other statutory requirement relating to an agency's communication with

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[668] "Frivolous" is defined as "totally and completely without merit or for the sole purpose of harassing an opposing party." Code Civ. Proc., § 128.5.
[669] "Unfounded" is defined as "the investigation clearly established the allegation is not true." Pen. Code, § 832.5, subd. (d)(2).
[670] "Exonerated" is defined as "the investigation clearly established that the actions of the [officer] that formed the basis for the complaint are not violations of law or department policy." Pen. Code, § 832.5, subd. (d)(3).
[671] "Sustained" is defined as "a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal, that the actions of the [officer] were found to violate law or department policy." Pen. Code, § 832.8, subd. (b).
[672] Pen. Code, § 832.5, subd. (c).
[673] *Id*., § 832.7, subd. (b)(8).
[674] *Id*., § 832.5, subd. (c)(3).
[675] See *id*., § 832.7; Evid. Code, §§ 1043, 1046; Gov. Code, § 6250 et seq.
[676] See Pen. Code, § 832.7, subds. (b)(1)(A)(i)-(ii).
[677] See *id*., § 832.7, subds. (b)(1)(B)(i) and (b)(1)(C).
[678] *Id*., § 832.7 (c).

a complainant occurs at the end of the investigation. State law requires agencies to provide the complainant with written notification of the disposition of the complaint within 30 days of the disposition.[679] State law prohibits this written notification from being used as evidence in any subsequent proceeding "brought before an arbitrator, court, or judge of this state or the United States."[680]

2. Board Recommendations to the Legislature

The Board has identified several gaps in current state law that may impede adequate access to the civilian complaint process across the state. Some of these gaps can be filled by codifying best practice recommendations the Board has identified over the past four years. Without changes to state law, the civilian complaint process will remain inconsistent across the state and agency data regarding complaints will be difficult to compare and evaluate for access and effectiveness. To address the identified gaps in state law, the Board recommends the California legislature create legislation to standardize the civilian complaint process by making the following specific changes to state law:

Define "Civilian Complaint"

A gap in state law is the lack of a definition of "civilian complaint." In its 2020 Annual Report, the Board discussed at length the concerns this raises and factors to consider in developing a definition.[681] After reviewing several civilian complaint definitions and revisiting the considerations raised in previous reports, the Board recommends 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.

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[679] *Id*., § 832.7, subd. (f)(1).
[680] *Id*., § 832.7, subd. (8)(f)(2).
[681] Racial and Identity Profiling Advisory Board, Annual Report (2020) *supra* note 644, at pp. 64-70.

Require Agencies to Adopt Best Practices to Improve the Civilian Complaint Process.

As detailed above, current law gives each individual law enforcement agency the freedom to create their own civilian complaint procedure and only outlines a few requirements for that procedure. The outcome of this kind of statutory framework is unequal access to the civilian complaint process and a lack of transparency. Given the concerns raised by the community and through the RIPA Board's research, the Board asks the Legislature to amend state law to include the following best practices to ensure uniform accessibility and accountability in the civilian complaint process. Penal Code Section 832.5 or 832.7 should require agencies to:

- Provide complaint forms and instructions on filing a complaint in any language spoken by more than 5% of the jurisdiction's population, as defined in the Dymally-Alatorre Bilingual Services Act;[682]
- Ensure complaint forms are made available in an easily accessible location within the agencies' offices and in a variety of governmental and community-centered public locations;[683]
- In order to fully comply with state law, explicitly inquire on the civilian complaint form whether the complaint alleges racial or identity profiling and, if so, provide space to specify the type of racial or identity profiling alleged;[684]
- Inform the public of their right to make a complaint by posting signage of that right in any location where complaint forms are available;[685]
- Require an officer to inform a member of the public of their right to file a complaint and the department or agency's complaint procedures when a member of the public describes alleged misconduct by an officer;[686]
- Accept all complaints, in any form, including in person, by phone, e-mail, or fax, and electronically online;[687]

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[682] See Gov. Code § 7296.2, 7299.6; see also Racial and Identity Profiling Advisory Board, Annual Report (2018) p. 33 <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2018.pdf> [as of Dec. 2, 2021].

[683] See, e.g., *U.S. v. Police Department of Baltimore City, et. al.* (Md. 2017) 1:17-cv-00099-JKB <https://www.justice.gov/opa/file/925056/download> [as of Dec. 2, 2021]; *U.S. v. City of Newark* (2016) 2:16-cv-01731-MCA-MAH <https://www.justice.gov/crt/file/868131/download> [as of Dec. 2, 2021]; U.S. DOJ Office of Community Oriented Policing Services, *Standards and Guidelines for Internal Affairs: Recommendations from a Community Practice* ("COPS Recommendations from a Community Practice"*)* (2008) <https://cops.usdoj.gov/ric/Publications/cops-p164-pub.pdf> [as of Dec. 2, 2021].

[684] Agencies are currently required to report civilian complaint data at this granular level but not all agencies provide space on their civilian complaint forms for this information to be provided by the complainant. See Pen. Code, § 13012, subd. (a)(5)(A)(iii); Cal. Dep't of Justice, DLE-2015-06: Citizens' Complaints Against Peace Officers (2015).

[685] See COPS Recommendations from a Community Practice, *supra* note 683.

[686] See Consent Decree, U.S. v. Police Dept. of Baltimore City, supra note 155.

[687] See Racial and Identity Profiling Advisory Board, Annual Report (2018) *supra* note 682, at p. 32; see also U.S. DOJ Office of Community Oriented Policing Services, Police Executive Research Forum, *Critical Response Technical Assessment Review: Police Accountability – Findings and National Implications of an Assessment of the San Diego Police Department ("PERF SDPD")* (2015) p. 6 <https://cops.usodj.gov/RIC/Publications/cops-w0756-pub.pdf> [as of Dec. 2, 2021]; Consent Decree, *U.S. v. Police Dept. of Baltimore City*, *supra* note 155.

- Create an online portal for members of the public to prepare, submit, and track their complaints;[688]
- Accept complaints from all people, including minors, parents or legal guardians filing complaints on behalf of their minor dependent, non-English-speaking persons, third-party complainants (i.e. witnesses to misconduct against another person, persons who are aware of misconduct by an officer), or anonymous parties;[689]
- Assign a number[690] and log every complaint when it is received with the following details:
    - Provide complainants with written acknowledgement of their complaint with a tracking number, the identity of the investigator, and contact information or other information to track the progress of their complaint;[691]
    - Provide complainants with an opportunity to review their complaint and/or statements for accuracy;[692]
    - Include clearly delineated standards for review and disposition categories in their policy, procedures, and trainings. These standards and categories should be provided to a complainant upon submission of a complaint;[693]
    - Include a timeline for complaint investigations in their policy and procedures that must be followed. This timeline should be provided to a complainant upon submission of a complaint.[694] Complainants should be notified of any delays in the investigation process;[695]
- Investigate all complaints received;[696]
- Conduct audits of the complaint process;[697]
- Require an officer to submit a complaint in the event a member of the public provides the officer with information about alleged misconduct by another officer but does not

[688] See, e.g., *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 2:16-cv-01731-MCA-MAH; Consent Decree, *U.S. v. Police Dept. of Baltimore City*, supra note 155; COPS Recommendations from a Community Practice, *supra* note 683.
[689] See, e.g., PERF SDPD, *supra* note 687, at p. 6; Consent Decree, *U.S. v. Police Dept. of Baltimore City*, *supra* note 155; COPS Recommendations from a Community Practice, *supra* note 683.
[690] Consent Decree, U.S. v. Police Dept. of Baltimore City, supra note 155.
[691] See COPS Recommendations from a Community Practice, *supra* note 683.
[692] See *ibid*.
[693] See *Investigation of Allegations of Employee Misconduct* (2019) IACP Law Enforcement Policy Center <https://www.theiacp.org/sites/default/files/2020-08/Investigation%20of%20Allegations%20of%20Employee%20Misconduct%20-%20FULL.pdf> [as of Dec. 2, 2021]; *U.S. v. Alamance County Sheriff Terry Johnson*, *supra* note 688; *U.S. v. The City of Ferguson*, (2016) 4:16-cv-000180-CP.
[694] Racial and Identity Profiling Advisory Board, Annual Report (2018) *supra* note 687, at p. 34; See *Investigation of Allegations of Employee Misconduct*, *supra* note 393; *U.S. v. The City of Ferguson*, *supra* note 693.
[695] Racial and Identity Profiling Advisory Board, Annual Report (2018) *supra* note 687, at p. 34.
[696] See Investigation of Allegations of Employee Misconduct, supra note 693; *U.S. v. Alamance County Sheriff Terry Johnson*, *supra* note 688; *U.S. v. The City of Ferguson*, *supra* note 693.
[697] See COPS Recommendations from a Community Practice, *supra* note 683.

wish to pursue a complaint themselves or does not express any desire for any remedy, such as discipline of the officer;[698] and

- Prohibit the department or agency from terminating an investigation into a complaint solely on the basis of a complainant's withdrawal of a complaint.[699]

Remove Deterrent Language from Civilian Complaint Forms

Generally, the civilian complaint process should not discourage complainants in any way.[700] Discouragement from filing a complaint can happen in many ways, including by the phrasing of the content contained on the complaint form itself or in the description of the agency's complaint investigation process on their website or in a printed brochure.

Penal Code section 148.6

Penal Code section 148.6 is a longstanding concern of the RIPA Board. This law makes it a misdemeanor to knowingly file a false allegation of misconduct against a law enforcement officer and requires complainants to read and sign advisory language that states:

> "YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CIVILIANS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CIVILIAN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.
>
> IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE."

The Board has identified that this language has a chilling effect that may deter members of the public from pursuing a complaint against an officer for fear of criminal sanctions in spite of having a bona fide complaint.

The RIPA Board renews its request to the Legislature to address the inaccessibility and deterrence caused by the Penal Code by removing this advisory language and signature requirement from state law.

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[698] See Consent Decree, U.S. v. Police Dept. of Baltimore City, supra note 155.
[699] Ibid.
[700] See COPS Recommendations from a Community Practice, *supra* note 683.

Civil Code 47.5

The Board has seen an increase in the inclusion of a civil advisory on agencies' civilian complaint forms, websites, or civilian complaint procedure descriptions. The advisory varies by agency; some include the code section verbatim while others simply state that officers have the right to bring a civil action.

California Civil Code Section 47.5 allows peace officers to:

> "bring an action for defamation against an individual who has filed a complaint with that officer's employing agency alleging misconduct, criminal conduct, or incompetence, if that complaint is false, the complaint was made with knowledge that it was false and that it was made with spite, hatred, or ill will. Knowledge that the complaint was false may be proved by a showing that the complainant had no reasonable grounds to believe the statement was true and the complainant exhibited a reckless disregard for ascertaining the truth."

This provision of the law has been called into question by conflicting decisions by the California Court of Appeal. However, federal district courts have found it unconstitutional. Like Penal Code 148.6, including this civil advisory could have a chilling effect on the submission of bona fide complaints. Therefore, the Board recommends that the Legislature amend state law to prohibit agencies from including this advisory on their complaint forms.

D. Vision for Future Reports

In the coming years, the Board will continue to review civilian complaint policies and data to establish additional recommendations and best practices. The Board's goal is to ensure that civilian complaints function as the effective law enforcement oversight tool intended by the Legislature.

POST TRAINING AND RECRUITMENT

A. Addressing Biases in Peace Officers in the Hiring Phase

1. AB 846 Summary

On September 30, 2020, Governor Gavin Newsom signed California Assembly Bill (AB) 846 into law. AB 846 heightened the minimum standards for peace officer employment and evaluation for fitness as an officer. Prior to its enactment, officers were required to be "free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer" and to undergo an evaluation of their emotional and mental condition. AB 846 expanded this standard by requiring that officers be "free" of "bias against race or ethnicity, gender, nationality religion, disability, or sexual orientation." In turn, the state Commission on Peace Officer Standards and Training (POST) is required by January 1, 2022 to study, review, and update regulations and screening materials related to the emotional and mental condition evaluation of officers to incorporate both explicit and implicit bias towards race or ethnicity, gender, nationality, religion, disability, or sexual orientation.[701]

i. Background, Rationale, and Support for AB 846

Lawmakers introduced AB 846 among several bills that advanced reforms to policing practices in the wake of the tragic murder of George Floyd by Minneapolis Police Department Officer Derek Chauvin. The authors observed that implicit biases among officers were "especially dangerous because of the positions of power they hold"[702] and noted the various disparities in stops, searches, and arrest rates, as well as the killings of Black men by White police officers across our nation.[703]

Given these disparities, AB 846 authors determined that it was "critical … [to] require screening of bias during the hiring process and recognize how to take steps to counteract [its] influence."[704] To that end, the authors intended for AB 846 to take a "slightly different tact" from previous legislation that focused on training or policy changes; instead, AB 846 would require that officers "undergo an evaluation to determine whether they hold biases that could impact their ability to effectively and neutrally act in the role of a peace officer, and to handle the extraordinary responsibility that goes along with that highly-trusted role."[705]

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[701] Assem. Bill No. 846 (2019-2020 Reg. Sess.) Ch. 322. Consistent with this new requirement, AB 846 also adds Section 13651 to the Penal Code, requiring every entity that employs peace officers to review the job description used in recruitment and hiring and make changes emphasizing community-based policing while de-emphasizing the paramilitary aspects of the job.
[702] Off. of Assem. Floor Analyses, Analysis of Assem. Bill No. 846 (2019-2020 Reg. Sess.) Aug. 29, 2020, p. 2 <https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB846#> [as of Dec. 2, 2021].
[703] Ibid.
[704] Ibid.
[705] Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 846 (2019-2020 Reg. Sess.) as amended Aug. 21, 2020, p. 5 <https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB846#> [as of Dec. 2, 2021].

News coverage of bias-related incidents by law enforcement officers supported the need for peace officers to undergo a screening for implicit and explicit biases.[706] As discussed more fully in last year's annual RIPA report, in June 2020, the mayor of San Jose called for the firing of four San Jose police officers accused of making racist comments on Facebook in what he called "an online ring of hate."[707] Supporters of AB 846 believed that the bill's enactment would be a "significant step towards protecting the people of California from biased law enforcement officers who have no place in our law enforcement agencies."[708]

The authors believed that the changes to the hiring standards for and evaluations of peace officers would help to "reform the system as it currently exists and move us in the direction of equity."[709] Co-author of the bill, Assemblymember Jacqui Irwin, explained that "screening police officer applicants for dangerous biases is a common sense approach for any state that wishes to see its law enforcement fully protect and serve its diverse communities."[710] Co-author Assemblymember Autumn Burke likewise stated that "the way we recruit and screen officer candidates is an incredibly necessary step in the fight for criminal justice reform and racial equality."[711]

In sum, AB 846 authors and supporters are hopeful that AB 846 will help to change the culture of law enforcement, and in turn improve policing outcomes. Nevertheless, whether AB 846 will achieve the Legislature's goals will depend on how AB 846's various components are implemented.

ii. Progress in Implementing AB 846's Mandates

Since AB 846's passage, POST has taken steps to study, review, and update regulations and screening materials related to the emotional and mental condition evaluation as required by the bill. This work started with POST conducting a psychological evaluator survey seeking input

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[706] Implicit bias leads to negative stereotypes, and when acted upon, can result in explicit forms of bias which may in turn lead to disparate policing. See Racial and Identity Profiling Advisory Board, Annual Report 2021, *supra* note 199, at p. 24 (citing Salmanowitz, *Unconventional Methods for A Traditional Setting: The Use of Virtual Reality to Reduce Implicit Racial Bias in the Courtroom* (2016) 15 U.N.H.L. Rev. 117, 123 [citations omitted]). The RIPA 2021 Annual Report also noted that research that found that "when White participants view Black faces, there is increased activity in the regions of the brain associated with threat and fear processing, disgust reactions, and social stereotyping" and "[t]his attentional bias and brain activity associated with threat and fear, among other processes, may explain disproportionate stops of Black individuals in some jurisdictions. That is, officers may have an attentional bias towards Black individuals, and may experience brain activity associated with threat and fear processing, which causes the officers to pay more attention to Black individuals and, in turn stop them at disproportionate rates." Racial and Identity Profiling Advisory Board, Annual Report 2021, *supra* note 199, at p. 24.

[707] Off. of Assem. Floor Analyses, Analysis of Assem. Bill No. 846, *supra* note 702, at p. 2; Racial and Identity Profiling Advisory Board, Annual Report 2021, *supra* note 199, at p. 26.

[708] Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 846, *supra* note 705, at p. 6.

[709] Off. of Assem. Floor Analyses, Analysis of Assem. Bill No. 846, *supra* note 702, at p. 2.

[710] Assemblymember Irwin, *Newsom signs legislation reforming police officer recruitment and pre-employment evaluations* (Oct. 1, 2020) Press Release <https://a44.asmdc.org/press-releases/20201001-governor-newsom-signs-legislation-reforming-police-officer-recruitment-and> [as of Dec. 2, 2021].

[711] *Ibid*. AB 846 was not without opposition. The California Police Chiefs Association (CPCA) opposed the bill, arguing that its mandates would be costly, duplicative of existing screening imposed by POST, and would unnecessarily increase costs to local agencies already facing budget cuts due to the pandemic. See Off. of Assem. Floor Analyses, Analysis of Assem. Bill No. 846, *supra* note 702, at pp. 2-3. Further, CPCA contended that the bill would hamper law enforcement agencies' ability to recruit qualified candidates. *Ibid*.

on current methods used for assessing bias of California peace officer candidates in the context of pre-employment psychological evaluations.[712]

POST then organized its work on implementing AB 846 into the following three phases. In Phase One, POST created a working group of subject matter experts (hereafter, SME Panel) to study, review, and update regulations and associated screening materials related to the emotional and mental condition evaluation as provided by AB 846 requirements.[713] The SME Panel exchanged research articles intended to assist the panel's focus in determining whether there were any existing methods to measure bias, and specifically whether those methods have been used in the context of peace officer or personnel selection.[714]

The SME Panel then developed a bias assessment framework that could be used to assess a person's biases.[715] The framework identified three "targeted constructs" to evaluate individuals for bias. Those constructs are "biased behaviors, biased attitudes, and bias-relevant traits & attributes."[716] From there, POST identified negative and positive factors for each construct.[717] For example, POST lists examples of negative factors demonstrating biased behavior as "[s]tatements, social media postings and other behaviors indicating bias, social group dominance/ supremacy, or espousing intolerance of or hostile action against a person or group because of one or more actual or perceived characteristics involving disability, gender, nationality, race or ethnicity, religion, or sexual orientation, or because of association with a person with one or more of these actual or perceived characteristics."[718]

Finally, the framework identified specific sources (the psychological interview, the individual's personal history, and written documents) that could be used to identify those negative and positive factors.[719] Additionally, the SME Panel recommended the addition and development of a draft definition for multicultural competence to the POST Psychological Screening Manual.[720]

In Phase Two, POST reached out to POST-compliant screening psychologists (the Psychological Evaluator Advisory Group) along with other stakeholders, including background investigators and law enforcement agencies, to review and provide feedback on the draft recommendations of the SME Panel. It is worth noting that, in light of RIPA's overall goal of reducing bias in policing and its stated interest in participating as stakeholder, the RIPA Board had hoped to participate in the Phase Two stakeholder review process. However, POST presented the materials to the Board only after the stakeholders had already reviewed them and POST

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[712] See Com. on Peace Officer Stds. and Training, Bull. No. 2021-22, *Update on the Assembly Bill (AB) 846 Project: Bias Screening of Peace Officer Candidates* ("Bull. No. 2021-22") (May 27, 2021) p. 1 <https://post.ca.gov/Portals/0/post_docs/bulletin/2021-22.pdf> [as of Dec. 2, 2021].
[713] See *ibid*.
[714] See *id*. at pp. 1-2.
[715] See generally Com. on Peace Officer Stds. and Training, Bias Assessment Framework (Sept. 10, 2021) <https://post.ca.gov/Portals/0/post_docs/regulationnotices/2021/Bias_Assessment_Framework.pdf> [as of Dec. 2, 2021].
[716] Com. on Peace Officer Stds. and Training, Text of Proposed Reg. Action (Sept. 10, 2021) p. 5 <https://post.ca.gov/Portals/0/post_docs/regulationnotices/2021/2021-38_TPRA.pdf> [as of Dec. 2, 2021].
[717] See *ibid*.
[718] Ibid.
[719] See Com. on Peace Officer Stds. and Training, Bull. No. 2021-22, *supra* note 712, at p. 2.
[720] See *ibid.*

submitted the final proposed regulations to the POST Commission in Phase Three, as described in more detail below. Thus, the Board was not able to evaluate at this stage.[721]

In Phase Three, the SME Panel reviewed the recommendations and feedback received by the stakeholders. From there, POST prepared proposed regulations, which would require background investigators to include any findings of biased behavior, traits, or attributes – as listed in the bias assessment framework described above –in their narrative reports describing the results of their investigation into a peace officer candidate's background.[722] In a similar vein, the proposed regulations would also require psychological evaluators to use the bias assessment framework to assess a person for biased behavior, traits, or attributes.[723] POST provided these proposed regulations, including the bias assessment framework, to the POST Commission for its review and approval on September 1, 2021.[724]

The POST Commission approved the proposed regulations and POST submitted them to the Office of Administrative Law (OAL) for publication on September 10, 2021.[725] The publication of the proposed regulations triggered a 45-day public comment period during which members of the public and other interested stakeholders could comment on the proposals.[726]

On October 25, 2021, the RIPA Board submitted a comment letter recommending revisions to the proposed regulations.[727] First, the Board recommended that the regulations specifically require background investigators and evaluators to search for and review an applicant's social media—including prior postings, affiliations, and conduct reflecting agreement or opposition to others' postings – as part of the background investigation into finding evidence of explicit or implicit bias.

Second, the Board recommended that the regulations require background investigators and evaluators to provide specific findings with respect to each of the "targeted constructs." With respect to background investigators, POST's proposed regulations state that the investigative report on a candidate must include any findings on any of the targeted constructs.[728] In other words, the investigative report need not address *all* of the targeted constructs. The Board's letter proposes more specific requirements that (1) the background investigator make specific findings with respect to every targeted construct, and (2) the findings clearly explain the assessment for each construct, including sources used and evidence used.

With respect to psychological evaluators, POST's proposed regulations would only require psychological evaluators to "use" the Bias Assessment Framework to assess biased behaviors,

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[721] Ventura County Sheriff and current RIPA Board Member William Ayub did participate in his capacity as a California State Sheriff's Association representative but not in his capacity as a RIPA Board member.
[722] See Com. on Peace Officer Stds. and Training, Text of Proposed Reg. Action, *supra* note 716, at p. 2.
[723] See *id*. at p. 5.
[724] See generally *id*.
[725] See generally Cal. Reg. Notice Register 2021, No. 37-Z, pp. 1236-1238 <https://oal.ca.gov/wp-content/uploads/sites/166/2021/09/2021-Notice-Register-Number-37-Z-September-10-2021.pdf> [as of Dec. 2, 2021].
[726] See generally *ibid*.
[727] Please see Appendix K for a copy of the RIPA Board's Comment letter.
[728] See generally Com. on Peace Officer Stds. and Training, Text of Proposed Reg. Action *supra* note 716.

attitudes, and traits and attributes.[729] However, the proposed regulations do not require the evaluator to provide clear findings with respect to *every* targeted construct. The Board's letter recommends that the evaluator provide (1) detailed findings of its evaluation for each targeted construct of the candidate and (2) clearly explain the evaluator's finding, including the identification of sources, evidence used, and other factors relied upon, and an explanation of how they contributed the evaluator's analysis and decision.

The RIPA Board believed that its recommendations for more specific and detailed requirements and findings would better equip agencies to determine whether a person is "free" of biases, as contemplated by the Legislature in passing AB 846.

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.[730]

POST also raised concerns about possible free speech issues related to checking social media within the context of a pre-employment background check.[731] The Board does not believe that there are such constraints, and social media was given as an example of something to search in the proposed regulations. The Board simply recommended that POST require investigators and evaluators to check candidates' social media, rather than leave it as discretionary.

Concerning recommendations on investigator's findings, POST notes that it must ensure that the responsibilities of investigators and evaluators are "bifurcated, to insure the [i]nvestigator is not placed in a position to make medical assessment, which would go beyond his/her professional scope."[732] Concerning recommendations on evaluator's findings, POST notes that it must "consult with psychologists in order to determine if such recommendations comport with medical assessment protocols and reporting procedures within the profession."[733] The intention of the Board's recommendation is not to require the investigator to make a medical assessment or to require anything of evaluators that might not comport with medical assessment protocols and reporting procedures. Simply put, the Board recommended that investigators and evaluators specifically look at each biased behavior and/or bias-relevant traits and attributes identified by POST in the Bias Assessment Framework—rather than have the discretion to make findings as to "any" of those categories. The Board further recommended that the regulations require that the investigators and evaluators document the support for each finding.

At its December 1, 2021 meeting, the Board spent considerable time discussing POST's letter. Many Board members expressed significant concerns about POST's rejection of the Board's recommendations and believed that POST's unwillingness to consider the Board's recommendations demonstrated that POST had not adequately fulfilled the obligations

[729] See generally *ibid*.
[730] See Appendix K for a copy of POST's Response to the RIPA Board's Comment letter.
[731] See *ibid.*
[732] See *ibid.*
[733] See *ibid.*

conferred upon it by the Legislature to ensure a robust evaluation of explicit and implicit bias in peace officer candidates. Other Board members wanted to work with POST to see if there was a way to incorporate the recommendations in the future. Ultimately, the Board voted to include language in this report expressing its disagreement with POST's decision to reject its recommendations. Specifically, the Board felt that, in rejecting the recommendation concerning social media, POST was ignoring significant evidence that social media has been an important tool to identify officer bias. In addition, the Board expressed that POST's rejection of the recommendation that investigators and evaluators document the factors involved in their decisions was not best practice and believed it would undermine the intent of the Legislature.[734]

POST subsequently postponed the publishing of the regulations to engage with Board members to evaluate and fully consider the Board's recommendations. POST plans to address its regulations at its March 2022 Commission meeting. The Board is committed to work with POST in a meaningful way to ensure its recommendations are addressed by the Commission. As discussed above, the RIPA board has in previous reports written about the value of screening social media and has reviewed the utility of specific tools intended to measure implicit bias. The Board is committed to directly engaging with POST to share previous analysis and reasoning driving the recommendations with the aim of effective implementation of AB 846.

2. The Board's Assessment of AB 846's Mandates and Suggested Next Steps for Stakeholders

Given that POST's regulations implementing AB 846 are not yet finalized and approved by the Office of Administrative Law, the long-term impact of AB 846 remains to be seen. However, the Board has some preliminary observations about AB 846 and the requirements of the bill.

As a threshold matter, the RIPA Board recognizes the historical significance of AB 846's purpose in seeking to evaluate officers for bias against race or ethnicity, gender, nationality religion, disability, or sexual orientation. AB 846 is ground-breaking legislation that places a welcome focus on law enforcement organizational transformation at the front end—when a person is first hired by an agency. Additionally, the Board appreciates the spirit behind AB 846, which is to ensure that peace officers will be found free of biases that might adversely affect their ability to be a peace officer. The Board shares the Legislature's belief that the cumulative impact of changing how agencies hire officers may change the culture of the organization such that officers police in a less biased manner.

While the Board appreciates AB 846's focus on using the hiring process to identify biased officers, there are a few issues that should be carefully considered. A threshold issue is whether it is even possible to find applicants who could meet the statutory standard of being "free" of biases that would "adversely affect the exercise of the powers of a peace officer." Indeed, studies suggest that all individuals hold some implicit biases.[735] Thus, it may be an

[734] See *ibid*.; see also Off. of Assem. Floor Analyses, Analysis of Assem. Bill No. 846, *supra* note 702, at p. 2.
[735] See, e.g., Su, *A Proposal to Properly Address Implicit Bias in the Jury* (2020) 31 Hastings Women's L.J. 79, 86; Chi Cantalupo, *And Even More of Us Are Brave: Intersectionality & Sexual Harassment of Women Students of Color* (2019) 42 Harv. J. L. & Gender 1, 78 (citations omitted); Johnson, Everyone Is Biased*: Harvard Professor's Work Reveals We Barely Know Our*

"unrealistic expectation" to expect to find applicants who are "100 percent bias-free."[736] And, as leading bias expert and social psychologist Jennifer Eberhardt explains, it may be impossible to rid oneself of biases and, instead, the goal should be on managing those biases:

> We're kind of limited . . . to the extent that we can actually rid ourselves of bias. I don't even know if that's a goal that is achievable. People always want to know how we can get over bias. And I understand that. But bias is not something we cure, it's something we manage. There's no magical moment where bias just ends and we never have to deal with it again.[737]

Even if law enforcement agencies and POST did not take AB 846's mandate literally and instead focused on screening out applicants for strong biases against various identity groups, AB 846 does not lay out what specific metrics would be used to measure a person's biases.

There are, in fact, tests developed by social psychologists that purport to measure a person's implicit biases.[738] The most widely known test is the Implicit Association Test (IAT), which is a collection of several tests that measure how quickly a person associates and pairs "good" and "bad" words and images with people from different identity groups; a quicker association of bad or good words (such as the words "evil," "kind," or an image of a gun) with a person of a certain identity group may reflect a bias towards people within that identity group.[739] But there does not appear to be wide consensus—nor sufficient research— to support the position that these tests accurately measure a person's implicit biases.[740] Nor does there appear to be agreement among leading social psychologists on implicit bias research that implicit biases can predict how a person will behave in real world contexts.[741] As implicit bias expert and UCLA law

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Own Minds (Feb. 5, 2013) *Boston.com* <https://www.boston.com/news/science/2013/02/05/everyone-is-biased-harvard-professors-work-reveals-we-barely-know-our-own-minds> [as of Dec. 2, 2021].

[736] See Office of Community Oriented Policing Services, United States Department of Justice, *Hiring for the 21st Century Law Enforcement Officer* (2017) p. 17 <https://cops.usdoj.gov/RIC/Publications/cops-w0831-pub.pdf> [as of Dec. 2, 2021].

[737] See Chang, *Can We Overcome Racial Bias? 'Biased' Author Says to Start By Acknowledging It* (Mar. 28, 2019) NPR <https://www.npr.org/2019/03/28/705113639/can-we-overcome-racial-bias-biased-author-says-to-start-by-acknowledging-it> [as of Dec. 2, 2021].

[738] See Feigenberg, et al., *Implicit Bias Training for Police*, University of Chicago Urban Labs Crime Lab (Apr. 23, 2021) p. 2 <https://urbanlabs.uchicago.edu/attachments/a11adfec96ff6054bc4146c1d366bdf26861fcc7/store/35ceee1c8a33feebad18b35aa80f7c55c435ce0f7f9e56d6cbee40b6bf27/Implicit+Bias+Training+for+Police.pdf> [as of Dec. 2, 2021].

[739] Various IAT tests are available here: https://implicit.harvard.edu/implicit/takeatest.html.

[740] Banks, et al., Discrimination and Implicit Bias in A Racially Unequal Society (2006) 94 Cal. L. Rev. 1169, 1187.

[741] Feigenberg, et al., *Implicit Bias Training for Police*, *supra* note 738, at p. 2 ("Estimated correlations between implicit (and, for that matter, explicit) lab-based bias measures and lab-based discriminatory behaviors are generally modest but have held up in meta-analyses."); but see Banks, et al., *Discrimination and Implicit Bias in A Racially Unequal Society* (2006) 94 Cal. L. Rev. 1169, 1187 (beyond the domain of race and crime, evidence linking IAT scores and racially discriminatory behavior is similarly sparse. The few published studies that have found a statistically significant relationship between participants' Race IAT scores and their performance in a study concern aspects of one's demeanor that are both subtle and ambiguous (e.g., eye contact, speech errors, and facial expression); *see also* Villegas, *How much bias is too much to become a police officer? Experts fear new law might backfire*, Washington Post (Oct. 27, 2020) <https://www.washingtonpost.com/nation/2020/10/27/how-much-bias-is-too-much-become-police-officer-experts-fear-policing-law-might-backfire/> [as of Dec. 2, 2021] ("These types of evaluations, [experts] say, do not necessarily predict future behavior or future beliefs as they are constantly relearned by individuals and supplied by society.").

professor Jerry Kang explained: "[AB 846] worryingly assumes there is an easy way to identify emotional and mental conditions that include implicit bias on specific individuals."[742]

Because there do not appear to be reliable tests to measure implicit bias, the RIPA Board recommends that POST and law enforcement agencies consider using additional approaches to reducing bias-based policing. To that end, the RIPA Board recommends that the Legislature consider legislation that would provide funding to stakeholders, including academic researchers and community organizations, to explore in a meaningful way other approaches to reducing biased policing. This type of legislation will further the goals of AB 846 to change the culture of law enforcement and to reduce harm to California communities.

i. Evaluating officers' social media for evidence of explicit bias

One approach would be to evaluate officers' social media for explicit biases. As noted above, the Board already recommended that POST revise its proposed regulations implementing AB 846 to include a specific requirement to evaluate a peace officer candidate's social media profile. This recommendation is informed by widely publicized examples of officers using social media to share and discuss information and images evidencing biased beliefs.

In last year's annual report, the Board referenced the Plain View Project, which examined the Facebook accounts of 2,900 officers from eight departments across the country and an additional 600 retired officers from those same departments for evidence of bias and now maintains an active database.[743] The Plain View Project found thousands of Facebook posts that included racist or otherwise offensive language.[744] Of the Facebook accounts that Plain View researchers could identify as belonging to officers or retired officers, about 1 in 5 of the current officers and 2 in 5 of the retired officers made public posts or comments that included biased language or otherwise undermined confidence or trust in law enforcement by using dehumanizing language or praising violence.[745] Some of those Facebook posts were linked to actual harm: the Plain View Project collaborated with Injustice Watch, a Chicago-based nonprofit newsroom, which determined that, of 327 officers in the Philadelphia Police Department who posted troubling content, 138 officers—or more than 33%—may have been defendants in at least one federal civil rights lawsuit.[746] For 99 of those 138 officers (or nearly 72%), those lawsuits ended in settlements or verdicts against the officers or the city of Philadelphia.

In a similar fashion, the Center for Investigative Reporting (CIR) conducted an investigation and found that almost 400 current and retired law enforcement officers are members of Confederate, Islamophobia, misogynistic, or anti-government militia groups on Facebook,

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[742] Villegas, How much bias is too much to become a police officer? Experts fear new law might backfire, *supra* note 741.
[743] See Racial and Identity Profiling Advisory Board, Annual Report 2021, *supra* note 199, at p. 26.
[744] See *ibid*.
[745] Hoerner, et al., *Cops Around the Country Are Posting Racist and Violent Comments on Facebook* (2019) Injustice Watch <https://www.injusticewatch.org/interactives/cops-troubling-facebook-posts-revealed/> [as of Dec. 2, 2021].
[746] See *ibid*. InjusticeWatch linked the officers to these lawsuits based on the officers' names, badge numbers, and/or other corroborating details.

resulting in more than 50 departments launching internal investigations.[747] Like the Plain View/Injustice Watch investigation, CIR determined that at least some officers who belonged to these groups engaged in actual harm: for example, one Madison County, Mississippi sheriff's deputy was a member of a Facebook group called "White Lives Matter" and in a deposition filed by the ACLU against his department, admitted that he "may have" used the "N-word."[748] A lieutenant with the Chicago Police Department joined an Islamophobic Facebook group and posted anti-transgender memes. Citizens Police Data Project determined that this lieutenant was the subject of 70 allegations of misconduct, including allegations of unlawful use of force.[749] CIR's findings prompted an associate professor of sociology who has studied extremist groups to assert that it is not "consistent with what we know about the decision-making process" "[t]o think that people could completely separate these extremist right-wing views from their actions."[750]

These examples lend support to the public calls for agencies to evaluate job applicants' social media posts to identify any examples of explicit biases.

ii. Evaluating officers for their motivation not to police in a biased manner

Another approach that law enforcement agencies and POST could consider to address bias among officers is evaluating officers' motivations to police in an unbiased manner. Several researchers have studied people's motivations to avoid biased actions, and this appears to be a promising avenue to identify individuals who might be less likely to engage in disparate policing. Prominent researchers in this area, Patricia G. Devine and Ashby Plant, theorized that there are two types of motivations to act in a nonbiased manner (or to respond without prejudice, as the researchers describe it): internal and external motivation.[751]

Internal motivation to act in a nonbiased manner comes from within—a person has "internalized and personally important nonprejudiced standards."[752] A person with internal motivation would agree with the following statement: "Being nonprejudiced toward Black people is important to my self-concept."[753] External motivation to act in a nonbiased manner is driven by "social pressure to comply with nonprejudiced norms."[754] A person with external motivation would agree with the following statement: "I attempt to appear nonprejudiced toward Black people in order to avoid disapproval from others."[755]

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[747] See Carless et al., *To protect and slur: Inside hate groups on Facebook, police officers trade racist memes, conspiracy theories and Islamophobia* (June 14, 2019) Reveal News <https://revealnews.org/article/inside-hate-groups-on-facebook-police-officers-trade-racist-memes-conspiracy-theories-and-islamophobia/> [as of Dec. 2, 2021].
[748] See *ibid*.
[749] See *ibid*.
[750] Ibid.
[751] See Devine et al., *Internal and External Motivation to Respond without Prejudice* (1998) 75 J. of Personality and Soc. Psychol. 811, 811.
[752] *Id*. at p. 813.
[753] Ibid.
[754] Ibid.
[755] Ibid.

Plant and Devine conducted two studies on a university campus to determine whether these two forms of motivation can predict future actions or feelings. In the first study, researchers measured student participants' responses to discrepancies in how they believed they *should* treat Black individuals and how they believed they *would* actually treat Black individuals in various hypothetical scenarios.[756]

The authors found that participants with high internal motivation to act in a nonbiased manner experienced more guilt and self-criticism when there were large discrepancies between their own personal standards for how to treat Black individuals and how they believed they would actually treat them. Participants with high external motivation experienced more threat-related feelings when there were large discrepancies between the broader campus norms and how they would actually treat Black individuals.[757]

In the second study, participants answered the questions in front of a live individual. The researchers found that only those with high external motivation—which has a "clear focus on concern over how one would be evaluated by others"—changed their prejudiced reactions under the scrutiny of a live experimenter.[758] Plant and Devine also found that those with high internal motivation also reported low-prejudice attitudes; by contrast, the range of prejudice scores was wide (from high to low) for people with external motivations.[759]

Plant and Devine, as well as other researchers, have expanded on this research and have found that internal motivation not to be biased has stronger and more consistent impact on actual biased attitudes and responses than external motivation. In one study of White participants' interactions with Black individuals, researchers found that White participants who were more internally motivated to respond without prejudice were more concerned about showing their partner respect, more focused on their partner's needs, exhibited more partner-engaged behaviors, and were more likely to remember details about their partners. In contrast, more externally motivated individuals were more focused on themselves and did not exhibit as much care towards the needs of their partner.[760]

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[756] *Id*. at p. 818. The researchers separated the participants into two groups – the first group measured the discrepancies from participants' own personal standards (the difference between (1) their own internalized standards on how they should treat Black individuals and (2) how they believed they would actually treat Black individuals) and the second group measured discrepancies from broader norms of the campus (the difference between (1) the broader campus's standard on how they should treat Black individuals and (2) how they believed they would actually treat Black individuals). Participants were given a list of scenarios (the one provided by Plant and Devine was "Imagine that you saw a young Black woman at the grocery store with four small children. Your initial thought should be—'How typical'"). For each scenario, the participant would have to provide, on a 1-7 scale, how strongly they would agree with a statement. They first would measure based on whether they *should* agree and then second based on whether they *would* actually respond. For example, one situation read as follows: "Imagine that you saw a young Black woman at the grocery store with four small children. Your initial thought should be—'How typical'." The second section of the questionnaire assessed how participants believed they actually would respond in the same scenarios.
[757] See *id*. at p. 823.
[758] See *id*. at pp. 814, 824.
[759] See *id*. at p. 826.
[760] See LaCosse et al., Internal Motivation to Respond without Prejudice Fosters Respectful Responses in Interracial Interactions (2019) J. of Personality and Soc. Psychol.; see also Devine et al., The Regulation of Explicit and Implicit Race Bias: the Role of Motivations to Respond without Prejudice (2002) 82 J. of Personality and Soc. Psychol. 835, 840 (participants with low levels of

While it is not clear whether Plant and Devine's findings would reliably apply to a different set of subjects, nor is it clear whether the questions that Plant and Devine developed to determine a person's internal and external motivations would work in the law enforcement context, these studies may highlight an avenue by which POST and law enforcement agencies could work towards the Legislature's goal of "counteract[ing] [the] influence" of officers' biases. The Board invites academics to engage in further research, and invites the Legislature to consider funding in this area to determine whether examining officer candidates' motivations may have an impact on officers' interactions, and in turn, disparities in policing.

iii. Long-term interventions to address implicit biases

Researchers have also suggested looking beyond evaluating the individual characteristics of an officer (i.e. their implicit biases or motivations) to looking at other approaches to reduce biased policing.[761] While there has not been significant research on these other approaches to determine their impacts on biased policing (and specifically, disparities in police encounters), it is at least worth noting these other approaches.

Leading social psychologists on bias research, Benjamin Feigenberg, Jack Glaser, and Eleni Packis, have surveyed various other approaches. One approach involves employing various strategies to decrease the impact of implicit bias on people's behaviors, including: (1) guiding people to take the perspective of a person from an identity group different from one's own; (2) exposing them to counter-stereotypes of an identity group to reduce the stereotypic associations one has of that identity group; and (3) asking people to recall times they behaved in an objective manner so as to promote equitable behavior.[762]

There is some indication that employing these types of strategies over the course of a several-week "intervention" may have a sustained reduction on individuals' implicit biases. In a study of 91 non-Black psychology students, social psychologists worked for 12 weeks to employ various bias reduction strategies, including the ones described above.[763] Researchers measured participants IAT scores at various intervals throughout the 12-week study (at the start of the intervention, at 4 weeks, and at 8 weeks) and concluded that people who participated in the intervention had lower IAT scores than those who did not participate, and those lower scores persisted throughout the study.[764]

However, it is unclear whether this type of long-term intervention is replicable in the policing context. Indeed, another study involving a similar type of multi-week intervention, but with

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internal motivation to control prejudice reported higher levels of explicit race bias and participants with high internal motivation and low external motivation had the lowest levels of implicit bias and were the most effective at regulating their biases on difficult-to-control reactions).

[761] See Villegas, How much bias is too much to become a police officer? Experts fear new law might backfire, *supra* note 741.

[762] See Feigenberg et al., *Implicit Bias Training for Police*, *supra* note 738, at pp. 2-3.

[763] See *ibid*.

[764] See generally Devine, et al., *Long-term reduction in implicit race bias: A prejudice habit-breaking intervention* (2012) J. Exp. Soc. Psychol. 2012 Nov; 48(6): 1267-1278 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3603687/> [as of Dec. 2, 2021].

non-students, did not produce the same sustained reductions in IAT scores.[765] Nor is it clear that a reduction in IAT scores would necessarily translate into better policing outcomes, as described above.

iv. Implicit bias trainings

Implicit bias trainings are also another potential method to reduce biases. Thus far, social psychologists who have researched bias reduction strategies have identified only one study that has evaluated the impact of implicit bias trainings in the policing context (and specifically at the New York City Police Department). This study found no impact from this type of training on arrests, stops, frisks in stops, summonses, searches in stops, use of force in stops, use of force in arrests, and citizen complaints.[766] One study alone, of course, should not be a basis to discourage implicit bias trainings. Indeed, this study found that implicit bias trainings had some positive impact on officers: the study found that officers were more concerned about "the potential for bias by the police toward the public" after the implicit bias training.[767] After taking the implicit bias training, officers were also more likely to agree with the statement that bias in policing is a legitimate community concern.[768]

Given that this study did find some benefit to implicit bias trainings, it is worth further exploration into their impact. Leading social psychologists on bias and policing, in fact, suggest that "further evidence is needed to assess whether [these types of] trainings that differ in terms of both content and dosage may hold more promise"[769] In other words, there needs to be further study into whether different types of implicit bias trainings and the frequency of those trainings could have a long-term impact on policing disparities. A promising development in this regard is a study conducted by a researcher out of Washington State University, Dr. Lois James. Dr. James is the director and developer of Counter Bias Training Simulation, a training that has officers undergo various simulations, using video scenarios, designed to have officers make split-second decisions, de-escalate situations, and interact with community members. These video simulations are intended to have officers understand how implicit biases influence those decisions.[770] Dr. James is currently studying body-worn camera footage from the Sacramento Police Department to determine whether there is any impact of this type of

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[765] See Feigenberg et al., *Implicit Bias Training for Police*, *supra* note 738, at pp. 2-3 (citing Carnes, et al., *Effect of an Intervention to Break the Gender Bias Habit for Faculty at one Institution: A Cluster Randomized, Controlled Trial* (2015) Academic Medicine: J. of the Assn. of American Medical Colleges 90(2), 221-230.)

[766] See Feigenberg et al., *Implicit Bias Training for Police*, *supra* note 738, at pp. 5-7 (describing a study of New York Police Department's rollout of implicit bias trainings and its conclusion that there were "essentially no changes in racial disparities across the range of policing outcomes.").

[767] See Worden et al., *The Impacts of Implicit Bias Awareness Training in the NYPD*, The John F. Finn Institute (July 2020) p. 91 <https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/impacts-of-implicit-bias-awareness-training-in-%20the-nypd.pdf> [as of Dec. 2, 2021].

[768] See *ibid*.

[769] See Feigenberg et al., *Implicit Bias Training for Police*, *supra* note 738, at p. 7.

[770] See *Advanced Curriculum Solutions for Counter Bias Training*, FAAC <https://www.faac.com/milo/cognitive/cbtsim/> [as of Dec. 2, 2021].

training on policing behavior.[771] The RIPA Board will continue to monitor this study for future reports.

v. Impact of supervisors on officers' behavior

Feigenberg, Glaser, and Packis further suggest research into the impact supervisors (i.e. sergeants) have on reducing biases among officers under their command and the impact they have on disparate policing in general.[772] Because of a "widespread belief that sergeants play a critical role in [both] establishing departmental norms" and incentivizing officers, there is a critical need to think creatively on how to engage supervisors in helping officers address their individual policing outcomes and to examine supervisory impact on disparities in policing outcomes in the aggregate.[773] One approach would be for agencies to develop dashboards that use RIPA data to identify policing outcomes for individual officers. To the extent that a dashboard reveals disparities when looking at an officer's shift, patrol neighborhood demographics, and the policing outcomes of other officers during those same shifts and patrol neighborhoods, supervisors could work with the individual officer to determine if any of those disparities are the result of the conduct of the officer and if so, provide the officer remedial support. An agency in the long term could evaluate whether early intervention in this form has any impact on reducing stop disparities.

In sum, all these various approaches—evaluation of officers' motivations, long-term use of bias reduction strategies, implicit bias training, and data-driven supervisory engagement—require further research specifically in the context of policing. AB 846's passage suggests that the Legislature is primed to consider further legislation to evaluate these other approaches, which may be found to further the AB 846's authors' goals of "reform[ing] the system as it currently exists and mov[ing] . . . in the direction of equity."[774] This legislation could come in the form of funding for POST (in consultation with subject matter experts), law enforcement agencies themselves, and/or California universities to conduct this additional research.

vi. Strategies to reduce bias in the broader context

Of course, regardless of the type of reform the Legislature considers, any approach aimed at reducing biases in policing must be understood in the broader context in which policing takes place. As the Board discussed in the 2021 Report, "biases may, in part, explain individual officer behavior, but there are other systemic factors that impact certain racial, ethnic, and other identity groups that help to explain stop disparities in the aggregate."[775] Those "[l]arger systemic and social oppression [may also] inform officers' decisions – both directly and indirectly – to interact more with certain groups and in different ways, and thus lead to stop

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[771] See Matusek et al., *Police reforms surge after months of racial justice protests*, The Christian Science Monitor (Sept. 30, 2020) <https://www.csmonitor.com/USA/Justice/2020/1002/Police-reforms-surge-after-months-of-racial-justice-protests> [as of Dec. 2, 2021].
[772] See Feigenberg et al., *Implicit Bias Training for Police*, *supra* note 738, at p. 8.
[773] See *ibid*.
[774] Off. of Assem. Floor Analyses, Analysis of Assem. Bill No. 846, *supra* note 702, at p. 2.
[775] See Racial and Identity Profiling Advisory Board, Annual Report 2021, *supra* note 199, at pp. 26-27.

data disparities."[776] These "external" factors have led Robert E. Worden, lead author of the study behind the NYPD's implicit bias trainings described above, to observe that it is "not at all clear that the enforcement disparities that we commonly see in law enforcement are due even in part to implicit bias."[777] Nor is it clear that rooting out officers with apparent explicit biases would also have a meaningful impact on stop disparities. In short, given the other contributors to stop data disparities, the Legislature should strongly consider addressing stop disparities in a holistic manner by expanding the focus to include not just reforms to policing but to other areas (such as housing, judicial system, prosecutorial conduct), which contribute to systemic inequities that inform the disparities we are seeing.

B. Law Enforcement Training Related to Racial and Identity Profiling

1. Introduction and Background

i. California Law Enforcement Training

Since the inception of policing systems, it has been challenging to develop consistent training for officers and ensure that the training evolves with community needs. The early 1900's marked the beginning of a new police system in California, initiated by August Vollmer, the Chief of Police for the City of Berkeley.[778] He introduced the concept of training American peace officers; the first United States police training academy was the August Vollmer's Berkeley Police School, which opened in the early 1900's.[779] Vollmer pioneered several policing practices, including being the first to put officers on bicycles, developing a call box system throughout the city so officers could communicate with one another, and establishing the country's first crime lab.[780]

While Vollmer's innovations in professionalizing peace officer practices laid the foundation for modern day policing, he has also been sharply criticized for both "pioneering the militarization of the police and espousing the racist theories of eugenics."[781] Vollmer's early proposed police training curriculum included eugenics theory, and in some of his writings, he theorized that Black people were predisposed to commit crime.[782] Some have suggested his work and trainings may have "planted the seeds for policing methods, such as racial profiling" that still

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[776] See *id*. at p. 28.
[777] See Matusek et al., *Police reforms surge after months of racial justice protests*, *supra* note 771.
[778] City of Berkeley Police Department History, *The Earliest Years 1905-1925, First in Policing* <https://www.cityofberkeley.info/Police/Home/History_The_Earliest_Years_1905-1925.aspx> [as of Dec. 2, 2021].
[779] Hicks, *Berkeley's First Police Chief Supported Eugenics, Prompting Calls to Rename Vollmer Peak*, Berkeleyside News (Sept. 2020) <https://www.berkeleyside.org/2020/09/15/berkeleys-first-police-chief-supported-eugenics-> [as of Dec. 2, 2021].
[780] Ibid.
[781] See Newitz, *How the Father of Modern Policing 'Abolished' the Police*, N.Y. Times (June 2021) <https://www.nytimes.com/2021/06/03/opinion/august-vollmer-abolish-police.html> [as of Dec. 2, 2021]. The American Eugenics Society (AES) described eugenics as the study of improving the genetic composition of humans through controlled reproduction of different races and classes of people. See Hicks, *supra* note 779.
[782] See Newitz, *supra* note 781; see also Moffitt, *Weighing August Vollmer's tarnished legacy: Should his name be scrubbed from peak?* (Sept. 2020) S.F. Gate < https://www.sfgate.com/bayarea/article/Berkeley-Vollmer-Peak-police-chief-eugenics-15597927.php> [as of Dec. 2, 2021].

affect policing to this day.[783] Understanding these historical roots of police training in California will help develop and shape future trainings that break free from bias-based concepts.

In 1959, the California Legislature took steps to develop more consistent peace officer standards and training by establishing the Commission of Peace Officer Standards and Training (POST). Since the formation of POST, there has been an increased demand by both the public and law enforcement for enhanced training by officers. The public release of video recordings by bystanders and body worn cameras has highlighted the need for training that reinforces the constitutional mandates of treating people equitably and without unnecessary uses of force. In addition, communities have called for training aimed at acknowledging and healing the historical strain between communities of color and law enforcement. Meaningful reform to police training and practices throughout the state of California begins with POST.

ii. Commission on Peace Officer Standards and Training (POST)

POST is responsible for setting the minimum guidelines and training for most officers throughout the state. POST is an independent state entity within the California Executive Branch that reports directly to the Governor. It was created for the purpose of establishing minimum selection and training standards for California law enforcement officers. The POST Commission has the authority to (1) issue regulations regarding uniform standards and training and (2) set the minimum standards for training at the basic academy. POST is the central hub for any training and regulations for peace officers throughout the state.[784] The work of POST is supported by a full-time staff with an extensive budget; the 2021-22 Governor's Budget for POST is $83 million.[785] POST is comprised of 135 employees who enforce hiring standards, develop and deliver trainings, and conduct audits of 41 police academies and 611 law enforcement agencies that voluntarily participate in the POST Program.[786] POST is an incentive-based program; this means that if a law enforcement agency agrees to abide by the standards established by POST, they become eligible to receive the services and benefits from the Commission, which include:

- research into improved officer selection standards;
- management counseling services;

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[783] See, e.g., Newitz, *supra* note 781.

[784] Despite its central role in the regulation of peace officers, POST, until recently, lacked the authority to deny or cancel a peace officer's certification. Senate Bill 2, effective January 1, 2022, restores this meaningful oversight mechanism, previously revoked by the legislature in 2003, by giving POST the authority to decertify officers who have been fired for serious misconduct. In doing so, California became the 47th state with the authority to decertify peace officers. (Stats. 2021, ch. 409; Assem. Com. on Appropriations, Analysis of Sen. Bill No. 2. (2020-2021 Reg. Sess.), as amended July 7, 2021, p. 7 [argument in support according to the ACLU of California references the legislature's 2003 elimination of POST's decertification authority].) <https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB2> [as of Dec. 2, 2021].

[785] See 2021-2022 State Budget: General Government: 8120 Commission on Peace Officer Standards and Training (June 28, 2021) <https://www.ebudget.ca.gov/2021-22/pdf/Enacted/GovernorsBudget/8000/8120.pdf> [as of Dec. 2, 2021].

[786] Little Hoover Commission, Public Hearing on Law Enforcement Training (Part 1) (Feb. 11, 2021), written testimony of Executive Director Manny Alvarez, California Commission on Peace Officer Standards & Training Information ("Alvarez Public Hearing Testimony"), p. 1 <https://lhc.ca.gov/sites/lhc.ca.gov/files/CurrentStudies/PoliceTraining/PTWrittenTestimonny/Alvarez%20Testimony.pdf> [as of Dec. 2, 2021].

- the development of new training courses;
- reimbursement for training; and
- quality leadership training programs.

A combination of 652 law enforcement agencies and academies participate in the POST Program. There are approximately 84,300 full time peace officers and 8,100 public safety dispatchers who participate in the POST Program[787] and are eligible to receive training by POST.

The POST Peace Officer Training Program also provides financial assistance to participating jurisdictions for instructional costs associated with selected training courses. To encourage and assist local law enforcement agencies in meeting and maintaining minimum standards in the selection and training of law enforcement officers, POST provides financial assistance to all 58 counties, approximately 346 cities, and numerous specialized districts and local agencies which have agreed to meet the Commission's standards. The POST training program is designed to enhance the skills of entry-level peace officers and provide continuing education for seasoned peace officers. Table 1 provides a summary of the minimum training requirements for entry-level peace officers and continuing education for seasoned officers.

Any meaningful reform to policing practices must consider the role POST plays in shaping the minimum standards for officers. Presently there is very little oversight of POST, but with strong public support to reform policing throughout the country, several agencies are taking a closer look at training, funding, and ways to increase accountability.

As one aspect of community accountability, the Board notes that the POST Commission itself consists of 18 members but by law, ten of those members must

Entry-Level Peace Officers	Continuing Professional Training
Entry-level peace officers (new recruits) come primarily from participating law enforcement agencies and are required to complete a minimum of 1064 hours of training. The training is delivered through two components and both must be successfully completed to fulfill the requirements of the academy. **1. Component One**: Regular Basic Course consists of a minimum 664 hours of classroom training. **2. Component Two**: The Field Training Program consists of a minimum of 400 hours of on-the-job training.	Every peace officer (other than a level III Reserve Peace Officer), Public Safety Dispatcher, and Public Safety Dispatch Supervisor shall satisfactorily complete the CPT requirement of a minimum 18 or more hours of POST-qualifying training during every two years. Peace officers assigned to patrol, traffic, or investigation who routinely effect the physical arrest of criminal suspects are required to complete perishable Skills and Communications training. Perishable Skills Program training consists of a minimum of 18 hours in each two-year period. Of the total 18 hours required, the course breakdown is as follows: 1. Arrest and Control (4) 2. Driver Training (4) 3. Tactical Firearms (4) 4. Strategic Communication (2) 5. Use of Force (4)

[787] *Ibid*.

be from law enforcement.[788] In other words, more than half of the Commission brings law enforcement perspectives to the Commission's important work of setting the standards for training and certification for peace officers,789 which includes designing and administering training on bias, diversity, and historical perceptions of discriminatory enforcement practices.

In order to better conceptualize and understand the composition of the POST Commission, the Board reviewed the composition of 35 licensing boards.790 Of those Boards, 91% had significantly more public members than the POST Commission. For example, the Medical Board of California is comprised of 44.6% public members, more than double the amount of public members on the POST Board. The Medical Board of California is even advocating for more public members on their Board, which as noted by some, "could give the public more

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[788] The Governor appoints members after consultation with, and with the advice of, the Attorney General and with the advice and consent of the Senate. (Pen. Code, § 13500, subd. (a).) The composition of the Commission is as follows:

> (1) Two members shall be (i) sheriffs or chiefs of police or peace officers nominated by their respective sheriffs or chiefs of police, (ii) peace officers who are deputy sheriffs or city police officers, or (iii) a combination thereof.
> (2) Three members shall be sheriffs, chiefs of police, or peace officers nominated by their respective sheriffs or chiefs of police.
> (3) Four members shall be peace officers of the rank of sergeant or below with a minimum of five years' experience as a deputy sheriff, city police officer, marshal, or state-employed peace officer for whom the commission sets standards. Each member shall have demonstrated leadership in the recognized employee organization having the right to represent the member, as set forth in the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500)) and Chapter 10.5 (commencing with Section 3525) of Division 4 of Title 1 of the Government Code.
> (4) One member shall be an elected officer or chief administrative officer of a county in this state.
> (5) One member shall be an elected officer or chief administrative officer of a city in this state.
> (6) Two members shall be public members who shall not be peace officers.
> (7) One member shall be an educator or trainer in the field of criminal justice.
> (8) One member shall be a peace officer in California of the rank of sergeant or below with a minimum of five years' experience as a deputy sheriff, city police officer, marshal, or state-employed peace officer for whom the commission sets standards. This member shall have demonstrated leadership in a California-based law enforcement association that is also a presenter of POST-certified law enforcement training that advances the professionalism of peace officers in California.
> (c) In addition to the members of the commission appointed pursuant to subdivisions (a) and (b), the President pro Tempore of the Senate and the Speaker of the Assembly shall each appoint a commission member who is not a peace officer. The two appointees shall each have demonstrated expertise in one or more of the following areas:
> (1) Implicit and explicit bias.
> (2) Cultural competency.
> (3) Mental health and policing.
> (4) Work with vulnerable populations, including, but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities.
> (d) The Attorney General shall be an ex officio member of the commission.
> (e) All members of the commission shall serve for a term of three years and until appointment and qualification of their successors, each term to commence on the expiration date of the term of the predecessor.

(Pen. Code, § 13500, subds. (b)-(e).)

[789] Pen. Code, § 832, subd. (a).

[790] *Member Roster* (Nov. 19, 2021) California Department of Consumer Affairs <https://www.dca.ca.gov/about_us/board_members/roster.pdf> [as of Dec. 2, 2021].

confidence that the board is focused on protecting healthcare consumers, not healthcare providers."[791]

Presently, there is also no requirement that any POST Commission member have any experience or expertise with civil rights in the context of the criminal justice system, nor does the mandated composition reflect the diverse experiences of Californians regarding policing. Increasing the number of public members on the POST Commission could have the benefit of (1) improving and modernizing trainings, (2) increasing public trust and confidence in how the trainings are developed, and (3) allowing the public to be an active participant in developing those trainings. The Board believes the POST Commission would benefit from more public members who represent the diverse views of the community.

Specifically, the Commission would benefit from members who are not former law enforcement, including but not limited to:

- A university professor specializing in policing, and racial and identity equity or criminal justice.
- A representative of an organization that specializes in civil or human rights.
- A representative of a community organization that specializes in civil rights and/or criminal justice.
- A person with substantial experience working at a nonprofit or academic institution on issues related to police accountability.
- A person with substantial experience working at a community-based organization on issues related to police accountability.
- A person with prior criminal justice system involvement or who was previously incarcerated.
- A person who has been subject to wrongful use of force likely to cause death or serious bodily injury by a peace officer, or who is a surviving family member of a person killed by the wrongful use of deadly force by a peace officer.
- A representative from the California Public Defenders Association, or their designee.
- A religious clergy member who specializes in addressing and reducing racial and identity bias toward individuals and groups.
- An attorney with substantial professional experience involving oversight of peace officers.

Expanding the number of public members on the POST Commission who represent a broad range of views and perspectives of the community will give the public a voice in the

[791] Editorial Board, *Put Non-Physicians in Charge of the State Medical Board*, L.A. Times (July 6, 2021) <https://www.latimes.com/opinion/story/2021-07-06/california-medical-board-reform> [as of Dec. 2, 2021].

Commission's work and help shift the focus to how enforcement actions affect the people law enforcement agencies serve.

> The Board recommends the Legislature increase the number of community members on the POST Commission and require that those community members reflect the diverse experiences of Californians regarding policing.

2. Oversight of POST

i. A. Little Hoover Commission's 2021 Study on Law Enforcement Training in California

The Little Hoover Commission (LHC) is an independent state oversight agency created in 1962.[792] "The Commission's mission is to investigate state government operations and policy, and – through reports and legislative proposals – make recommendations to the Governor and Legislature to promote economy, efficiency, and improved service in state operations. In addition, the Commission has a statutory obligation to review and make recommendations on all proposed government reorganization plans."[793] This year, LHC is examining the development of training standards for California's law enforcement community.

Given lawmakers' ongoing interest in ensuring California peace officers receive adequate and appropriate training, the Commission set out to examine the role of POST in shaping law enforcement training standards for California's peace officers.[794]

The LHC conducted three public hearings and one advisory committee meeting on law enforcement training in 2021 that took place in February, March, and June.[795] At one of the hearings, the Executive Director of POST presented testimony.[796] The LHC also conducted a survey of California peace officers to gain an understanding of the training they receive. Following the completion of the survey, the LHC hosted a public advisory meeting to discuss the findings obtained from the survey and the hearings. There were twelve attendees – eight from POST or a law enforcement agency or organization and four academicians. In November 2021, LHC released two Issue Briefs and a final report on research gathered from the peace officer survey and from a review of basic training academy models across the country and in

[792] Little Hoover Commission, *History* < https://lhc.ca.gov/about/history> [as of Dec. 2, 2021].
[793] *Ibid*.
[794] See, e.g., Little Hoover Commission, Issue Brief: California Law Enforcement Survey (Nov. 2021) <https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/263/Report263.pdf> [as of Dec. 2, 2021]; Little Hoover Commission, Issue Brief: Comparing Law Enforcement Basic Training Academies (Nov. 2021) <https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/264/Report264.pdf> [as of Dec. 2, 2021]; Little Hoover Commission, Law Enforcement Training: Identifying What Works for Officers and Communities (Nov. 2021) <https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/265/Report265.pdf> [as of Dec. 2, 2021].
[795] Little Hoover Commission, Police Training (2021) < https://lhc.ca.gov/report/police-training> [as of Dec. 2, 2021].
[796] See generally Little Hoover Commission, Alvarez Public Hearing Testimony, *supra* note 786.

California.[797] The Issue Briefs are informational and do not contain recommendations. The final report makes 11 recommendations within five general categories:[798]

- Incorporating Research: California must incorporate academic research into a thorough assessment of how current training shapes peace officers' behavior on the job, and identify effective practices and deficiencies. Assessing Academies: California must learn about the structure of the state's 41 basic training academies to determine what kind of training works best.
- Rightsizing Entry Level Officer Training: California should reassess its approach to entry-level training to promote retention of knowledge and ensure that the training lines up with the knowledge and skills officers will need in the field.
- Developing Robust Ongoing Education: The state must ensure that officers receive training throughout their careers.
- Creating a More Representative POST: The POST Commission membership should incorporate more members of the public.

ii. B. California Legislative Analyst Office –Funding for POST

The Legislative Analyst's Office (LAO) provides nonpartisan fiscal and policy analysis to the California Legislature and has done so since 1941. The LAO (1) assists the Legislature in all aspects of the budget process, through its analytical and oversight activities; (2) responds to legislative requests for information and analysis of the state's budget and programs; and (3) conducts independent studies and produces self-generated reports on topics of importance to the state.

In the 2019-2020 budget, POST received a $34.9 million General Fund augmentation for law enforcement training costs. $20 million must be used to prioritize use of force and de-escalation training in 2019-20 and 2020-2021.

In the 2019-2020 budget, POST received a $34.9 million General Fund budget increase for law enforcement training costs.[799] The funds were used for POST administration, training, and oversight, as well as local assistance and training-related reimbursements. The budget increase provided that $20 million of this amount be used to prioritize use of force, de-escalation, and mental health crisis training in 2019-20 as well as in 2020-21.[800] However, the LAO explained

[797] Little Hoover Commission, Issue Brief: California Law Enforcement Survey (Nov. 2021), *supra* note 794; Little Hoover Commission, Issue Brief: Comparing Law Enforcement Basic Training Academies (Nov. 2021) <https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/264/Report264.pdf> [as of Dec. 2, 2021]; Little Hoover Commission, Law Enforcement Training: Identifying What Works for Officers and Communities (Nov. 2021) <https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/265/Report265.pdf> [as of Dec. 2, 2021].
[798] Little Hoover Commission, Law Enforcement Training: Identifying What Works for Officers and Communities (Nov. 2021), *supra* note 794, at pp. 3-4.
[799] See Legis. Analyst, The 2019-20 Budget: California Spending Plan, Judiciary and Criminal Justice <https://lao.ca.gov/Publications/Report/4097#other-criminal-justice-programs> [as of Dec. 2, 2021].
[800] See *ibid*.; see also Legis. Analyst, 2019-20 Budget: Analysis of the Governor's Criminal Justice Proposals (February 2019) p. 44 <https://lao.ca.gov/reports/2019/3940/2019-20-CJ-Analysis-021919.pdf> [as of Dec. 2, 2021].

under the proposed expenditure plan it was unclear how much of the increased funding would be used for these specific purposes.[801]

POST also submitted a 2021-22 Budget Change Proposal seeking re-appropriation of funding provided in prior years, including $10 million for distance learning and modernization of POST's learning management system and $300,000 for equipment purchase specific to use of force and de-escalation.[802]

Both the Board and the LAO suggest the Legislature conduct a more extensive review about how POST is spending the money, what trainings it is prioritizing, and what the performance measures are for those trainings prior to allocating additional funding for those trainings.[803] It is important both to track how funds are being used but also the quality of trainings being produced. If the Legislature approves additional funding for POST, the LAO recommends adopting "trailer bill language directing POST to report annually on specific outcome and performance measures that are tied to legislative expectations for the additional funding. **For example, if additional funding is provided for training, POST should collect and report information on the number of officers trained, how training was delivered, and the cost per training attendee, as well as the effect of specific trainings on officers' job performance.** To the extent that it takes time to begin collecting information on certain performance measures, the Legislature can direct POST to report on how it plans on acquiring or measuring that information in the near-term until the information becomes available for annual reporting. Such reporting would help the Legislature evaluate the impact of any new funding provided, as well as make decisions on appropriate funding and service levels in the future."[804]

3. Legislative Mandates for Racial and Identity Profiling

i. AB 953 Mandates Specific Training

Penal Code section 13519.4 requires POST to create specific law enforcement training courses aimed at preventing racial and identity profiling. The law requires academy level courses for new recruits and expanded training for seasoned in-service officers. The Legislature stressed that these courses should teach an understanding and respect for racial, identity, and cultural differences.

The legislative intent was to mandate effective methods of carrying out law enforcement duties in a racially and culturally diverse environment. Penal Code section 13519.4 requires the curriculum "be evidence-based patterns, practices, and protocols that prevent racial or identity profiling."[805] In developing the training courses, POST is required to consult with the RIPA Board. The results of the RIPA Board's evaluations must be included in their annual report.

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[801] See Legis. Analyst, 2019-20 Budget: Analysis of the Governor's Criminal Justice Proposals, *supra* note 800, at p. 44.
[802] See POST Budget Change Proposal: 2021-2022 Distance Learning and Use of Force Training Appropriations (submitted to Legislature April 1, 2021) <https://esd.dof.ca.gov/Documents/bcp/2122/FY2122_ORG8120_BCP4553.pdf> [as of Dec. 2, 2021].
[803] See Legis. Analyst, 2019-20 Budget: Analysis of the Governor's Criminal Justice Proposals, *supra* note at 800, pp. 42-44.
[804] *Id*. at p. 44, emphasis added.
[805] Pen. Code, § 13519.4, subd. (h).

ii. AB 953 DOJ Training Update

In the Fall of 2020, the Department received certification from POST to begin teaching a web-based course entitled "Reporting Stop Data for RIPA (AB 953)." This course is presently being conducted via a live webinar to provide an overview of the stop data reporting requirements pursuant to AB 953.[806] The target audience includes sworn and non-sworn personnel, as the course is intended for those responsible for working on their agency's overall RIPA implementation, agency trainers, and key stakeholders. Attendees learn information pertaining to the background, legislation, and data elements required under RIPA and review detailed scenarios to gain an understanding of how data on stops should be reported. The course also addresses roles and key activities for implementation, publication of the data, and resource materials. It is co-taught by instructors from the Civil Rights Enforcement Section and the California Justice Information Services Division.

The training incorporates multiple learning approaches, including a PowerPoint presentation, videos, interactive review of scenarios, a system demonstration, and knowledge checks. The goal of the course is to ensure uniform reporting across agencies. Sessions are three hours in length, and offered twice a month.

In 2021, the Department offered 22 courses. There were 853 total participants that completed the course, and 633 participants received Continuing Professional Training (CPT) credit. In order to meet high demand for the course once it reached capacity for POST participants, 1024 additional law enforcement agency staff requested to join the webinar for informational purposes only.

There were a total of 324 optional participant surveys completed, and the measurable results were as follows:

- **93%** of participants rated the overall course as either exceeded or met their expectations;
- **97%** of participants found the course material to be extremely useful, very useful or somewhat useful;
- **78%** of participants rated the length of the course as about the right length;
- **81%** or participants were either very likely or likely to recommend this course to a colleague;
- **96%** of participants rate the course as extremely useful, very useful, or somewhat useful; and
- **99%** of participants rated the quality and knowledge of the instructors as above average or average.

[806] The Department anticipates offering in-person courses in the future.

On May 3, 2021, the RIPA training course was evaluated by the POST Quality Assessment Program (QAP).[807] The trainer observed the course and provided verbal feedback at the conclusion of the course. On May 12, 2021, the course instructors received the formal evaluation from QAP. Appendix J contains the QAP form evaluators use when reviewing course content.

The POST Quality Assessment Program evaluator provided the following observations, among others:

- "By having attorneys from the Civil Rights Enforcement section put the legislation in perspective through the many different short scenarios helped reduce anxiety on operational impacts."
- "The course would benefit from reducing the time spent on resources related to implementing stop data reporting and focusing more on factual scenarios that get students thinking about how to report stop data."
- "Students should have an opportunity to address any specific questions in front of the entire class and instructors should also consider randomly calling on students for answers to ensure students are engaging with the course materials."
- "Practice actually inputting the data will be helpful for students getting familiar with reporting."
- "Without an effective 'message' to the patrol officers on the street, trying to obtain statistical data with legal requirements centered around the term 'perceived' will only exacerbate the challenges. An effective deployment message rests entirely with the Affective learning domain."
- "However, the legislation centers around 'perceptions' of the law enforcement officer, for which no training was provided."
- "Other than brief references to the legislative requirements there was no training or significant class discussion on the term 'perception' and the questions agencies might have in implementing the collection requirements. Gender and racial identification have become complex societal challenges in the past couple of years, yet there is limited training for peace officers in the topic."
- "To report "perceived" race or ethnicity of a subject means the officer will likely have to see skin color, hear voice dialogue, or have some other method of influencing their interpretation of race, ethnicity, and so on. The same is true for all the other reportable categories."

Since receiving the assessment, the DOJ has modified the course in the following ways: (1) the course content regarding resources has been cut down so the course can focus more on the

[807] The QAP provides recommendations for updating and improving trainings and participation in the program is voluntary. Regardless of whether the feedback and recommendations are minor or major, updates are at the instructor's discretion and there is no follow up from QAP.

factual scenarios; (2) instructors continue to read out loud student questions submitted in the chat and encourage students to share additional questions in the chat; and (3) instructors now spend more time discussing perception in an effort to remind law enforcement that they form perceptions every day and that the statute merely requires them to record it.

Although there was some helpful feedback from the POST QAP, there was other content in the course evaluation that was troubling. The evaluator suggested that course instructors should teach students how to perceive identity demographics, such as how to perceive whether someone is LGBT. This is a question course instructors receive from officers during almost every session when teaching the RIPA course. The course developers and instructors believe it would be highly inappropriate to teach anyone how to perceive identity demographics. Instead, the course instructors will continue to emphasize that demographic perceptions do not have to be a "charged" topic or instill fear or defensiveness in officers either personally or professionally. Instructors will make clear that people make perceptions every day and it is a routine part of an officer's job – for example, when an officer makes a stop based on a suspect description. RIPA asks officers to record that perception, and does not –contrary to the law enforcement personnel comments –ask officers to do anything inappropriate (i.e. racially profile) or beyond what they already do every single day. Instructors invite officers to take a curious and open-minded approach and recognize that making perceptions is natural and what matters is how those perceptions affect their behavior.

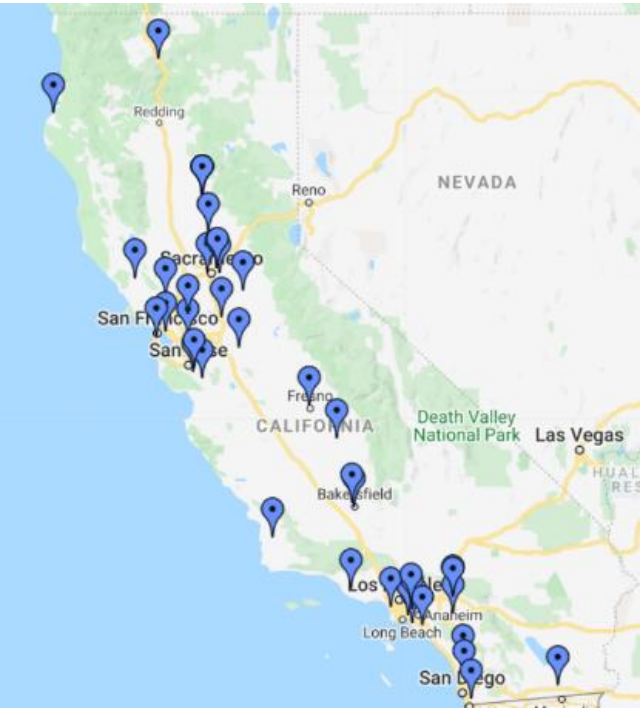
4. POST Training Program

In order to meet the mandates of setting standards and providing training to the California law enforcement community, POST has organized into 10 regions, as can be seen in Map 1. Within each region, there are several training academies. The academies have the primary responsibility for administering the basic training programs.

MAP 1: REGIONS

Map 2 shows the locations of the distribution of the academies; most of the academies are concentrated in the Bay Area and around Los Angeles.

MAP 2: ACADEMIES



Each academy is responsible for delivering 43 Regular Basic Training Courses, as noted in Table 2. In addition, the hiring agencies are responsible for ensuring that the new recruits receive the Field Training necessary to achieve 18 competencies, as indicated in Table 3.

TABLE 2
REGULAR BASIC COURSE TRAINING

- Regular Basic Course Minimum Hourly Requirements
- LD 01 Leadership, Professionalism and Ethics
- LD 02 Criminal Justice System
- LD 03 Principled Policing in the Community
- LD 04 Victimology/Crisis Intervention
- LD 05 Introduction to Criminal Law
- LD 06 Property Crimes
- LD 07 Crimes Against Persons
- LD 08 General Criminal Statutes
- LD 09 Crimes Against Children
- LD 10 Sex Crimes
- LD 11 Juvenile Law and Procedure
- LD 12 Controlled Substances
- LD 13 ABC Law
- LD 15 Laws of Arrest
- LD 16 Search and Seizure
- LD 17 Presentation of Evidence
- LD 18 Investigative Report Writing
- LD 19 Vehicle Operations
- LD 20 Use of Force/De-escalation
- LD 21 Patrol Techniques
- LD 22 Vehicle Pullovers
- LD 23 Crimes in Progress
- LD 24 Handling Disputes/Crowd Control
- LD 25 Domestic Violence
- LD 26 Critical Incidents
- LD 27 Missing Persons
- LD 28 Traffic Enforcement
- LD 29 Traffic Accident Investigation
- LD 30 Crime Scenes, Evidence, and Forensics
- LD 31 Custody
- LD 32 Lifetime Fitness
- LD 33 Arrest and Control
- LD 34 First Aid and CPR
- LD 35 Firearms/Chemical Agents
- LD 36 Information Systems
- LD 37 People with Disabilities
- LD 38 Gang Awareness
- LD 39 Crimes Against the Justice System
- LD 40 Weapons Violations
- LD 42 Cultural Diversity/Discrimination
- LD 43 Terrorism Awareness

TABLE 3
FIELD TRAINING PROGRAM

- 1 - Agency Orientation / Department Policies
- 2 - Officer Safety Procedures
- 3 - Ethics
- 4 - Use of Force
- 6 - Community Relations / Professional Demeanor
- 7 - Radio Communication Systems
- 8 - Leadership
- 9 - California Codes and Laws
- 10 - Search and Seizure
- 11 - Report Writing
- 12 - Control of Persons/Prisoners/Mentally Ill
- 13 - Patrol Procedures
- 14 - Investigations / Evidence
- 15 - Tactical Communication / Conflict Resolution
- 16 - Traffic (doc)
- 17 - Self-Initiated Activities
- 18 - Agency-Specific Activities

POST has an internal Bureau that oversees the POST academies. POST also has Regional Consultants assigned to each of the 10 academy regions. The Regional Training Consultants **work directly with law enforcement agencies and training managers** by assisting with the course certification requests and processes, advising on training requirements, and conducting regular audits. Regional Consultants are available for contact by training managers should any questions arise.[808]

Academy Courses

The Regular Basic Training Academy Courses – or Learning Domains – are entry level training for California peace officers. There are 43 Learning Domains ("LD") for a total 664 minimum mandatory hours that are made available to all 41 academies. POST certifies the academies, and they must meet the minimum mandates of providing 664 hours of the Basic Regular Course curriculum.[809]

The Regular Basic Course Learning Domain 3 –Principled Policing in the Community – is led by an instructor and covers six overarching topics: Community Policing; Community Partnerships; Problem Solving; Principled Policing; Historical and Current Events; and Implicit Bias.[810]

In-Service Courses

After trainees complete the academy and other necessary requirements to obtain their basic certificate, POST regulations require them to obtain 24 hours of POST Certified Continuing Professional Training (CPT) during every two-year training cycle. Penal Code § 13519.4 requires POST to create refresher courses on racial and identity profiling and cultural awareness for in-service officers. These courses must be taken at a minimum of every 5 years.

The Beyond Bias: Racial and Identity Profiling Update for In-Service officers is one such refresher course. The RIPA Board's feedback regarding this course is included in this year's report.

Other Courses/Guidelines

POST is creating a module entitled "De-Escalation" within the Strategic Communications course of the Perishable Skills Program (PSP). The course is available to seasoned officers and dispatchers and upon completion counts towards POST's Continuing Professional Training requirements. POST invited the RIPA Board to comment on the De-Escalation module and other modules within the Strategic Communication course and their comments are included in this year's annual report.

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[808] Cal. Dept. of Human Resources, Law Enforcement Consultants, Commission on Peace Officer Standards and Training Series (Feb. 2016) <https://www.calhr.ca.gov/state-hr-professionals/pages/8527.aspx> [as of Dec. 2, 2021].
[809] According to POST, most academies teach above the minimum requirements for an average of 800+ hours of basic training, but POST has not increased their minimum hourly requirement.
[810] Cal. Com. on Peace Officer Stds. and Training, Basic Course Workbook Series Student Materials: Learning Domain 3, Principled Policing in the Community, Version 5.1 ("Learning Domain 3, Principled Policing in the Community") (April 2020) pp. i-ii <https://post.ca.gov/portals/0/post_docs/basic_course_resources/workbooks/LD_03_V-5.1.pdf> [as of Dec. 2, 2021].

Pursuant to California legislation regarding use of deadly force – AB 392 – POST also developed Use of Force Guidelines in 2020.[811] A representative from the RIPA Board participated in the early development workshops for the Guidelines.

5. POST and RIPA Training Review

Over the past four years, POST and the RIPA Board have worked together to meet the mandates of RIPA. POST provided the RIPA Board with the names of six courses that they believe meet the RIPA mandate:

1. Principled Policing in The Community (26 hours), Regular Basic Course, Academy Learning Domain ("LD") 3 (*In Progress*)
2. Cultural Diversity/Discrimination (18 hours), Regular Basic Course, Academy LD 42 (*Not Yet Reviewed*)
3. Bias and Racial Profiling Video Refresher for In-Service Officers (2 hours) (*Completed)*
4. Beyond Bias: Racial and Identity Profiling Update online course for In-Service Officers (2 hours) (*Completed*)
5. Supervisory Support: Racial and Identity Profiling Self-Assessment for Supervisors (2 hours) (*Completed*)
6. Strategic Communications Courses for In-Service Officers (Ongoing)
   - De-Escalation online module (2 hours) *(Completed)*
   - Mindfulness online module *(Completed)*
   - Persuasion – Getting What You Want online (2 hours) (*Completed*)
   - Remaining Communications Modules – Establishing a Safe Space, Active Listening, Persons with Communications Challenges, and Team Communication[812] (*In Progress*)

Course Review Status

The Board has reviewed and provided input and comments on four of the courses:

(1) Strategic Communications[813] for In-Service Officers and Dispatchers: De-Escalation, Mindfulness, Active Listening Persuasion, and others in script form reviews (2022 Report)
(2) Bias and Racial Profiling Video for In-Service Officers (2021 Report)
(3) Beyond Bias: Racial and Identity Profiling Update online course for In-Service Officers (2021 & 2022 Report).
(4) Supervisory Support: Racial and Identity Profiling Self-Assessment (2022 Report)

[811] Cal. Com. on Peace Officers Stds. and Training, POST Use of Force Standards and Guidelines (Nov. 2021) pp. 3, 8 <https://post.ca.gov/Portals/0/post_docs/publications/Use_Of_Force_Standards_Guidelines.pdf> [as of Dec. 2, 2021].
[812] The titles of these modules are not final and are subject to revision.
[813] The Strategic Communications training module contains several sections of course content that the Board is reviewing including: de-escalation, active listening, persuasion, initiating, and self-assessment tools.

The Board is currently reviewing the following courses:

(6) Remaining Strategic Communications Modules
(7) Principled Policing in the Community (Regular Basic Course, Academy LD 3)

The Board has not yet reviewed the following course:

(8) Cultural Diversity/Discrimination (Regular Basic Course, Academy LD 42).

Course Reviews and Comments

The Legislature mandated that the RIPA Board make recommendations and participate in reviewing and developing racial and identity profiling training. This included a requirement that the POST Commission develop an expanded evidence-based curriculum to "include and examine evidence-based patterns, practices, and protocols to prevent racial and identity profiling."[814] The law further requires the POST Commission to consult with the RIPA Board in the development and review of courses that have a significant consideration of the following subjects:

> "(1) Identification of key indices and perspectives that make up racial, identity, and cultural differences among residents in a local community.
> (2) Negative impact of intentional and implicit biases, prejudices, and stereotyping on effective law enforcement, including examination of how historical perceptions of discriminatory enforcement practices have harmed police-community relations and contributed to injury, death, disparities in arrest detention and incarceration rights, and wrongful convictions.
> (3) The history and role of the civil and human rights movement and struggles and their impact on law enforcement.
> (4) Specific obligations of peace officers in preventing, reporting, and responding to discriminatory or biased practices by fellow peace officers.
> (5) Perspectives of diverse, local constituency groups and experts on particular racial, identity, and cultural and police-community relations issues in a local area.
> (6) The prohibition against racial or identity profiling in subdivision (f)."[815]

The RIPA Board is also charged with analyzing law enforcement training under the above-cited Penal Code section.[816] This year, the RIPA Board completed their review of the De-Escalation and Mindfulness modules of Strategic Communications and the Beyond Bias: Racial and Identity Profiling Update online course for In-Service Officers. The Board also reviewed Supervisory

[814] Pen. Code, § 13519.4, subd. (h).
[815] *Id*., subd. (h)(1)-(6)
[816] *Id*., § 13519.4, subd. (j)(3)(B).

Support: Racial and Identity Profiling and the academy course for new officers, LD 3 Principled Policing in the Community, discussed fully below.

The Board would like to gain a better understanding from POST on how the Board's feedback will be incorporated into trainings and how POST intends to work with the Board to identify other courses that fall within the statute. POST has indicated that some of the RIPA Board recommendations in the courses have been adopted, as described in more detail below. However, the Board has not yet seen revised versions of the courses to see how POST has incorporated the Board's feedback. Nonetheless, the Board is encouraged that POST is incorporating some of its feedback and looks forward to reviewing the revised versions of these courses.

The following is a brief summary of key comments by RIPA Board Members.

i. A. Strategic Communications Online Course for In-Service Officers and Dispatchers:

De-Escalation Module

Board members completed a detailed review of the De-escalation module in the Strategic Communications online course and found it provided a proper balance of information. The Board was appreciative of the opportunity to review this course because de-escalation as a focus of communication is critical to building community trust and eliminating racial and identity profiling. There was a positive response about how the module was arranged in such a way that the participant was placed in the shoes of the officer as well as the community.

The Board identified several areas where the course could be improved, including but not limited to:

- The Board would like POST to provide them with advance notice and more time to review these courses.
- There should be more examples and opportunities for de-escalation in the scenarios.
- The training should emphasize the importance of early initiation of de-escalation strategies which can increase safety and more positive outcomes for both the public and the officer.
- In the introduction, terms such as knowing your triggers, disengagement, and neutrality can have different meanings to different people. An open discussion with the students about these and the other terms will help to set the foundation for what the course is trying to accomplish. Also, this would allow the students to have some introspection on their own triggers, what could they do to remain calm in stressful situations, and how are they being perceived.
- The course should capitalize on using the individual scenarios and the specific word choices to further illustrate how officer tone, empathy, and professionalism can de-

escalate a communication exchange and can often prevent a situation from escalating at the outset.

The Board members provided POST with their comments, and they look forward to seeing how POST will incorporate them into the =module as it is being developed.

Persuasion Online Course for In-Service Officers

The goal of this strategic communications course is to teach officers the value of the tool of persuasion to achieve favorable outcomes for everyone in challenging situations. The scripted scenarios included a speeding ticket, a 911 call of suspicious activity, and shoplifting by teenagers.

The Board member comments are summarized as follows:

- Emphasize professional conduct, have patience when speaking to citizens, and make initial efforts to persuade.
- In the speeding ticket scenario, explain that signing a traffic ticket is not an admission of guilt and show the citizen the options on the back of the ticket that can be used to resolve it. Treat all citizens how you would expect to be treated.
- In the shoplifting scenario, know the statutes regarding custodial interrogations of juveniles and refrain from making comments about the ability of the District Attorney to press charges. It was a positive action that officers planned to talk to the teen's parents and the shop owner.

Other Communications Training Modules

POST requested that the Board review two additional modules within the Strategic Communications Course: Mindful Communication and Active Listening. A RIPA Board member had the opportunity to review the modules, and found that overall the scenarios seemed appropriate for communications training. One aspect of the feedback was that the communication scenario should remind the officer to focus on the facts of what the person did prior to and at the time of an incident. Regarding calls for service related to attempted suicide, the Board member recommended that officers be required to have accessible a copy of their agency's policy and resources for addressing individuals suffering from possible mental illness. Finally, the officers should be encouraged to always ask open-ended questions. Due to the limited timeframe provided for review, most Board members were not able to participate. Reviews are in progress for other communications modules.

ii. Beyond Bias: Racial and Identity Profiling Update Online Course for In-Service Officers

The Board initially reviewed this course and provided input in 2020. This year, multiple Board members provided a second review of the online refresher course on implicit bias and racial profiling. POST adopted several of the previous Board members' comments in its revisions.

In the current version of the course, Board members found that it included an adequate balance of information. Members indicated that the introduction set the proper tone, identified the scope of the training, the goals, the segments and the reasons why recognizing bias is important. Although the history section was not fully completed at the time of the Board's review, they felt that the personal stories presented good illustrations explaining certain communities' distrust of law enforcement.

Some members stated that the photos about preferences caused the viewer to pause and think and the information provided a good overview of the law. Other Board members felt that this section of the training should be rewritten because in its current form this section could actually lead to reinforcing biases. Board members did feel that the scenarios throughout the training were good illustrations of the impacts different officer responses can have on the outcomes of stops.

Board members identified several areas where the Implicit Bias and Racial Profiling course could be improved, including but not limited to:

- In the introduction, use a quote referencing the RIPA data – such as one from the Quick Facts 2021 – to underscore the presumptions that sometimes cause disparate treatment experienced by Black individuals, such as how often individuals are searched, detained, handcuffed, or how often contraband is found when compared to how often they are searched.[817]
- In the history section, emphasize that community distrust is based on historical experiences by using references to slave patrols and targeted and aggressive police practices during the years of Jim Crow and segregation. Also, acknowledge the role of elected officials in policing.
- The history section should extend to the present, instead of suggesting that the public's views of policing are based upon events that happened 60-200 years ago. Board members expressed that although this issue began over 200 years ago, policing has not changed in many crucial respects and the public very much feels the effects of this history to this day.
- Explain that bias results in presumptions based on unconscious associations or recognized preferences. When biases are acted upon by law enforcement, such bias has the power to put others' lives at risk or even cause death.
- Require officers to ask themselves questions about their intended actions to evaluate whether or not their actions have a non-biased intent before pulling a person over.
- Show examples of a White individual being treated preferentially during a stop.
- Thread stories into the training to show why people may act defensively or be hostile when stopped by law enforcement.

[817] See Racial and Identity Profiling Advisory Board, 2021 Quick Facts <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-quick-facts-2021-01.pdf> [as of Dec. 2, 2021].

- Add discipline to the discussion of department responses to misconduct.
- In officer stories, show them positively connecting to the community.
- In a scenario where an officer makes a stop, it is also important to include discussion about the decisions an officer makes during the course of the stop.
- The training needs to show officers relaying their reason for the stop.
- Provide this Implicit Bias training to police executives and elected officials so they can better explain their expectations of officers.

Board members have submitted their comments to POST and POST has indicated that it has largely incorporated their feedback. For example, POST explained that it incorporated data from the 2021 RIPA Report in the course, including data on stop disparities by race/identity, actions taken during stop by race/identity, and possible explanations of those disparities. POST has also indicated that it has incorporated suggestions to emphasize various perspectives, officer reporting obligations, and peer intervention skills. As noted earlier, the Board has not yet had an opportunity to review how these changes are incorporated in practice so the Board cannot comment whether it would have further feedback.

iii. Supervisory Support: Racial and Identity Profiling

In 2020, after the Board began its review of the Profiling and Implicit Bias Online Course for In-Service Officers, both Board members and POST discussed a mutual interest in working collaboratively on the companion course for supervisors.

This course is designed for law enforcement supervisors to ask themselves if they know their agency's policy on bias and how they would handle an employee who exhibits biased behavior. It also discusses how to handle racial profiling in the context of the Peace Officer Bill of Rights (POBAR). The course also contains a self-assessment tool to determine if supervisors are connecting with the community and offers ways to set up programs to bridge the gap. The sub-topics of the course are Manage the Impact of Bias, Connect with the Community, Build a Positive Culture, and Recognize Your Responsibility.

The Board members provided the following comments and suggestions:

- The course does not deal with explicit bias and what to look for, and it should discuss practices that lead to biased outcomes, such as consent searches, and provide input on how removing these practices could impact policy.
- The course should discuss ways to review subordinates' behavior to identify biased treatment and provide examples of discipline. It should review the concept of racial profiling and underscore that profiling occurs when stopping an individual based upon their identity, except in the limited circumstance where the individual matches a suspect description. Agency policies on Field Identification card checks and consent searches may be good examples to use in this type of discussion.

- The discussion of the link between community engagement and building trust was powerful. The actions listed in the course were deemed appropriate, however the discussion could be strengthened to show how each action is useful to eliminating bias.
- The self-assessment tool to promote a positive culture in the agency was deemed valuable.
- It was suggested that the course close the training with a story that empowers supervisors.

POST has indicated that it has incorporated some of the feedback from Board members, though it did not provide an exhaustive list. As some examples of the feedback incorporated by POST, POST has represented that it has provided explanations for incorrect answers raised during the training to provide to trainees, provided a clearer definition of explicit bias, and used graphics from RIPA annual reports to make the course more visually appealing. As noted earlier, the Board has not yet had an opportunity to review how these changes are incorporated in practice so the Board cannot comment whether it would have further feedback.

iv. Principled Policing in the Community (Regular Basic Course, Academy LD 3)[818]

The basic training officers receive should equip them with the skills and empathy necessary to serve the community in which they work. The academy is one of the first opportunities to educate new recruits on the importance of recognizing one's own biases and not letting them affect behavior, the concepts of principled policing, and what it means to serve the public.

This year the Board began its review of the academy courses related to racial and identity profiling by examining the workbook for LD 3. A few Board members were also able to observe the course being taught at basic training academies for both CHP and San Bernardino County. It is important to note this review is of the POST mandated training course outline, which is the foundation for the training conducted by the 41 different academies throughout California, rather than a review of individual instructors. The quality of any training course is dependent on the materials and learning requirements provided to instructors, which is the responsibility of POST, and how the instructors convey the materials and teach their recruits.

The Board in its review of LD 3 has expressed serious, wide-ranging concerns about the content of the course that warrant further exploration. Although this course was updated in April of 2020, Board members believe the course: (1) lacks a primary focus on principled policing concepts; (2) emphasizes outdated policing theories, such as broken windows policing;[819] and (3) fails to actually incorporate any community member perspectives.

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[818] Cal. Com. on Peace Officer Stds. and Training, Learning Domain 3, Principled Policing in the Community, *supra* note 810.

[819] The theory of broken windows policing "argues that maintaining order by policing low-level offenses can prevent more serious crimes. But in cities where broken windows policing has taken root, there's little evidence that it's worked as intended. The theory has instead resulted in what critics say is aggressive over-policing of minority communities, which often creates more problems than it solves. Such practices can strain criminal justice systems, burden impoverished people with fines for minor offenses, and fracture the relationship between police and minorities. It can also lead to tragedy: In New York in 2014, Eric Garner died from a police chokehold after officers approached him for selling loose cigarettes on a street corner."

The Board has identified several areas where the course could be improved and modernized, including but not limited to:

- POST represented they presently do not provide a facilitator guide to instructors, meaning there is no guideline that ensures consistency for the academy courses. However, it does appear that POST may in fact provide materials to instructors in addition to the course workbook, including (1) PowerPoint presentations and (2) instructor guides for the learning activities. These materials were not provided to the Board for review.
- In one particular section, it was noted that there was not much content or context to the historical and current events listed in the workbook such as Jim Crow laws, redlining, segregation, etc. This is concerning because the facilitation of this section is based on the instructors' own knowledge, there is no guide provided to instructors, and the level of knowledge instructors have to teach these topics is unknown. This underscores the need to have more information and resources regarding these topics in the workbook outline and makes it difficult to evaluate.
- The perspectives of each community are not meaningfully incorporated into the course. For example, not all communities feel safer when they see a police officer. Course material should reflect the individual communities being policed by partnering with each community and considering the needs of that community. This concept should be a clearly stated building block in the LD3 training.
- Board members expressed that the training should reflect that there are often differences in how the training is applied in practice in disparate communities. Community input into the design of the policing practices should be addressed in the training. Board members recommended that POST include scenarios in the academy course materials to help demonstrate the disparate impact of bias-based and inequitable enforcement activities on different communities. It would provide officers with the opportunity to evaluate their own biases regarding activities viewed as criminal behavior in some communities and not others.
- Cultural competencies and examples regarding bias should be addressed in the course from a philosophical perspective and supported by the entire department from the academy to field training, so that they are taught, accepted, and practiced in day-to-day policing.
- Alternatives to police interventions, particularly with mental health crises, should be interwoven throughout the course. Police officers should be taught to defer or connect to appropriate agencies for social services or mental health concerns and be open-minded that they cannot solve all public safety and health concerns. This will show that officers are vested in the health and safety of the community and influence how they see their role.

Childress, *The Problem with "Broken Windows" Policing,* Frontline PBS (Jun. 2015) <https://www.pbs.org/wgbh/frontline/article/the-problem-with-broken-windows-policing/> [as of Dec. 2, 2021].

- Referrals to other agencies should be addressed in the problem-solving section, especially regarding those who are unhoused.
- The definition of community policing provided in the course did not emphasize efforts to improve relations with the community and create true partnership; instead, it focused on arresting people. Moreover, predictive or targeted policing can turn into excessive policing and the criminalization of certain communities, which is inconsistent with serving the community and can in fact be harmful.
- In one section, Board members indicated that distinct communities have different ways of using their public spaces, and that certain activities are not signs of disorder. Community policing efforts should be focused on understanding these differences without presuming criminality.
- The course should remove the section regarding the outdated concept of "Broken Window" policing and ensure that those principles are not included throughout the course content.
    - Board members explained the research suggests there is not as much value in this theory as a crime-fighting strategy and that it was very concerning that the theory is being presented to trainees in this course. This philosophy teaches officers that they should crack down on everything they see no matter how minor the offense.
    - This training encourages officers to target certain neighborhoods – which often produces inequitable outcomes – and alienates communities, by contributing to policing policies and practices that do not actually deter or identify crime such as stop and frisk. In fact, there is little evidence to support crime reduction, whereas evidence does demonstrate that it has a negative impact on police-community relationships.[820]
- Implicit Bias and Historical/Current events are significant chapters in the LD3 training but are extremely brief in content. Both chapters lack depth, context, and specificity and would benefit from revision.
- In the history section, there is not much content or context to the historical and current events listed in the workbook, such as Jim Crow laws, redlining, or segregation. Without information behind each of these topics, it is difficult to know how they are being presented and therefore it was difficult for the Board to fully evaluate.
- The course lacked discussion of the important and necessary historical context of policing and specifically policing communities of color. Doing so would provide officers with the context as to why they are receiving training on racial and identity profiling. POST could include examples that show when implicit or explicit biases are involved.
- Current events, particularly with respect to racial and identity profiling and police murders of Black, Indigenous, and people of color, were not discussed despite this

[820] See Martin, *Do More Broken Windows Mean More Crime?* Northeastern University News (May 15, 2019) <https://news.northeastern.edu/2019/05/15/northeastern-university-researchers-find-little-evidence-for-broken-windows-theory-say-neighborhood-disorder-doesnt-cause-crime/> [as of Dec. 2, 2021].

course being updated in 2020. It also appears the supplementary materials provided to academy trainers are outdated, as the most recent reference material was from 2004.

- Law enforcement agencies must take ownership of how both the history of policing and contemporary events contribute to community mistrust. The premise that law enforcement officers historically were just neutrally enforcing the laws of the time is not an accurate presentation of historical policing, especially when that law enforcement activity violated individual civil rights. For example, the law did not require officers to beat and command dogs to attack peaceful protestors and children crossing a bridge in Selma. This should be recognized and incorporated into the training.
- The section on implicit bias would benefit from including concrete examples as well as data that discuss implicit bias and how it influences everyday decisions. Additionally, there is not enough information nor sufficient examples or data provided to truly address implicit bias in a way that would help officers. It was unclear to the Board whether the course supplied the trainees with the tools to self-identify biases when they are out in the community and give them opportunities to practice how to self-correct.
- The Principled Policing section is not as well developed, and therefore this does not give the impression that this is the primary focus of the course. There should be more emphasis placed on this chapter and real-life examples of how to apply the tenets of procedural justice. The goal of the course should be for officers to use the tenets of principled policing in every community and to apply the tenets equally to bring pride to their community so that problem solving can be a team effort.

POST Subcommittee Board members had the opportunity to directly provide their recommendations about the training to POST during the POST Training and Recruitment Subcommittee meeting[821] and look forward to a further discussion with POST about the development of their academy courses.

C. Visions and Next Steps

- The Board will continue to monitor the training recommendations made from course review comments and will seek specific updates from POST on prior recommendations. The Board would like to have more transparency from POST as to how their recommendations have been incorporated into POST trainings. In those instances, where POST had decided not to adopt a Board recommendation, the Board would like an explanation providing the reasoning the recommendation is not adopted, or information supporting an alternative but equivalent solution.
- The Board would also like a more transparent and inclusive process when developing POST training materials.

[821] A full recording of the meeting and the Board comments regarding LD 3 is available online. See California Department of Justice, *POST Training and Recruitment Subcommittee Meeting (Part 1 of 2)*, YouTube (July 29, 2021) <https://www.youtube.com/watch?v=44Jbr4E1Ei4>; California Department of Justice, *POST Training and Recruitment Subcommittee Meeting (Part 2 of 2)*, YouTube (July 29, 2021) <https://www.youtube.com/watch?v=zPBg9_xMyxI>.

- The Board plans to examine the Little Hoover Commissions evaluations regarding whether the training courses are producing the desired outcomes of preventing and eliminating racial and identity profiling.
- The Board would like to learn more about diversifying the POST Commission and those who develop POST trainings, including subject matter experts.
- The DOJ will continue to teach the POST certified AB 953 course to law enforcement agencies including those that are beginning to compile data. This training will help to increase officer understanding of how and when to report data from stops.
- The Board will continue to seek a better understanding of the POST Academy, including the Field and the In-Service Training Programs. The Board will continue to learn more about the role and makeup of the POST Commission and its role in establishing effective training courses. In addition, the Board will continue to research evidence-based best practice training courses that strengthen the way racial and identity profiling, bias, and cultural awareness trainings are incorporated throughout an officer's career training experience.
- The Board would like to learn more about the POST training development process, including how subject matter experts are selected and how the quality assessment program within POST evaluates trainings.
- The RIPA Board will continue to review additional POST training courses that relate to racial and identity profiling and bias. This includes but will not be limited to a review of the Regular Basic Course Academy Learning Domain #42 entitled Cultural Diversity and Discrimination. The Board will further examine the Regular Basic Courses and how the training is incorporated as well as reinforced during the Field Training Program.

RELEVANT LEGISLATION ENACTED IN 2021

This Report highlights legislation enacted in 2021 that may impact the Board's work towards eliminating racial and identity profiling, as well as require updated trainings for officers and revisions to agencies' policies and procedures. Below is an overview of the main changes to the law that result from the enacted legislation.

Accountability

SB 2 – Decertification

SB 2, entitled the Kenneth Ross Jr. Police Decertification Act of 2021, includes a wide range of changes to peace officer employment and liability. In enacting this law, the Legislature declared the following: First, California is one of only four states that does not have a process for de-certifying peace officers. Second, 172 Californians were killed by the police in 2017, and our state's police departments have some of the highest rates of killings in the nation. Of the unarmed people California police killed, three out of four were people of color. Black and Latine(x) families and communities of color are disproportionately vulnerable to police violence, creating generations of individual and community trauma. Third, law enforcement officers are entrusted with extraordinary powers including the power to carry a firearm, to stop and search, to arrest, and to use force. They must be held to the highest standards of accountability, and the state should ensure that officers who abuse their authority by committing serious or repeated misconduct, or otherwise demonstrate a lack of fitness to serve as peace officers, are removed from the streets. Finally, to ensure public trust that the system for decertification will hold peace officers accountable for misconduct and that California's standards for law enforcement reflect community values.

The bill amends several laws; some of those changes are described below.

SB 2 amends the Bane Civil Rights Act, lifting state qualified immunity protections for peace officers.

SB 2 amends the Bane Civil Rights Act, Civil Code section 52.1, which permits individuals to sue a public entity or peace officer who through "threats, intimidation, or coercion" interferes with a person's rights guaranteed under the law, regardless of the perpetrator's state of mind or intent. The new amendments prohibit existing state qualified immunity provisions to apply to a Bane Act claim and makes clear that indemnification provisions of sections 825, 825.2, 825.4, and 825.6 of the Government Code apply to the public entity for Bane Act violations committed by their current or former employees.

SB 2 authorizes POST to suspend, revoke, or cancel any peace officer certification.

This bill also amends Section 1029 of the Government Code, which provides the criteria that would disqualify an individual from serving as a law enforcement officer in California.

SB 2 amends section 13510.1 of the Penal Code to authorize POST to suspend, revoke, or cancel any peace officer certification.[822] SB 2 adds section 13510.8 to the Penal Code to require POST to develop regulations to define "serious misconduct"; the definition must include conduct such as excessive or unreasonable use of force and demonstrating bias on the basis of race or identity.

SB 2 expands the responsibilities of law enforcement agencies related to the investigations of their peace officers.

Newly added section 13510.8 would also require law enforcement agencies, beginning on January 1, 2023, to complete investigations of allegations of "serious misconduct" regardless of the employment status of the subject of the investigation. In other words, agencies cannot end an investigation if a person under investigation leaves the agency voluntarily or is terminated. SB 2 also adds section 13510.9 to the Penal Code which requires law enforcement agencies to report to POST, among other events: (1) any employment or appointment by the agency; (2) any termination or separation from employment or appointment by the agency, of any peace officer; (3) any complaint, charge, or allegation of conduct against a peace officer that could render that officer subject to suspension or revocation of their certification, and (4) the final disposition of any investigation that determines a peace officer engaged in conduct that could render a peace officer subject to suspension or revocation of certification or any civil judgment or court finding of the same.

SB 2 creates a new Peace Officer Standards Accountability Division within POST and a Peace Officer Standards Advisory Board, charged with investigating and reviewing allegations of conduct that are grounds for decertification.

SB 2 adds section 13509.5 to the Penal Code, which creates a Peace Officer Standards Accountability Division within POST to review investigations conducted by law enforcement agencies into serious misconduct that are grounds for suspension or revocation of certification and to conduct its own additional investigation as necessary. Likewise, SB 2 adds section 13509.6 to the Penal Code, which creates a Peace Officer Standards Advisory Board; six of its nine members must be members of the public who are not former peace officers. The Advisory Board will review findings made by the Accountability Division, conduct public hearings on those findings, and make recommendations to the POST Commission as to decertification if there is clear and convincing evidence to support decertification.

Although the Legislature declared that its intent was for "the entities charged with investigating and rendering decisions on decertification [to] be under independent civilian control and maintain independence from law enforcement,"[823] the POST Commission, not the Advisory Board, is the final decision maker on decertification. SB 2 specifically adds section 13510.85 to the Penal Code, which requires the POST Commission (the majority of whose members are

[822] POST previously only had the authority to cancel certification if it was obtained by misrepresentation or fraud or administrative error on the part of POST or the employing agency.
[823] Sen. Bill No. 2, approved by Governor, Sept. 30, 2021 (2021-2022 Reg. Sess.).

statutorily required to be from law enforcement backgrounds[824]) to review and decide on the decertification based on the Advisory Board's recommendations. Under section 13510.85, the POST Commission must vote on the Advisory Board's recommendations and decertification carries if it gets two-thirds of the vote of present Commissioners. If the POST Commission reaches a different determination than the Advisory Board's recommendation, the Commission must, in writing, provide an analysis and reasons for its determination.

SB 2 requires POST to notify employing agencies and the district attorney officers regarding investigations into peace officers.

SB 2 adds Section 13510.9 to the Penal Code, which requires POST to notify the employing agency of any investigation, finding, final determination, or adjudication related to the peace officer's certification. POST must also notify the district attorney in the county in which the officer is employed if the peace officer's certification is suspended or revoked.

SB 16 - Release of Records Relating to Sustained Findings of Misconduct

SB 16 amends the California Public Records Act (CPRA) (section 832.7 of the Penal Code), expanding the categories of records subject to public disclosure. The following are now subject to disclosure under the CPRA: (1) a sustained finding involving a complaint alleging unreasonable or excessive use of force; (2) any sustained finding of an officer failing to intervene when another officer is using "clearly" unreasonable or excessive force; (3) any sustained findings of conduct based on prejudice or discrimination against a number of protected groups, including race, religion, and mental disability; and/or (4) records related to sustained findings of unlawful arrest or searches. These records can be obtained even if an officer resigned before the completion of the investigation into any alleged incident of misconduct and agencies must retain all complaints related to investigations.

Hiring and Recruitment

AB 89 - Increase Minimum Age Qualifications of Peace Officers

AB 89 adds section 1031.4 to the Government Code, which increases the minimum age for officers from 18 to 21 years old. The law also adds section 13511.1 to the Penal Code, which creates a requirement for the Office of the Chancellor of the California Community Colleges to develop a modern policing degree program, with the POST Commission and other stakeholders to serve as advisors, and to submit a report on recommendations and a plan to the Legislature by June 1, 2023. The bill requires the report to include, among other things, recommendations to adopt financial assistance for students of historically underserved and disadvantaged communities with barriers to higher education access.

[824] Pen. Code, § 13500, subd. (b).

Use of Force and Police Tactics

AB 48 - Kinetic Energy Projectiles and Chemical Agents

AB 48 adds section 13652 to the Penal Code, which prohibits law enforcement from using kinetic energy projectiles or chemical agents to disperse a protest or demonstration unless the use "is objectively reasonable to defend against a threat to life or serious bodily injury to any individual . . . or to bring an objectively dangerous and unlawful situation safely and effectively under control." Even under these permitted circumstances, the deployment of kinetic energy projectiles or chemical agents must satisfy several requirements, including that "[d]e-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed." The law further prohibits the use of projectiles or chemical agents solely with respect to a violation of an imposed curfew, verbal threat, or noncompliance with a law enforcement directive. Any use of force incident under these circumstances must be posted within 60 days on the agency's website with a summary of the incident.

AB 48 amends Government Code section 12525.2 by now requiring monthly as opposed to yearly reporting to the Department of Justice of the shooting of or by a peace officer or incidents resulting in death or serious bodily harm to a civilian, a.k.a. URSUS Data.

AB 481 - Military Equipment

AB 481 adds sections 7070, 7071, 7072, 7073, 7074 and 7075 to the Government Code. These new laws require a law enforcement agency to seek approval from its local governing body prior to acquiring (including borrowing or leasing) military equipment, seeking funds for military equipment, collaborating with another law enforcement agency in the deployment or other use of military equipment, or using military equipment in a manner not previously approved by the government body.

The law provides that the governing body can only approve a military equipment use policy if it determines, among other requirements, that the military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety, the proposed military equipment use policy will safeguard the public's welfare, safety, civil rights and civil liberties, and if purchasing the equipment, it is reasonably cost effective compared to available alternatives.[825]

Any agencies with military equipment must provide an annual report on each type of approved military equipment they possess, including a summary of how it was used, the total annual cost, and any complaints or concerns received. The agency must also hold a community engagement meeting so that the public can discuss the annual military equipment report. Local governing bodies can annually review the report and can disapprove a renewal or require modifications if there is any noncompliance.

[825] Assem. Bill No. 481, approved by Governor, Sept. 30, 2021 (2021-2022 Reg. Sess.).

AB 26 – Duty to Intercede: Policies Related to Use of Force

AB 26 amends Government Code section 7286, governing the minimum standards that must be included in a law enforcement agency's use of force policy. This new law defines the terms excessive force (i.e. force violating Penal Code section 835a or any other law), retaliation, and the duty to "intercede." [826]

Under AB 26, the duty to intercede is now clearly defined as follows: "Intercede" includes, but is not limited to, physically stopping the excessive use of force, recording the excessive force, if equipped with a body-worn camera, and documenting efforts to intervene, efforts to deescalate the offending officer's excessive use of force, and confronting the offending officer about the excessive force during the use of force and, if the officer continues, reporting to dispatch or the watch commander on duty and stating the offending officer's name, unit, location, time, and situation, in order to establish a duty for that officer to intervene.[827]

The law further provides that use of force policies must include provisions that (1) officers must "immediately" report potential excessive use of force[828] and (2) retaliation against an officer reporting a suspected violation of law or a regulation is prohibited.

AB 490 - Positional Asphyxia

AB 490 amends Government Code section 7286.5, which banned the use of carotid restraints and choke holds by law enforcement. Under AB 490, the law now specifies that a law enforcement agency "shall not authorize techniques or transport methods that involve a substantial risk of positional asphyxia," which is defined as "situating a person in a manner that compresses their airway" reducing a person's ability to breathe.[829]

Criminal Justice Reform

AB 1475 - Social Media and Booking Photos

AB 1475 adds section 13665 to the Penal Code, prohibiting law enforcement agencies from sharing on social media booking photos of a person arrested under the suspicion of a nonviolent crime, except under limited circumstances, such as when the agency determines that the person is a fugitive or an imminent threat to an individual or public safety and releasing the person's image may assist in locating the person or eliminating the threat. Agencies must also remove the booking photo of a person arrested for a nonviolent crime within 14 days, upon the request of the person unless any of the above noted circumstances exist. Agencies must also remove photos of a person arrested for a "violent felony," as defined in Penal Code section 667.5, at the request of the person if they have demonstrated one of a number of

[826] Assem. Bill No. 26, approved by Governor, Sept. 30, 2021 (2021-2022 Reg. Sess.).
[827] Ibid.
[828] Government Code section 7286 previously did not provide any deadline by which a peace officer would have to report potential excessive use of force.
[829] Assem. Bill No. 490, approved by Governor, Sept. 30, 2021 (2021-2022 Reg. Sess.).

applicable circumstances, such as their record being sealed, their conviction being dismissed or expunged, or a finding of not guilty.

Mental Health and Crisis Response

AB 118 - Emergency Services: Community Response Grant Program

AB 118 adds sections 18999.91, 18999.92, 18999.93, 18999.94, and 18999.95 to the Welfare and Institutions Code, creating a grant pilot program which would award each grantee a minimum of $250,000 per year to fund community-based alternatives to law enforcement with the end goal of reducing police responses to someone experiencing a health related crisis. The Department of Social Services will convene and consult with a stakeholder working group to make recommendations regarding implementation of the grant program.

CONCLUSION

This year marks the Board's fifth annual report since the enactment of the Racial and Identity Profiling Act of 2015. Last year, the Board committed to delving deeper into topics of import to the community and law enforcement to make recommendations that will continue to effect positive change and ultimately improve relationships and trust between law enforcement and the community. To that end, in this year's report the Board has more thoroughly examined and made concrete recommendations in the areas of civilian complaints, bias, accountability, pretext stops, gender disparities, consent searches and interactions with individuals on supervision and those perceived to have a disability. Future reports will continue this work.

So many events related to policing in California and the nation over the past two years have not only raised awareness of longstanding injustices, but have also shown the complexities of the relationship between law enforcement, individuals, communities and other governmental institutions. Systemic change is not easy, but the similar disparities shown in the data over the years make clear that change is needed to ensure everyone has the equal protection of the law. And, while equality seems like an unattainable goal, the Board will continue to bring individuals with diverse backgrounds together and persevere with this important work toward its common goal of eradicating racial and identity profiling in policing.