

RACIAL AND
IDENTITY
PROFILING
ADVISORY
BOARD

Annual Report
2024

January 1, 2024

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EXECUTIVE SUMMARY

The California Racial and Identity Profiling Advisory Board (Board) is pleased to release its seventh Annual Report (Report). The Report continues to build upon the Board’s prior work by examining additional ways to improve law enforcement and community interactions and reduce racial and identity profiling.

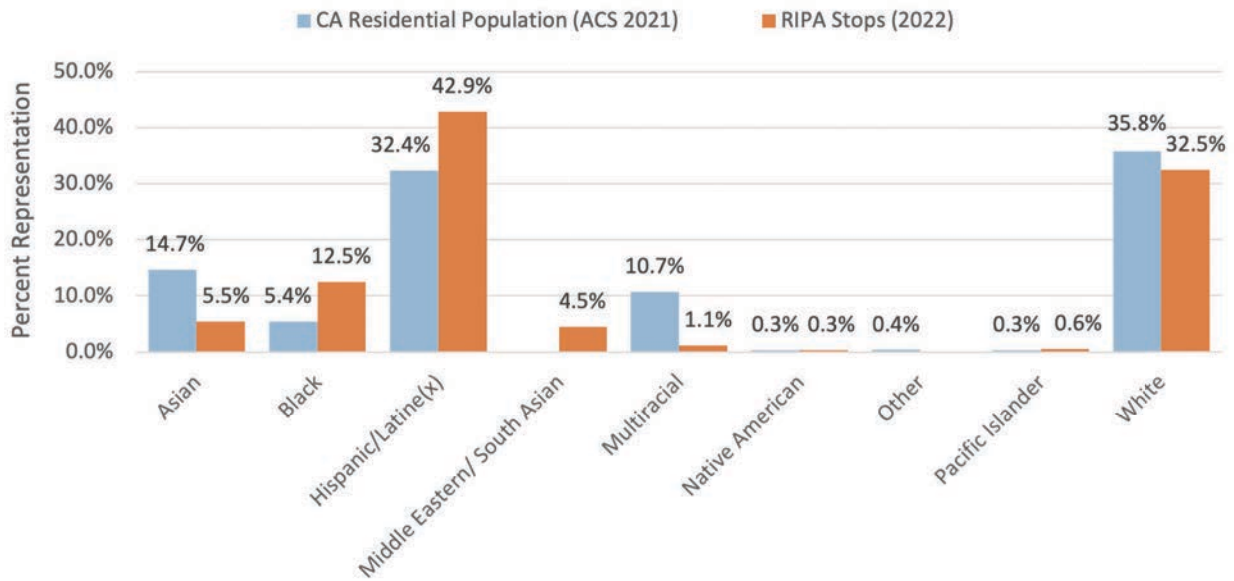
The Report analyzes stop data reported on more than 4.5 million stops by 535 California law enforcement agencies from January 1, 2022 to December 31, 2022. Additionally, the Report examines youth interactions with law enforcement, both within and outside of schools. The Report also explores the effect police unions may have on law enforcement accountability and protocols and guidelines for law enforcement training on racial and identity profiling. Furthermore, the Report continues the Board’s examination of pretextual stops, analyzing the results of stops where field interview cards are completed and where the stops result in resisting arrest charges.

To supplement the Report, the Board also includes a summary of Recommendations and Best Practices. The Board encourages all stakeholders, including law enforcement agencies, policymakers, the California Commission on Peace Officer Standards and Training (POST), researchers, advocates, and community members, to use these recommendations and best practices to propose and implement data-driven reforms. Such reforms can strengthen law enforcement and community relationships and improve public safety for all Californians.

FINDINGS REGARDING STOP DATA

- Five hundred thirty-five agencies conducted a total of 4,575,725 stops from January 1, 2022 to December 31, 2022. There are 25 additional agencies required to report RIPA stop data, but they reported zero stops in 2022.
- Black individuals were stopped 131.5 percent more frequently than expected, given their relative proportion of the California population, using a comparison of stop data and residential population data.

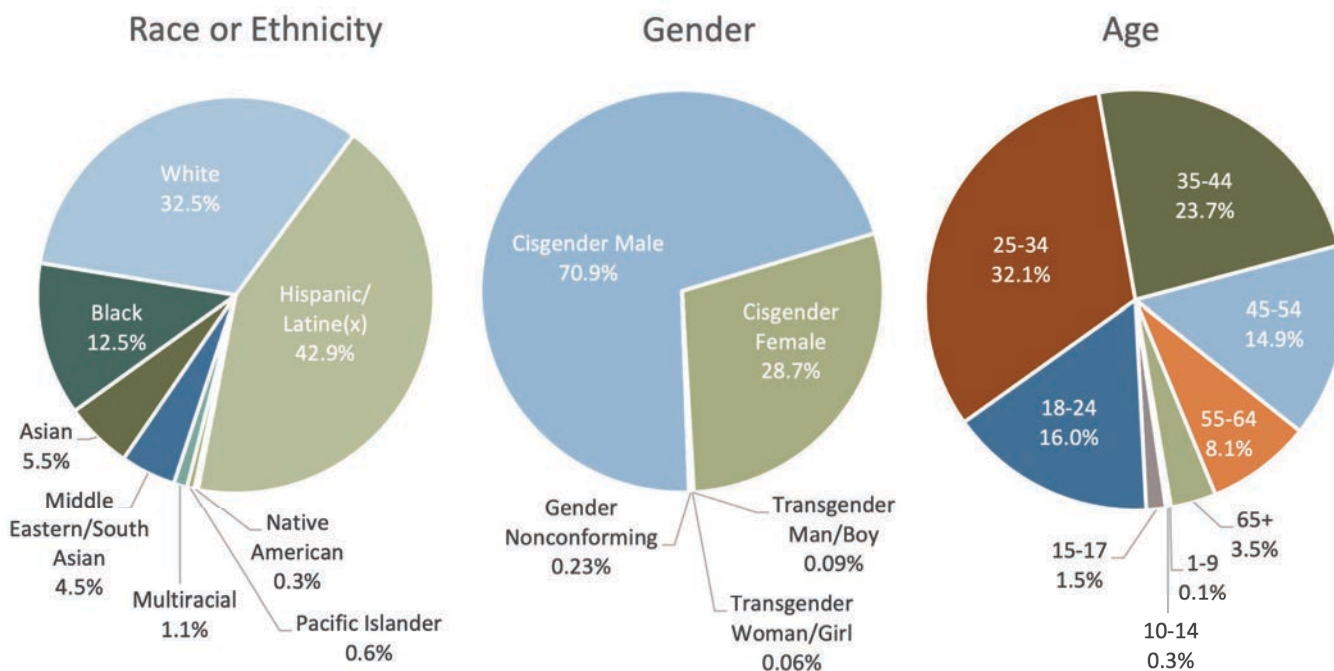
RESIDENTIAL POPULATION COMPARISON TO STOP DATA¹



¹ Because the ACS table used for these analyses does not contain a race category that is comparable to the Middle

- Individuals perceived to be Hispanic/Latine(x) (42.9%), White (32.5%), or Black (12.5%) comprised the majority of stopped individuals.
- Individuals perceived to be between the ages of 25 and 34 accounted for the largest proportion of individuals stopped within any age group (32.1%).
- The majority of individuals stopped were perceived to be cisgender male (70.9%) or cisgender female (28.7%), with all other groups collectively constituting less than one percent of stops.
- Officers perceived 1.4 percent of individuals stopped to have a disability. Of individuals perceived to have a disability, the most common disability reported by officers was a mental health disability (68.4%).

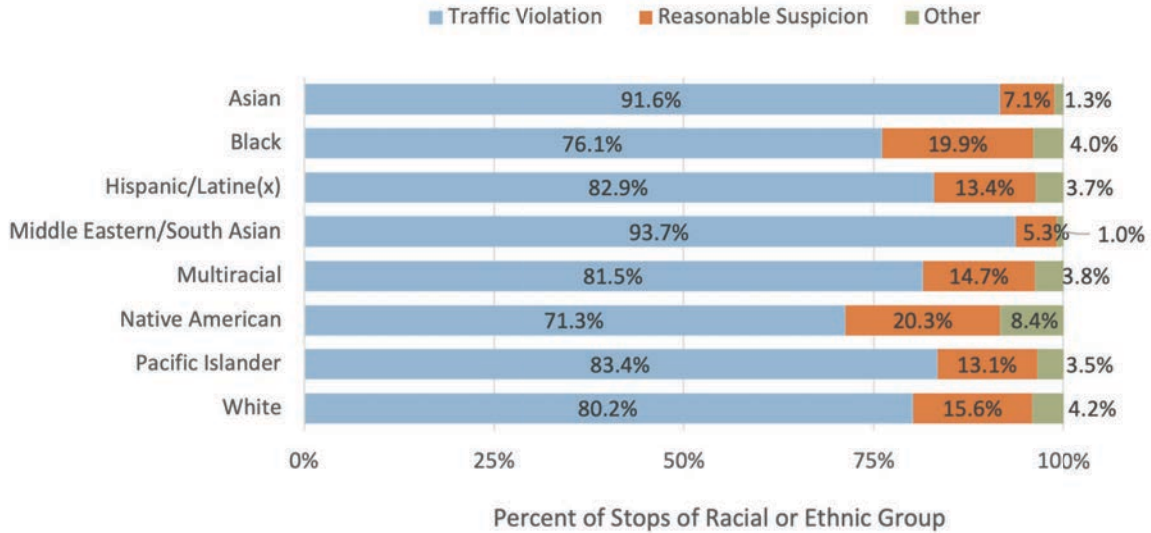
RACE OR ETHNICITY, GENDER AND AGE DISTRIBUTIONS OF 2022 RIPA STOP DATA



- The most common reason reported for stops across all racial and ethnic groups was a traffic violation (82.1%), followed by reasonable suspicion that the person was engaged in criminal activity (14.2%). Individuals perceived to be Native American had the highest proportion of stops reported for reasonable suspicion (20.3%) and the lowest proportion of stops reported for traffic violations (71.3%).

Eastern/South Asian group within the RIPA data, there is no residential population bar for this group in this Figure. For more information about the ACS data used in this section, see section B.1 of Appendix B.

PRIMARY REASON FOR STOP BY RACE OR ETHNICITY

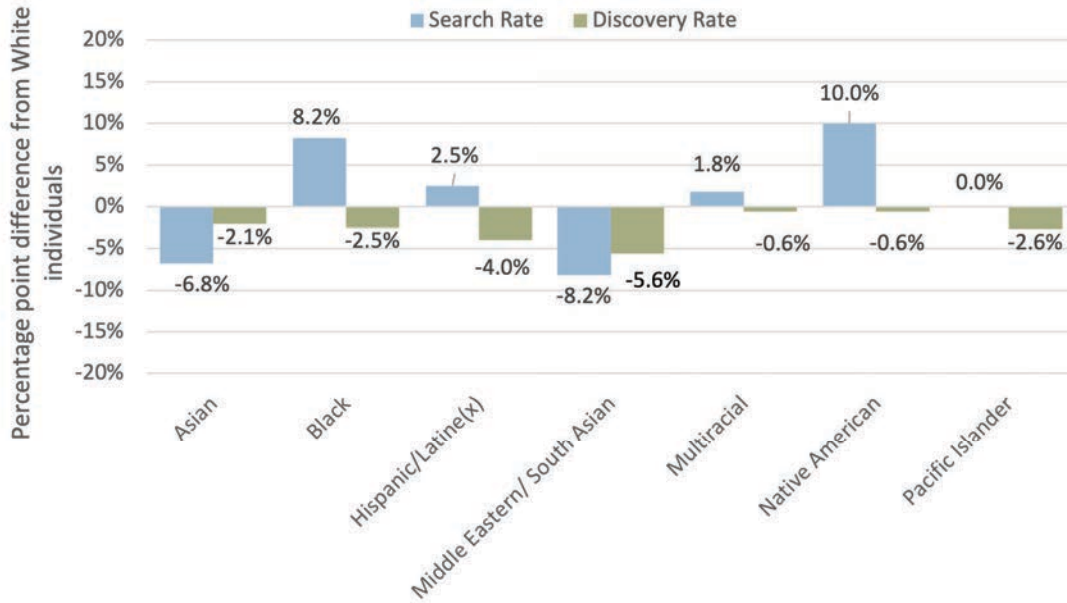


- Officers reported that 9.3 percent of stops were made in response to a call for service.

The Board also analyzed the actions taken by law enforcement officers during stops. Findings indicate that:

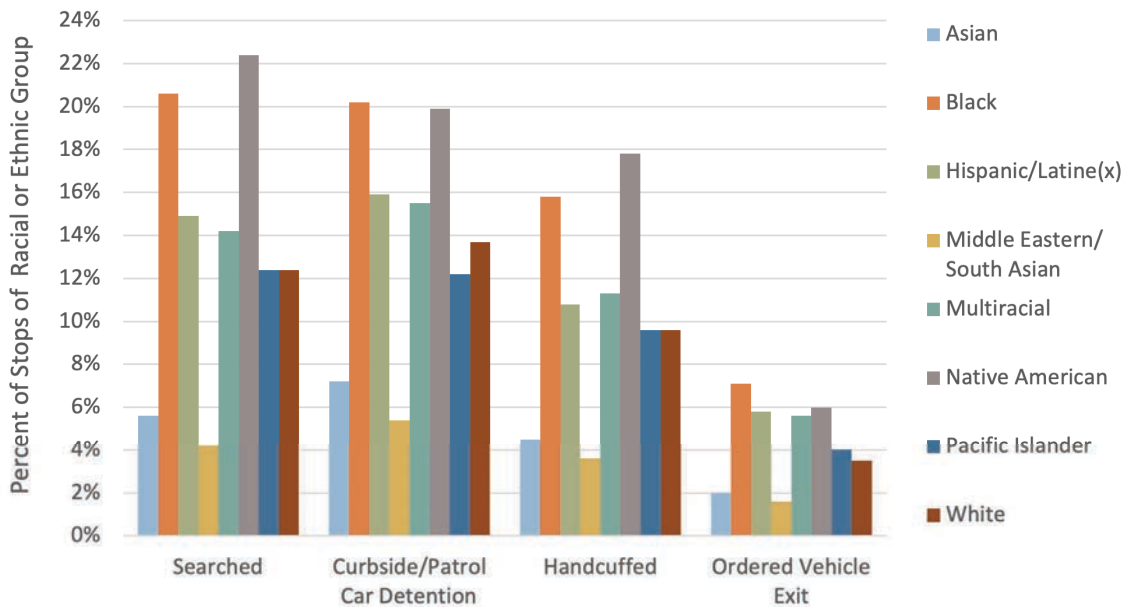
- All racial or ethnic groups of color were searched at higher rates than individuals perceived to be White, except for individuals perceived as Asian, Middle Eastern/South Asian, and Pacific Islander. Individuals perceived to be Native American had the highest rate of being searched (22.4%), while individuals perceived to be Middle Eastern/South Asian were searched at the lowest rate (4.2%). Individuals perceived to be White were searched 12.4 percent of the time, meaning officers searched individuals perceived to be Native American 10 percent more often than individuals they perceived as White (22.4% vs. 12.4%). Officers also searched individuals perceived to be Black (+8.2%), Hispanic/Latine(x) (+2.5%), and Multiracial (+1.8%) more often than stopped individuals perceived to be White.
- Search discovery rates (i.e. the rate at which contraband or evidence of a crime was discovered) did not vary widely across racial or ethnic groups. However, discovery rates were lower during stops with searches of all racial or ethnic groups of color (-2.1% Asian, -2.5% Black, -4.0% Hispanic/Latine(x), -5.6% Middle Eastern/South Asian, -0.6% Multiracial, -0.6% Native American, and -2.6% for Pacific Islander individuals) compared to individuals perceived to be White.

RACIAL OR ETHNIC DISPARITIES IN SEARCH AND DISCOVERY RATES



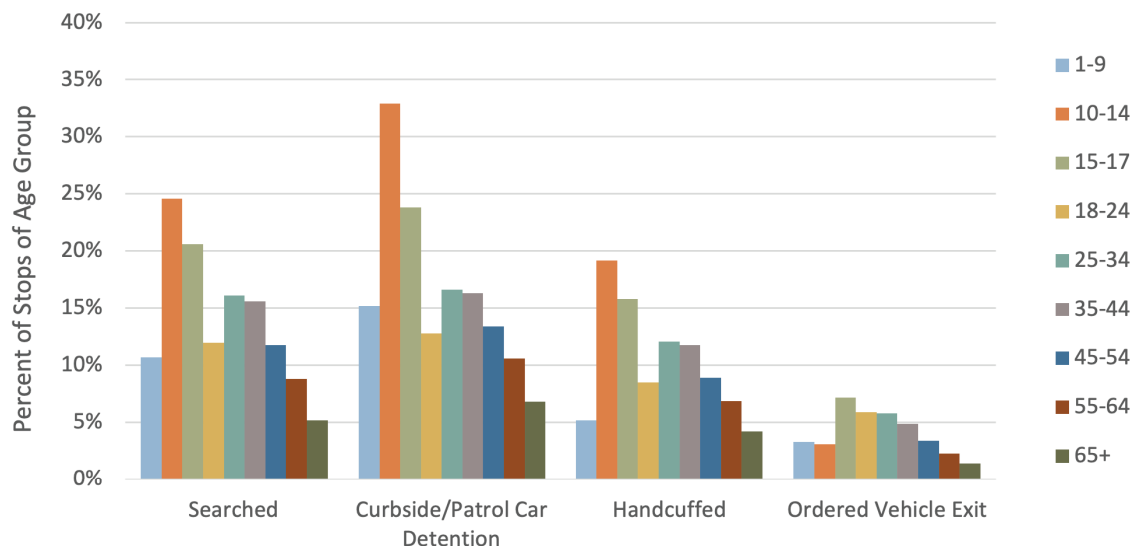
- Relative to other groups, individuals perceived to be Native American had the highest rate of being handcuffed (17.8%) among all racial and ethnic groups. Individuals perceived to be Black had the highest rates of being detained curbside or in a patrol car (20.2%) and ordered to exit a vehicle (7.1%). Individuals perceived to be Middle Eastern/South Asian had the lowest reported rate for each of these actions (ranging from 1.6% to 5.4%).

ACTIONS TAKEN DURING STOP BY RACE OR ETHNICITY



- Relative to other age groups, individuals perceived to be between the ages of 10 to 14 had the highest rate of being searched (24.6%), detained on the curb or in a patrol car (32.9%), and handcuffed (19.2%). Individuals perceived to be between the ages of 15 to 17 had the highest rate of being removed from a vehicle by order (7.2%).

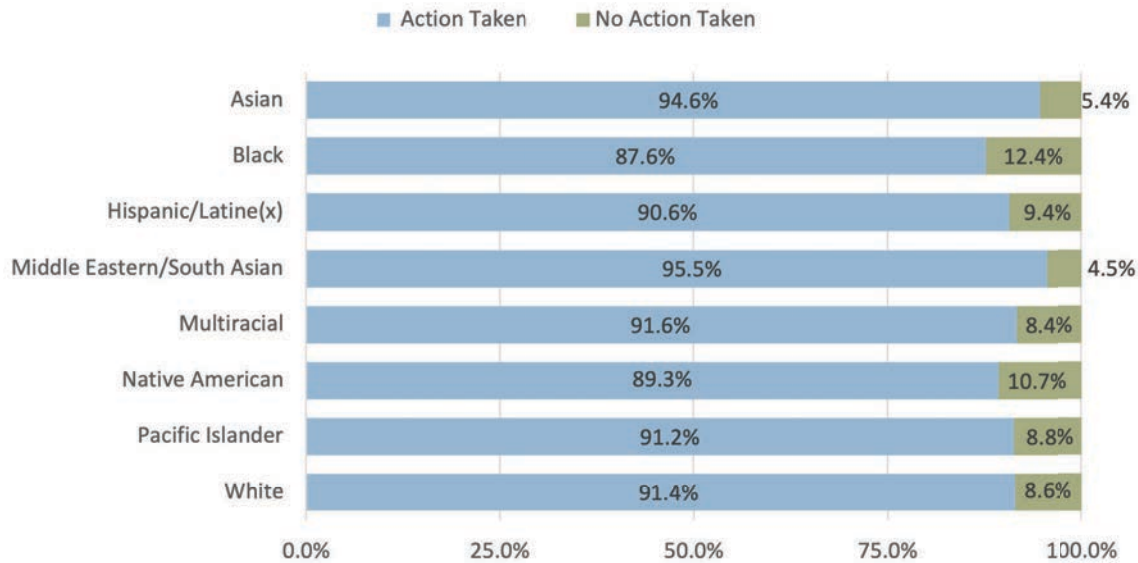
ACTIONS TAKEN DURING STOP BY AGE GROUP



- Individuals perceived to be transgender women/girls had the highest rate of being searched (28.3%), detained curbside or in a patrol car (30.3%), handcuffed (29.9%), and being removed from a vehicle by order (6.4%). Individuals perceived to be cisgender female consistently had the lowest rates for each of these actions (8.6% searched, 11.3% detained curbside or in a patrol car, 7.1% handcuffed, and 3.4% removed from vehicle by order).
- Individuals perceived to have a disability were searched (42.7%), detained curbside or in a patrol car (42.2%), and handcuffed (41.6%) at a much higher rate than individuals perceived to not have a disability (13.4% searched, 14.4% detained curbside or in a patrol car, and 9.9% handcuffed). However, individuals perceived to have a disability were removed from a vehicle by order at a lower rate (3.4%), compared to individuals who were not perceived to have a disability (4.8%).

Officers also report the result of each stop (for example, warning or citation given, arrest, or no action taken). Officers reported taking no action as a result of a stop most frequently for individuals perceived to be Black (12.4%). Officers reported taking no action as a result of a stop least often for stops of individuals perceived to be Middle Eastern/South Asian (4.5%).

RESULT OF STOP – NO ACTION BY RACE OR ETHNICITY

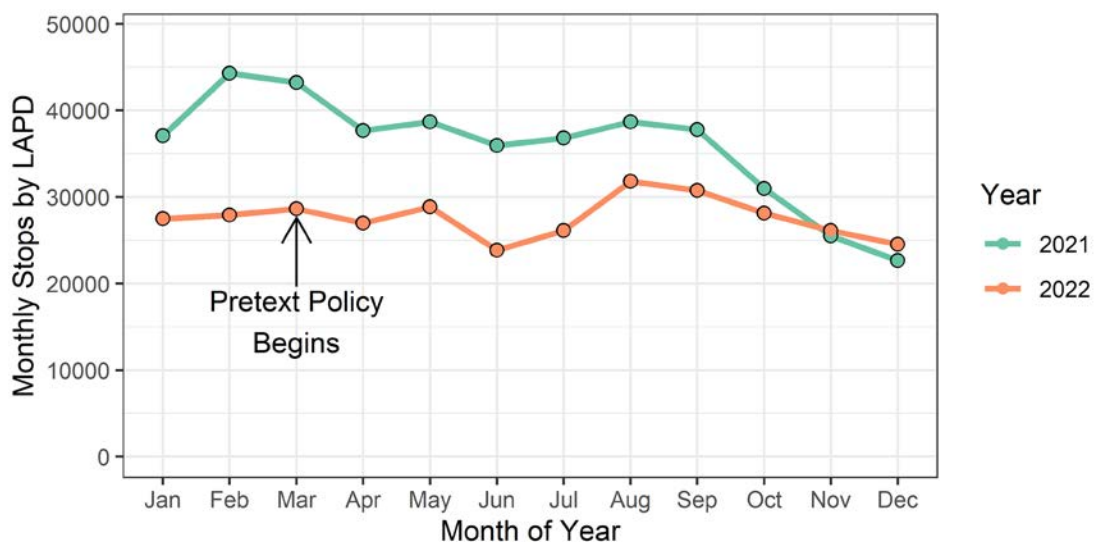


PRETEXTUAL STOPS

This Report continues to build on the Board’s prior discussion, analysis, and recommendations regarding pretext stops and searches. First, the Board examines the effectiveness of two different policy approaches to pretext stops adopted by the Los Angeles Police Department (LAPD) and the state of Virginia. The new LAPD policy allows officers to make traffic stops only if the violation significantly interferes with public safety or if they have information to suspect the person has committed a serious crime (i.e., a crime with potential for great bodily injury or death). The Virginia policy, by contrast, establishes what is known as a primary and secondary traffic enforcement system, where an officer can only stop someone for a primary public safety violation and not solely for a defined secondary violation, such as an expired registration.

- Preliminarily, it appears the policies contributed to an overall reduction in stops and searches. LAPD data indicate an overall reduction in stops and searches, a slight increase in discovery rates, and a slight decrease in disparities of persons stopped who were perceived to be Black. Data for Virginia indicate a slight reduction in the number of stops and searches overall, although disparities persist. Because these policies are new, an analysis of their impact would benefit from more data.
- The data on LAPD stops indicate that the number of traffic violation stops for common equipment violations dramatically decreased after the LAPD pretext policy was implemented (60.2% reduction in total stops for equipment violations between 2022 and 2021 comparison periods).

MONTHLY STOP TOTALS FOR LOS ANGELES POLICE DEPARTMENT 2021 AND 2022



- LAPD discovered contraband during a higher percentage of RIPA reported stops with searches after the pretext policy was in place (37.9% discovery rate) compared to the same time period in 2021, before the pretext policy was in place (36.0% discovery rate).

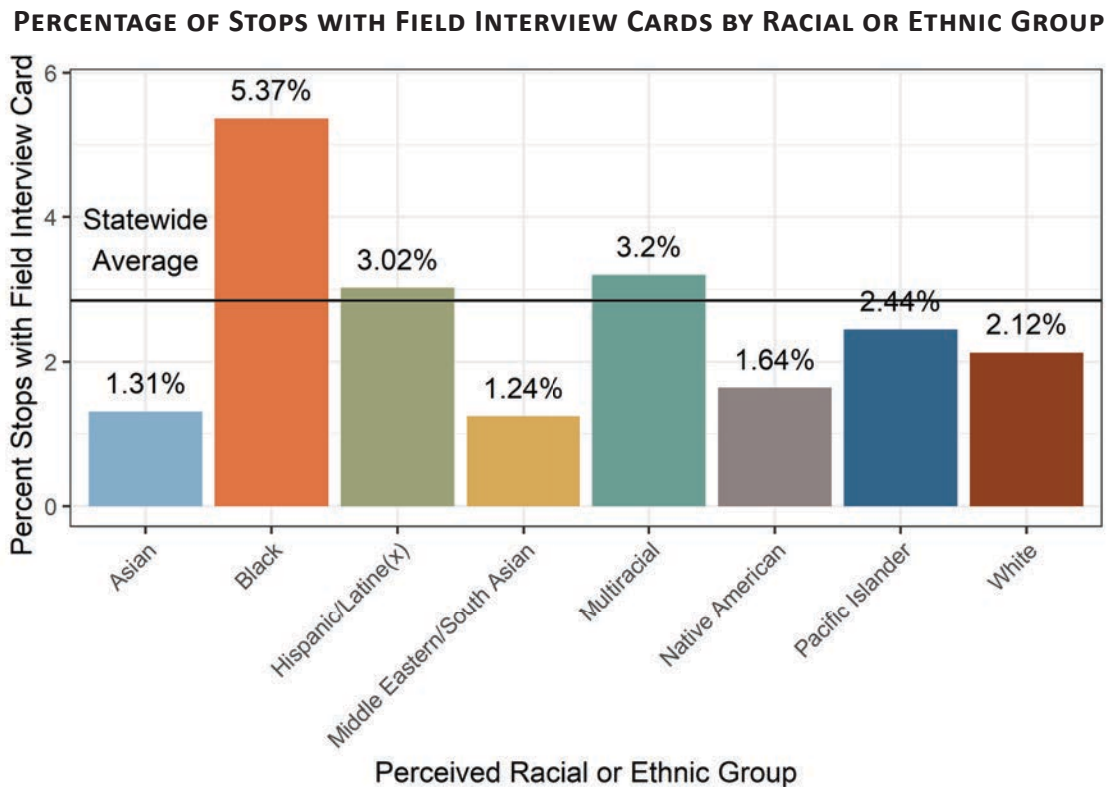
Next, the Board discusses legislative measures to address pretext stops and searches, including Senate Bill No. 50 (2023-2024 Reg. Sess.) and Assembly Bill No. 93, and expresses its support of these bills and related recommendations. The Board also discusses the provisions regarding pretext stops and searches, including consent searches, in the settlement agreement between the State of Minnesota and the Minneapolis Police Department that resulted from parallel pattern and practice investigations by Minnesota and the United States Department of Justice (U.S. DOJ) following the murder of George Floyd.

The Board also delves deeper into RIPA data related to pretext stops, analyzing the results of stops where field interview cards are completed and stops resulting in a charge of resisting arrest. The results show notable disparities, and the data indicate the results may have little to no connection to the original reasons for the stop, such as traffic infractions.

Field Interview Cards

A field interview card is a document law enforcement officers can choose to fill out during a contact with an individual that can contain information regarding a person’s nickname, who the person is with, what they are wearing, or any social media accounts – even if the person is not involved in criminal activity. Many of these field interview cards are entered into criminal databases, such as CalGang, which are used by law enforcement agencies to share data collected in these interviews. This can have serious repercussions; if an individual is “known to police” because their name is in a database – even if due to a consensual encounter – they may later be treated by law enforcement as having a criminal history even if they do not. As shown below, the RIPA data show disparities regarding when officers complete field interview cards. More specifically, the reasons given for those stops often do not implicate a need to complete a field interview card in the first place. If an officer conducts a pretextual stop – for which the RIPA data show there are disparities, suggesting bias may play a role – any initial bias for the stop could influence the decision to complete a field interview card and the information the officer records on the card and enters into the database. This may result in the compounding of bias affecting the database.

- Of the stops where officers completed a field interview card, individuals perceived to be Hispanic/Latine(x) represented the largest racial or ethnic group of stopped individuals (45.6%), followed by individuals perceived to be White (24.2%) and Black (23.6%). However, field interview cards were filled out for a larger percentage of stops when individuals were perceived to be Black (5.4% of stops), Multiracial (3.2%), or Hispanic/Latine(x) (3.0%). Individuals perceived as Black had the highest per capita occurrence of field interview cards (1,441 field interview cards per 100,000 residents or 4.4 times the statewide average).

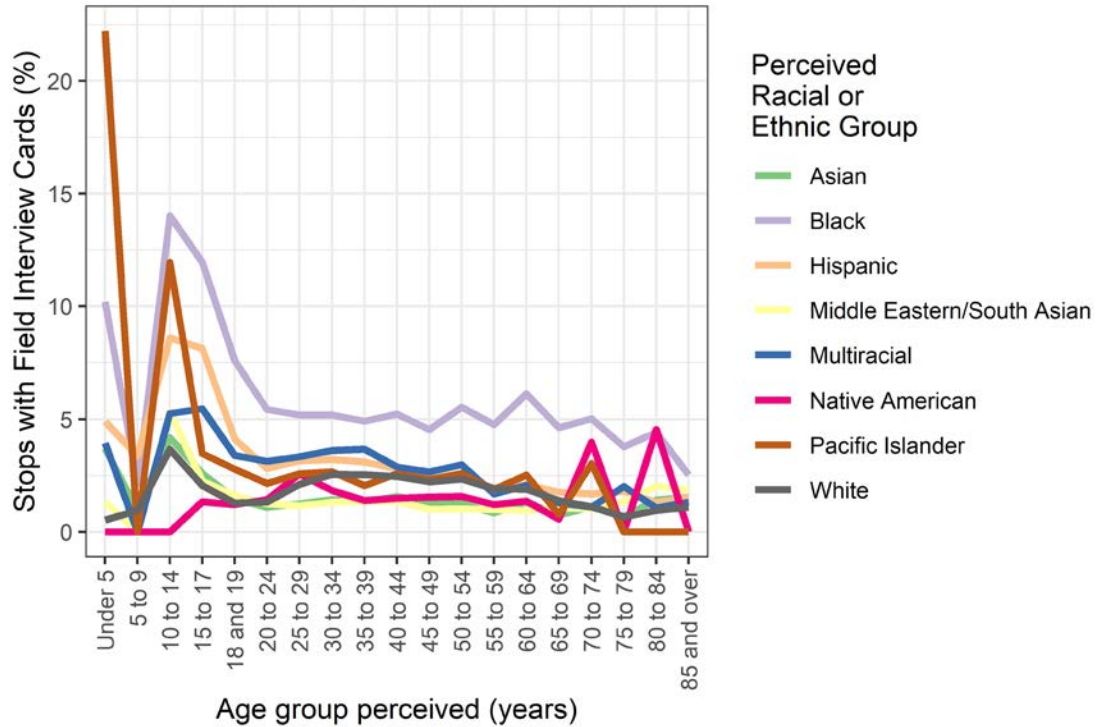


- When an officer stops an individual, the officer reports the specific suspected offense. For stops for reasonable suspicion, the primary offenses with the largest number of field interview cards were local ordinance violations (9,463 field interview cards),² community caretaking (5,079 field interview cards), trespassing (4,844 field interview cards), and burglary (3,451 field interview cards).³
- Youth perceived to be 10 to 14 years old had the highest percentage of stops during which field interview cards were issued (7.8% of stops where a field interview card was issued), followed by 15 to 17 year olds (6%). These rates are more than double the statewide average percentage of stops with field interview cards (2.8%).
- Across all age groups between the ages of 10 and 80, individuals perceived as Black had the highest percentage of stops in which a field interview card was completed, among all racial and ethnic groups.

² Local ordinance violation Offense Codes 65002 and 65000 were combined into 65000 for the purposes of this figure.

³ Local ordinance violations are specified with California DOJ CJIS Offense Codes 65000 and 65002. Community Caretaking is specified with California DOJ CJIS Offense Code 99990.

PERCENTAGE OF STOPS WITH FIELD INTERVIEW CARDS BY RACIAL OR ETHNIC GROUP AND AGE GROUP



Based on these findings, the Board makes the following recommendations to the Legislature, municipalities, and agencies regarding field interview cards:

- Prohibit the collection of field interview cards and entries into CalGang or any agency database in absence of an arrest.
- Prohibit the collection of field interview cards and entries of youth into CalGang or any agency database designed to track criminal information after youth are questioned or a field interview is conducted without the presence of an attorney.
- In the alternative to the two recommendations above, agencies should recognize (and include in their policies) that these encounters may not be fully consensual, and officers should be required to inform the individuals subject to the field interview that they do not have to respond to questions and are free to leave. Additionally, officers should be required to:
 - Inform individuals that providing a physical form of identification is voluntary;
 - Not use a person's failure to stop, answer questions, decision to end the encounter, or attempt or decision to walk away to establish reasonable suspicion for initial stop or detention, search, citation, or arrest of the person if an officer is engaged in, or attempting to engage in, a field interview.
- Consider prohibiting law enforcement agencies from creating criminal databases that are not tied to information about an arrest or conviction.
- Ban the collection of information and entries into any agency databases designed to track criminal information if the entry is collected from a stop for community caretaking or when a person might be experiencing a mental health crisis. Law enforcement supervisors shall review any case where a field interview card is filled out after a community caretaking or crisis intervention contact. This recommendation does not apply to collecting information that might assist law enforcement in its approach to interacting with the individual in crisis or in engaging in their legal requirements under disability civil rights laws.

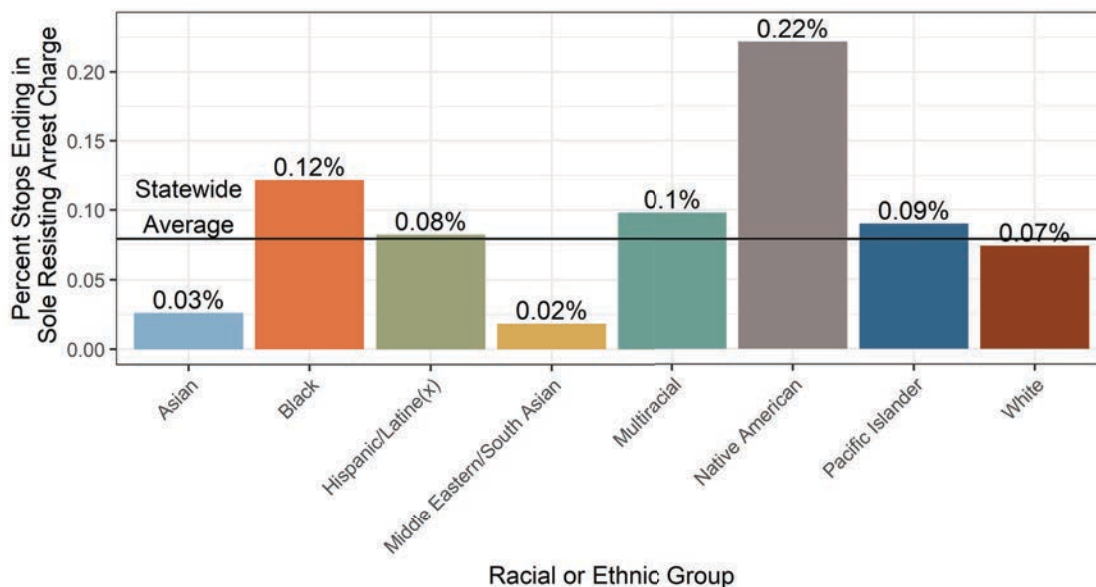
- Make the removal process from CalGang and other agency databases designed to track or store criminal information more transparent. Require agencies to conduct regular audits, including determining if notice is properly provided to a person entered into a database and evaluating the processes for removal from the databases to ensure compliance with the laws.
- Create funding incentives for agencies to adopt policies prohibiting the input of non-criminal information into agency databases for tracking purposes and audit those practices.

Resisting Arrest Stops

In California, resisting arrest (including obstructing or delaying an officer in the performance of their duties) can be charged as a misdemeanor with or without accompanying charges. In this Report, the Board looks specifically at misdemeanor resisting arrest charges where there is no alleged injury charged as a part of the crime and the sole charge is resisting arrest.

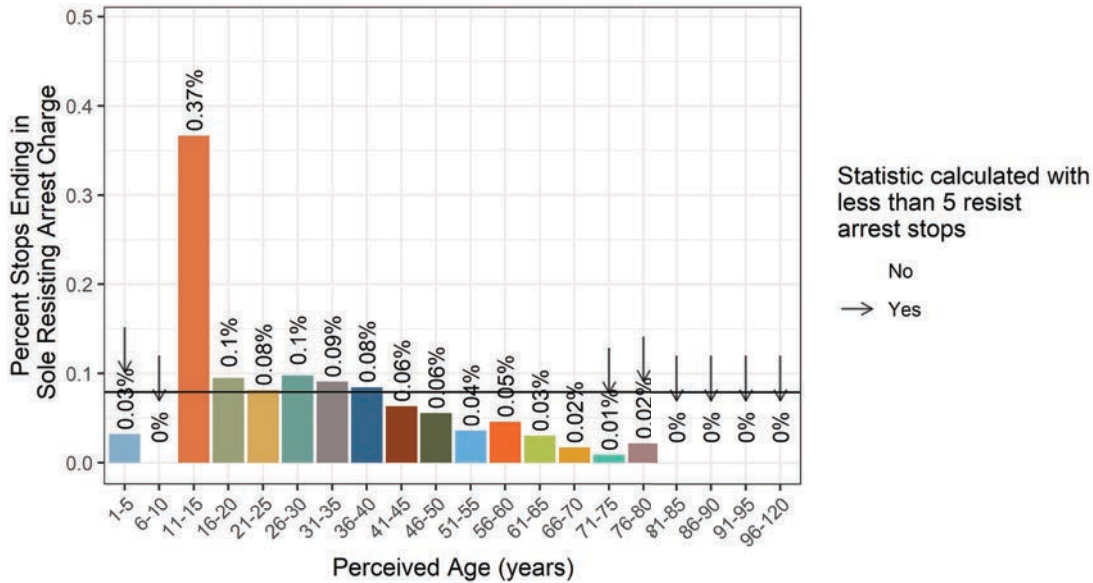
- Individuals perceived as Black had the highest per capita rate of stops that resulted in a sole charge of resisting arrest (32.7 stops per 100,000 residents, 3.3 times the statewide average). Individuals perceived as Black accounted for 19.2 percent of all stops that resulted in a sole charge of resisting arrest, while accounting for only 5.4 percent of the California residential population.
- Individuals perceived as Native American had the highest percentage of stops that resulted in a sole resisting arrest charge among perceived racial or ethnic groups (0.22%, 2.8 times the state average). Other racial or ethnic groups with above average percentages of stops resulting in sole resisting arrest charges include individuals perceived as Black (0.12% of stops), Multiracial (0.1%), Pacific Islander (0.09%) and Hispanic/Latine(x) (0.08%).

PERCENT OF STOPS RESULTING IN SOLE RESISTING ARREST BY RACIAL OR ETHNIC GROUP



- Individuals perceived as being between the ages of 11 and 15 had the highest percentage of stops that resulted in a sole resisting arrest charge among perceived age groups (0.37%, 4.6 times the state average).

PERCENT OF STOPS RESULTING IN SOLE RESISTING ARREST BY AGE GROUP



- Individuals perceived to have a mental health disability had the highest percentage of stops that resulted in a sole resisting arrest charge among perceived or known disability groups (0.46%, 5.7 times the state average).
- Individuals perceived as LGBT and transgender had the highest percentage of stops resulting in sole resisting arrest charges (0.25%, three times the statewide average).

Based on the RIPA data and a review of the impacts of evolving district attorneys' policies, the Board makes several recommendations to agencies, municipalities, district attorneys, and the Legislature:

- Adopt internal policies that prohibit district attorneys from filing and law enforcement agencies from submitting to the district attorney's office for review misdemeanor criminal filings on standalone resisting arrest charges if it is the sole charge listed at the time of arrest and is not accompanied by other citable offenses unless extraordinary circumstances exist, such as an identifiable, continuing threat to another individual or another circumstance of similar gravity.
- Explore internal policies that limit district attorneys from filing standalone misdemeanor resisting arrest charges or charges where resisting arrest is charged in conjunction with trespass, disturbing the peace, driving without a valid license or a suspended license, simple drug possession, minor in possession of alcohol, drinking in public, under the influence of a controlled substance, public intoxication, or loitering unless extraordinary circumstances exist, such as an identifiable, continuing threat to another individual or another circumstance of similar gravity.
- Develop policies to require officers to notify supervisors prior to making an arrest for resisting arrest and have supervisors review any case where resisting arrest is alleged in a report.
- Develop policies requiring district attorneys to review body-worn camera footage in any case that involves a resisting arrest allegation prior to filing charges.
- Adopt internal policies that eliminate or severely limit arrests and charges filed for resisting arrest during consensual encounters unless extraordinary circumstances exist, such as an identifiable, continuing threat to another individual or another circumstance of similar gravity.

- Adopt internal policies that prohibit arrest and filing of charges against individuals stopped for community caretaking unless extraordinary circumstances exist, such as an identifiable, continuing threat to another individual or another circumstance of similar gravity.
- Adopt internal policies that prohibit arrest and filing of charges against individuals if the alleged resisting stems from a disability.

Assignment Type: Specialized Teams and Hot Spot Policing

Lastly, the Board analyzes officer assignment type data, including a discussion of the history of specialized teams and concerns about some of their actions. The Report discusses how the assignment type (such as specialized units) and other specific policing strategies may increase the opportunities for pretextual stops. RIPA data for 2022 indicates that:

- For nine of the ten officer assignment types, the highest per-resident stop rate was for individuals perceived as Black, followed by individuals perceived as Pacific Islander and Hispanic/Latine(x).
- Comparing across officer assignment types, officers who worked on a specialized team and had the assignment type of “Gang Enforcement” had the highest percentages of all stop actions during stops, with the exception of use of force. Officers of this assignment type handcuffed an individual during 20.4 percent of all stops for traffic violations, performed a detention (curbside or patrol car) during 28.6 percent of traffic stops, and performed a search during 39.3 percent of traffic stops.

The Board makes the following recommendations with respect to officer assignment types and the use of specialized teams:

- Create policies that provide for measurable oversight of specialized teams and require law enforcement agencies to develop policies that define clear objectives and outcomes for specialized teams. These policies should address enforcement of any violation of the law or deviation from the programmatic mission; and
- Provide funding for programs that focus on community-based drug and violence intervention programs.

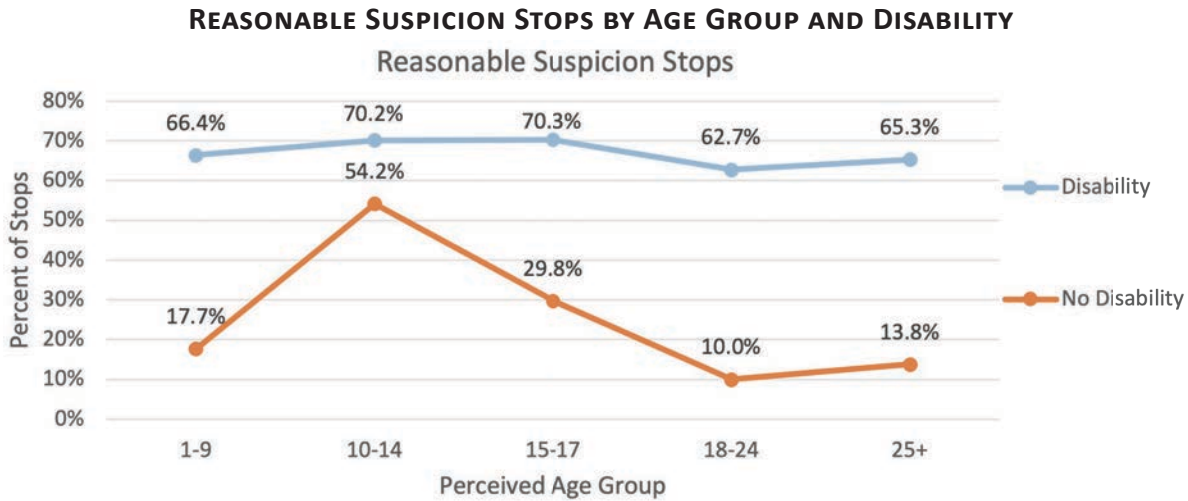
The Board also began to explore the relationship between drug possession charges and pretextual stops, including reviewing RIPA data that show individuals who are Black or Hispanic/Latine/(x) are more likely to be cited or arrested for drug offenses despite research showing that drug use rates are virtually the same across race and ethnicity.

- For stops resulting in drug possession charges, the top ten reasons for a stop were five types of vehicle equipment violations, three offense codes associated with drug possession, and two reasonable suspicion offenses (failure to obey juvenile court order and second-degree burglary). The five equipment violations that resulted in the most drug possession charges were vehicle registration (6,577), improper display of license plates (2,319), bike headlight violation (2,004), failure to maintain vehicle lights (1,336), and window obstruction (1,093).
- Individuals perceived as Black were stopped for drug possession reasons at the highest rate per resident among racial or ethnic groups (105.1 stops with reason for stop reported as drug possession, 2.6 times the statewide average).

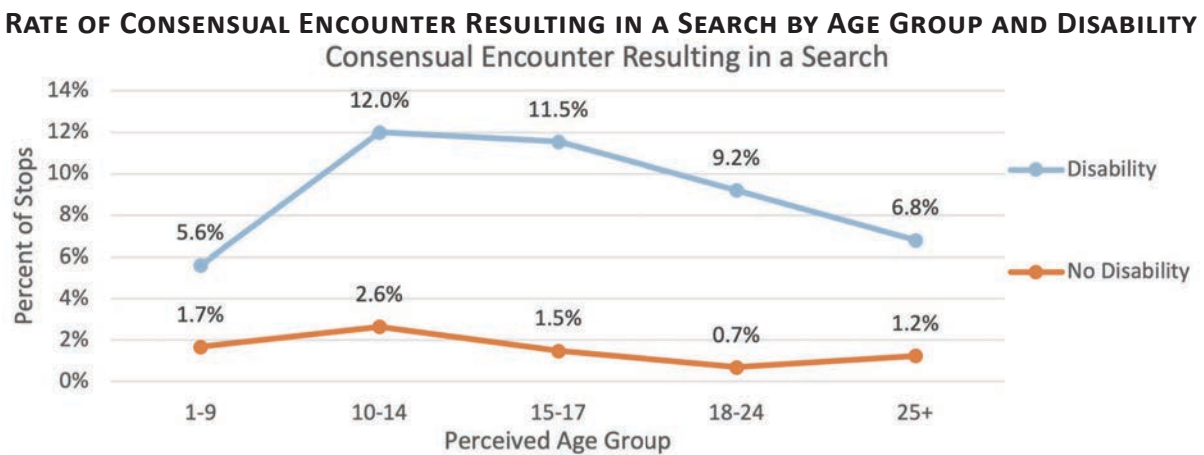
POLICE CONTACT WITH YOUTH WITH DISABILITIES AND YOUTH EXPERIENCING MENTAL HEALTH CRISES

This year, the Board examines data and research suggesting that youth with disabilities, including youth experiencing mental health crises, are particularly vulnerable to police violence and are at higher risk of intrusive police contact, use of force, and death during police encounters. Stop data reported by California law enforcement agencies in 2022 and other studies indicate that:

- Individuals perceived or known to have a disability had the highest percentage of stops reported as reasonable suspicion across all age groups, compared to individuals perceived to not have a disability.



- Officers reported that 1.2 percent of stops made in 2022 were consensual encounters that resulted in a search. Youth between the ages of 10 and 14 with a perceived disability had the highest percentage of stops reported as a consensual encounter resulting in a search (12.0%) compared to youth not perceived to have a disability, followed by youth with a perceived disability between the ages of 15 and 17 (11.5%).



- In California, public schools refer students with disabilities to law enforcement at a higher rate than most other students. Only Black students are referred at a higher rate. If the school has an assigned law enforcement officer, the rate of referral for students with disabilities quadruples.
- Police stops can trigger adverse effects beyond the initial arrest or interaction with the juvenile justice system, including higher rates of arrest, juvenile detention, and long-term mental health

consequences. In the Los Angeles County juvenile justice system alone, 87 percent of youth have a mental disability.

In light of this data, the Board discusses the negative mental health effects and criminalization that can result from youth interactions with police, as well as approaches recommended by researchers and advocates for encounters with youth with disabilities and youth experiencing mental health crises. In general, researchers and advocates recommend that law enforcement agencies and communities prioritize a care-first model, reducing unnecessary criminal justice intervention or law enforcement response in favor of a sustained community response.

ADDRESSING PROFILING OF STUDENTS

The Board continues to build on the foundation of the prior report, analyzing issues related to policing in schools. The Report discusses research and data on law enforcement in schools, as well as the disparate impact of school policing on Black and Hispanic/Latine(x) youth and youth with disabilities across California's schools.

The Board discusses research demonstrating that police priorities vary across different school settings, with school-based law enforcement officers in White suburban school districts more often viewing students as charges to be protected, and school-based law enforcement officers in urban districts with a larger number of Black students more often treating students as criminals to be feared. The role of school-based law enforcement officers also varies across schools, and officers are more involved in the disciplinary process in schools with more students of color.

The Board also analyzes data, including RIPA stop data, regarding law enforcement in California schools. The data indicate that:

- California school districts report a larger number of law enforcement officers than social workers and a greater number of security guards than nurses.
- There are 19 school district-administered police departments in California. These school district police departments are independent of the municipal police agencies or sheriff's departments and are established by the governing board of a school district. The majority of students in these school districts are youth of color.
- In 2022, 743 officers reported making stops while working an assignment type of "K-12 Public School." Both school district-administered police departments and municipal law enforcement agencies may assign officers to work in K-12 public schools. These officers reported making 9,130 stops while working this assignment type.
- Among stops of students on campus, 3,514 stops (54.6%) were made by officers with an assignment type of "K-12 Public School" and 2,735 stops (42.5%) were made by officers with an assignment type of "Patrol, traffic enforcement, field operations."

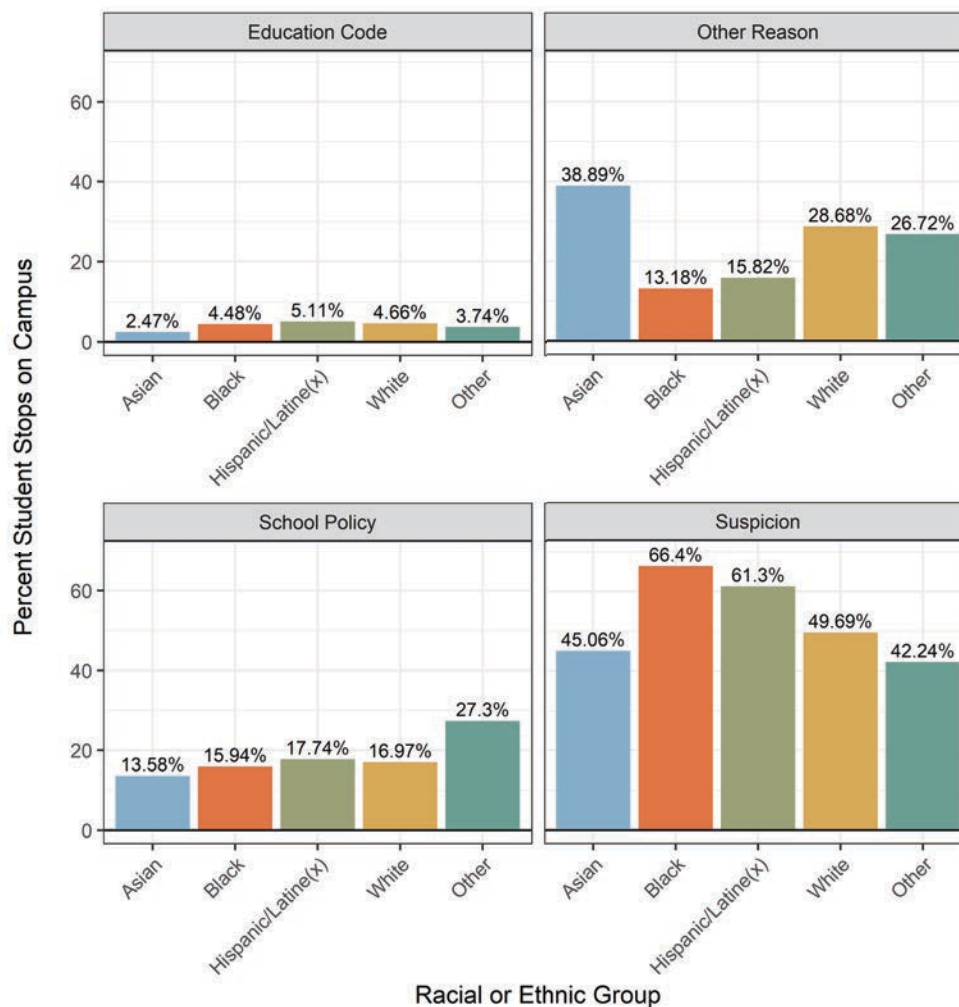
The most common primary reason for stops of students on K-12 campuses was reasonable suspicion that the student was engaged in criminal activity (3,705 stops, 57.5% of stops of students on campus). The next most common primary reasons for stops were "to determine whether student violated school policy" (1,143 stops, 17.8% of stops of students on campus), traffic violation (724 stops, 11.2% of stops of students on campus), "possible conduct under Education Code" (308 stops, 4.8% of stops of students on campus), and truancy (290 stops, 4.5% of stops of students on campus).

COUNTS AND PERCENTAGES OF PRIMARY REASONS FOR STOPS OF STUDENTS ON K-12 CAMPUSES

Reason for Stop	Count	Percentage of Student Stops
Reasonable Suspicion	3,705	57.53%
To Determine Whether Student Violated School Policy	1,143	17.75%
Traffic Violation	724	11.24%
Possible Conduct Warranting Discipline Under Education Code	308	4.78%
To Determine Truancy	290	4.50%
Consensual Encounter that Resulted in a Search	171	2.66%
Outstanding Warrant/Wanted	62	0.96%
Supervision	37	0.57%

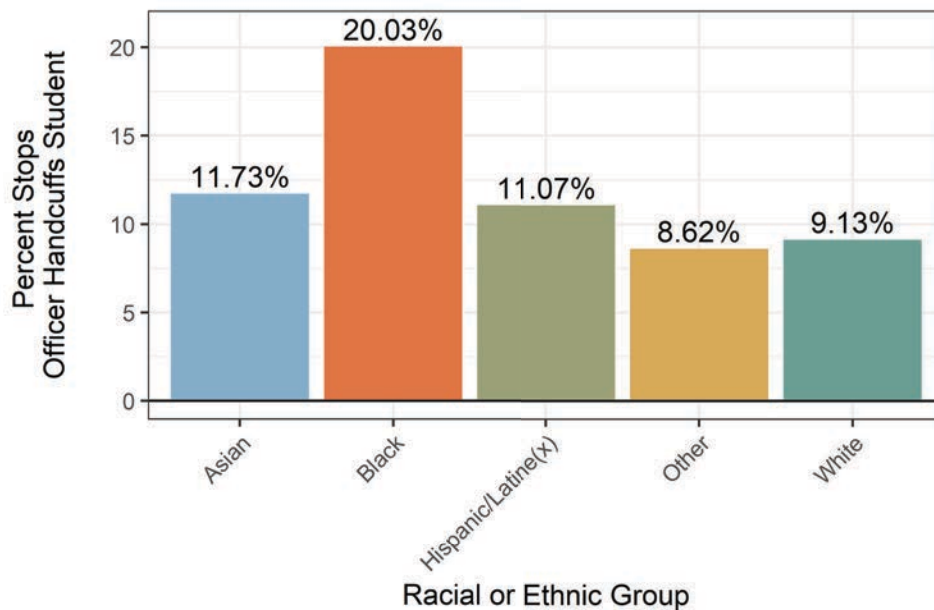
- Students on campus perceived to be Black had a larger percentage of stops for reasonable suspicion (66.4% of stops) compared to other racial or ethnic groups of students (Hispanic/Latine(x) (61.3%), White (49.7%), Asian (45%), Other (42%)).

REASON FOR STOP – PERCENT OF STOPS OF STUDENTS ON CAMPUS BY IDENTITY GROUP



- There were 3,149 stops of students on campus that officers reported as related to calls for service (48.9%). This compares to 9.3 percent of stops statewide that officers reported as related to calls for service.
- Officers handcuffed students on campus perceived as Black in the highest percentage of stops (20%) compared to other racial or ethnic groups (Asian (11.7%), Hispanic/Latine(x) (11.1%), White (9.1%), or Other (8.6%).

**PERCENTAGE OF STOPS IN WHICH OFFICERS USED HANDCUFFS
STUDENTS ON CAMPUS BY RACIAL OR ETHNIC GROUP**



- The most common “Result of Stop” during stops of students on campus was a referral to a school administrator (1,688 results), followed by contact of a parent/legal guardian or other person responsible for the student (1,553 results), citation for an infraction (1,215 results), in-field cite and release (986 results), warning (885 results), and custodial arrest without warrant (818 results). Officers reported that 403 students were placed on psychiatric holds following stops on K-12 campuses. Officers reported completing field interview cards as a result of 157 stops of students on K-12 campuses.

To mitigate the disproportionate and detrimental impacts of law enforcement interactions with Black and Hispanic/Latine(x) students and students with disabilities, the Board makes the following recommendations:

- Based on the findings in the Board’s 2023 Report and the present Report demonstrating racial bias in policing in schools, the Board recommends that the Legislature repeal the part of Education Code section 38000 authorizing school districts to operate their own police departments.
- The Legislature should explore identifying specific student conduct or statutory violations that require disciplinary action that should be handled by school staff, and for which law enforcement officers should not be involved. This review should include making clear the responsibility of schools to respond to conduct requiring disciplinary action without relying on police and the related responsibility of police not to respond to disciplinary issues in schools.

- School districts should adopt policies that require staff to obtain approval from an administrator prior to reporting a student to law enforcement with respect to non-emergency matters. Districts should set clear policies that staff are only permitted to contact law enforcement without prior approval in circumstances involving an immediate threat to school safety or imminent risk of serious physical harm to students or staff. Districts should clearly define those situations that would qualify as an emergency and require staff to document the reasons law enforcement was contacted.
- The Legislature should more clearly define how suspected offenses related to fighting, assault and battery without injury, threats of assault and battery, and drug possession by students on K-12 campuses should be treated by school staff and whether or not they should be referred to police.
- The Legislature should prohibit law enforcement officers from pursuing or using force in an effort to detain, apprehend, or overcome resistance of students who are fleeing relating solely to low-level disciplinary conduct.
- The Board recommends that school districts adopt policies establishing that under no circumstance should law enforcement use force against students that is not legitimate, necessary, and proportionate.

In addition, the Board recommends:

Stop Data Reporting by Law Enforcement in Schools

- Law enforcement agencies should implement practices to ensure the accurate and complete reporting of RIPA stop data among primary and secondary school-aged children and youth. Agencies should provide training to clarify the requirements for reporting stops of students.
- The Board recommends incorporating data, disaggregated by identity groups, about all law enforcement stops of students and the outcomes of these stops into California’s existing school accountability system as an indicator of school climate.

Student Threat Assessment Processes

- The Legislature should develop due process protections for student threat assessment processes and mandate that incidents involving only self-harm may not be assessed as threats.
- Researchers should study threat assessment outcomes to evaluate whether they are consistent, align with the programs’ guidelines, and are effective at reducing violence and improving student experiences.
- The Legislature should require schools to inform parents and students of threat assessment processes on an annual basis by including information on them in the school’s policies and orientation materials and on its website.

Use of Restraints, Electronic Control Weapons, Chemical Agents

- The Legislature should prohibit law enforcement officers and school security personnel from using mechanical restraints on all students unless the student poses a serious risk of harm to themselves or another person. This is especially the case for students with a perceived or known disability or a student having a mental health crisis.
- The Legislature should prohibit law enforcement officers and school security personnel from using electronic control weapons against students or individuals who reasonably appear to be minors in K-12 schools.

- The Legislature should prohibit the use of all chemical agents, including but not limited to OC spray, against students or individuals who reasonably appear to be minors in K-12 schools.

Training

- The Legislature should mandate that any law enforcement officer who is working an assignment that may require responding to a school receive training provided by POST, which is currently mandated for officers employed by a school district-administered police department. The Legislature should also mandate that POST update this training.

Funding

- The Legislature should limit or prohibit the use of funding to pay for school-based police, school-based probation department staff, and school security officers and reinvest funding into resources that promote safe environments for and improve services to students, such as providing family resource navigators, school climate advocates, and restorative justice teachers.
- The Board recommends that government agencies prioritize grant and other funding that focuses on educational and supportive programs like counseling, as opposed to funding law enforcement presence in schools.

RACIAL AND IDENTITY PROFILING POLICIES AND ACCOUNTABILITY

The Board continues to explore issues related to police accountability, beginning with a discussion of the role police unions may play. The Report analyzes the lack of community input in collective bargaining agreements and police union influence on legislation that affects police accountability, as illustrated by the legislative histories of Assembly Bills No. 931 and No. 392. Further, the Report addresses the limitations caused by California’s Public Safety Officers Procedural Bill of Rights (POBR) that affect a law enforcement agency’s ability to hold officers accountable.

The Report also reviews provisions in police contracts that scholars believe may limit accountability, including: (1) delays in interrogation or interview of officers suspected of misconduct; (2) providing officers access to evidence of alleged misconduct prior to interrogation; (3) limiting consideration of disciplinary records by excluding records for future employment or destroying disciplinary records from files after a set period; (4) limiting the length of time during which an investigation must conclude or disciplinary action can occur; (5) limiting anonymous complaints; (6) limiting civilian oversight; and (7) permitting or requiring arbitration of disputes related to disciplinary actions. These protections are above and beyond the protections provided to other public sector employees or individuals suspected of a crime who are facing potential losses of personal freedom.

The Report also discusses the role of municipalities in representing various stakeholders, including the public, during collective bargaining, and the benefits of including rank-and-file members of law enforcement in discussions of police reform.

In light of this discussion, the Board highlights several questions that warrant additional research, including:

- While POBR was intended to protect to officers, does it affect community interests by obstructing some aspects of police accountability?
- Do certain provisions or agreements with unions or a POBR change officer behavior or prevent accountability?
- Does the structure of a union affect practices related to uses of force or critical incidents?

The Board calls on researchers to review agency-level data (including data reported through RIPA) and

the structure of police unions, POBR, and questions of collective bargaining to study their impact on police behavior, specifically with regard to bias. The Board encourages examination of these questions and the data in order to provide more evidence regarding the impact of unions on law enforcement accountability.

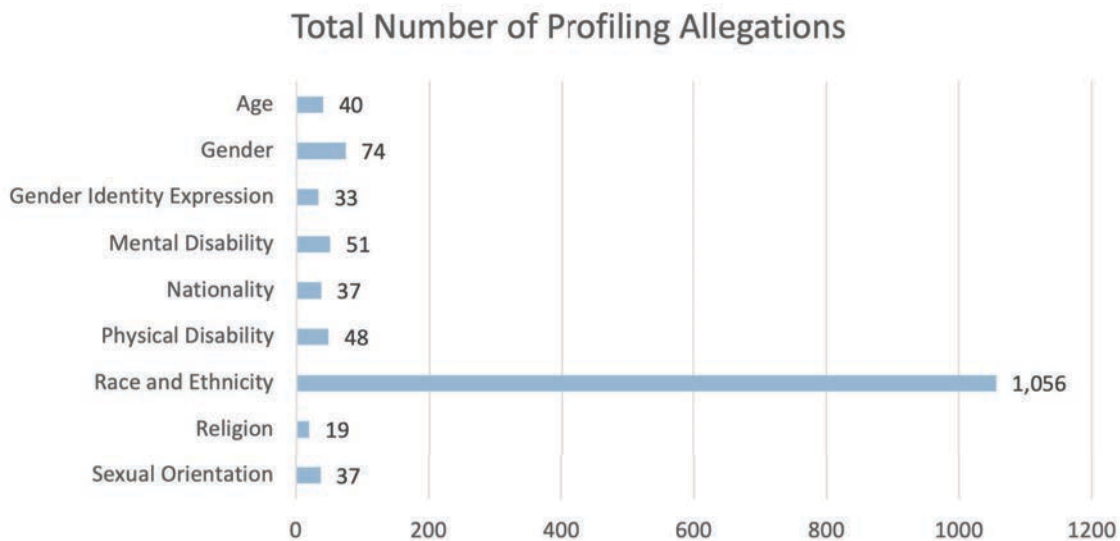
Lastly, the Report analyzes the existing legal standard for qualified immunity (a defense officers may raise in court), how the standard has been interpreted and applied by courts, and how this doctrine can impact the ability to hold officers accountable for misconduct.

CIVILIAN COMPLAINTS

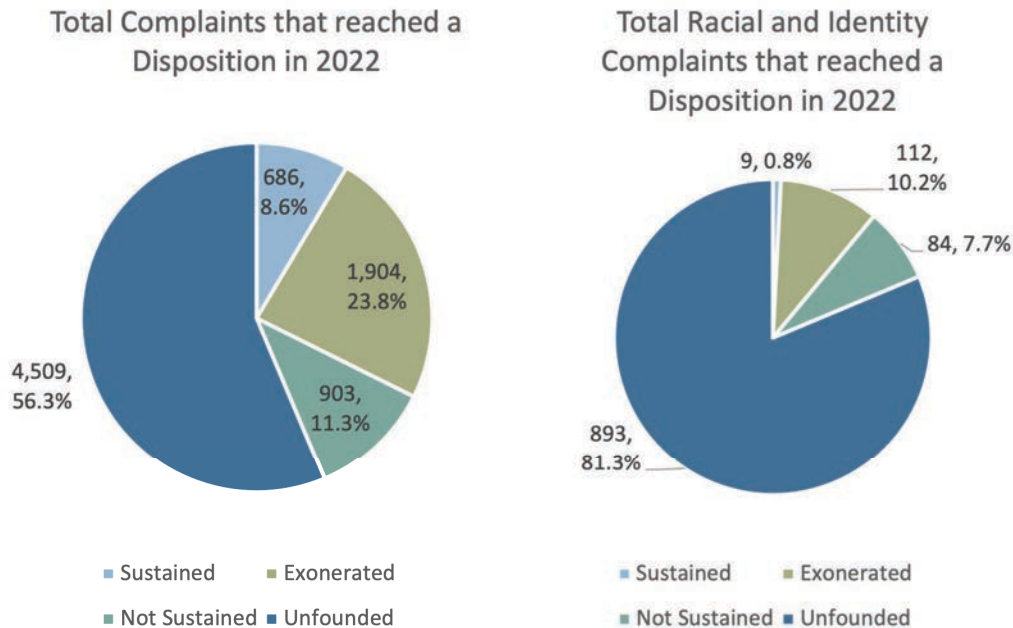
The Report analyzes civilian complaint data reported by 518 law enforcement agencies in 2022. The 2022 data indicate that:

- In total, 10,156 complaints were reported by RIPA agencies in 2022. The majority of complaints alleged non-criminal conduct (94.7%), while 4.1 percent alleged conduct that constitutes a misdemeanor offense, and 1.3 percent alleged conduct that constitutes a felony.
- Roughly three-quarters of RIPA agencies (74.5%) reported receiving one or more civilian complaints, while the remaining quarter of agencies (25.5%) reported receiving zero civilian complaints in 2022.
- Of the agencies that reported receiving civilian complaints in 2022, 42.7 percent reported one or more complaints alleging racial or identity profiling. A total of 1,233 complaints reported in 2022 alleged an element of racial or identity profiling, constituting 12.1 percent of the total 10,156 complaints reported in 2022. Each complaint can have multiple allegations. A total of 1,395 allegations of racial and identity profiling were made in 2022.

TOTAL ALLEGATIONS OF RACIAL AND IDENTITY PROFILING REPORTED IN 2022



DISPOSITION DISTRIBUTION OF 2022 COMPLAINTS



The Report also analyzes issues impacting the effectiveness of the civilian complaint process, including the need to uniformly define “civilian complaint” across all law enforcement agencies, review video footage during complaint investigations, and incorporate root cause analysis into the complaint process. The Board makes the following recommendations:

- The Legislature should amend Penal Code section 832.5 to include a standardized definition of “civilian complaint.”
- Law enforcement agencies should review all available video footage (from sources such as body-worn cameras, dashboard cameras, CCTV cameras, police drones, and cellphones) in complaint investigations, to ensure that investigations are as thorough and impartial as possible.
- Law enforcement agencies should incorporate the principles of root cause analysis into the complaint process. To ensure that complaint investigations are meaningful as agency-wide learning opportunities, agencies should establish a blame-free analysis process that analyzes all underlying factors that contributed to an incident and takes action to prevent undesirable outcomes in the future.

POST TRAINING AND RECRUITMENT

This year, the RIPA POST Subcommittee met with POST Executive Director Manny Alvarez and other POST staff to discuss POST’s responses to Board recommendations. For the first time, and following the Board’s recommendation in past reports, POST provided written responses to the Board’s recommendations directly to the POST Commission in a report presented at their September 21, 2023 meeting. POST supported several recommendations and responded that other recommendations were already sufficiently covered, POST lacked the resources to implement them, or the recommendations were outside the scope of the Commission’s work. In part, POST committed to:

- Adopting the Board’s recommendation to develop and adopt separate guidelines for courses related to racial and identity profiling, apart from publication in the course curriculum.
- Soliciting the Board’s participation throughout the process of developing the separate guidelines. The Report highlights suggested topics for the guidelines.

In addition to discussion of the Board’s interactions with POST, this year’s Report highlights updates and Board feedback based on its review of POST courses related to racial and identity profiling in 2022 and 2023, including the Museum of Tolerance Racial and Identity Train the Trainer Curriculum Update and the outline of the Public Safety Dispatchers’ Basic Course.

Over the past seven years, the RIPA Board has conducted extensive reviews of the training and curriculum materials provided by POST. The RIPA data shows that across all years of the RIPA data collection (2018-2022), disparities persist in how individuals perceived as Black, Hispanic/Latine(x), and transgender are treated. This information should dictate the training necessary to reduce and eliminate racial and identity profiling while also improving officer safety in the state of California. With this background in mind, the Board’s Report makes the following recommendations to POST for protocols and procedures and in other areas for course development and updates:

- Integrate a review timeline by the Board and the community for POST course development and updates.
- Seek community and stakeholder input earlier in the course development process and incorporate their feedback before finalizing the training.
- Build in mechanisms to evaluate the effectiveness of all POST courses on racial and identity profiling.
- Emphasize accountability for discriminatory practices by peace officers and the responsibility of supervisors.

RIPA REGULATIONS

The Report summarizes amendments to the RIPA regulations. The primary amendment adds a new RIPA reporting requirement requiring law enforcement officers to report the reason for stop that was communicated to the stopped person. The regulations were also amended to clarify the different categories of traffic violations that must be reported (moving, non-moving, and equipment violations) and the scope of the California Department of Justice’s obligation to disclose stop data to the public.

RELEVANT LEGISLATION ENACTED IN 2022

The Report includes a section on recently enacted legislation related to RIPA. Assembly Bill No. 443 (2023-2024 Reg. Sess.) requires POST to define and develop guidance regarding “biased conduct.” Assembly Bill No. 645 (2023-2024 Reg. Sess.) establishes a speed safety pilot program to measure the impact of automated speed enforcement technology in a select number of cities and counties.

INTRODUCTION

[I]n the long run the systematic collection of statistics and information regarding law enforcement activities support community policing by building trust and respect for the police in the community. The only way to move the discussion about racial profiling from rhetoric and accusation to a more rational dialogue about appropriate enforcement strategies is to collect the information that will either allay community concerns about the activities of the police or help communities ascertain the scope and magnitude of the problem. When police begin to collect information about the racial and ethnic demographics of their stops, they demonstrate that they have nothing to hide and retain their credibility. Once data are collected, they become catalysts for an informed community-police discussion about the appropriate allocation of police resources. Such a process promises to promote neighborhood policing.⁴

For seven years, the Racial and Identity Profiling Advisory (RIPA) Board has dedicated itself to examining and developing effective strategies to eliminate racial and identity profiling in policing. In this year's Report, after careful assessment of the RIPA data collected by California's law enforcement agencies, the Board has made evidence-based recommendations to address systemic disparities and related concerns regarding pretextual stops and consent searches, youth interactions with law enforcement, police accountability, civilian complaints, and law enforcement training. This current Report is unique in that it is the first one to include data from all 535 reporting agencies in California. A comprehensive analysis of the data indicates that there are disproportionate interactions between police officers and certain vulnerable communities. Most recently, the United Nations Human Rights Council, which examined law enforcement practices in the United States, concluded that policing systemically and disproportionately impacts Black Americans, including Black youth.⁵ Relatedly, there is consensus among researchers that those interactions, including racial and identity profiling, have far-reaching negative consequences for members of those communities.⁶

The Board's work is driven by the Legislature's declaration that "[r]acial or identity profiling is a practice that presents a great danger to the fundamental principles of our Constitution and a democratic society. It is abhorrent and not to be tolerated."⁷ Given this mandate, the Board's efforts have been and continue to be focused on making recommendations that would facilitate long-term systemic change instead of reactionary short-term corrections to individual incidents. Since its inception, the Board has highlighted and worked towards data-driven evidence-based reforms that aim to change systemic practices and policies — changes that can make significant improvements in constitutional policing. For example, in prior years, the Board discussed and urged

4 U.S. DOJ, *A Resource Guide on Racial Profiling Data Collection Systems A Resource Guide: Promising Practices and Lessons Learned* (2000) p. 13 <<https://www.ojp.gov/pdffiles1/bja/184768.pdf>> [as of Nov. 15, 2023].

5 U.N. Human Rights Council, A/HRC/54/CRP.7: International Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement - Visit to the United States of America (Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement) (Sept. 26, 2023) p. 2 <<https://www.ohchr.org/en/documents/country-reports/ahrc54crp7-international-independent-expert-mechanism-advance-racial>> [as of Nov. 15, 2023].

6 At a meeting of the Human Rights Committee in October 2023, member M.V. J. Kran noted that the Committee had "numerous reports of policies and law enforcement agencies that don't comply with the [International Covenant on Civil and Political Rights]. For example, data collected under California's Racial Identity Profiling Act shows the pervasive presence of racial discrimination at every level of police encounters. In California, individuals perceived as Black are stopped two-and-a-half times more frequently than others and are three times as likely to be seriously injured, shot, or killed by the police." (U.N. Human Rights Committee, 139th Session, 4050th Meeting, (Oct. 17, 2023) at 27:35–28:12 <<https://webtv.un.org/en/asset/k1t/k1tu2vqwgo>> [as of Nov. 15, 2023].)

7 Pen. Code, § 13519.4, subd. (d)(4).

municipalities to adopt crisis intervention models that would make trained mental health professionals the first responders to non-violent crisis and mental health intervention calls.⁸ The data have shown that police response to non-violent or mental health crisis calls involving individuals with disabilities is often ineffective and sometimes even harmful. Additionally, the Board has spent years examining and recommending best practices for interactions between youth and law enforcement, especially youth of color and youth with disabilities, and exploring the various factors that contribute to police accountability.

This year's Report continues the Board's in-depth examination of the RIPA data and how to use the information captured by that data to inform recommendations that will effectuate systemic change in policing practices and policies. To accomplish that goal and fulfill the legislative directive to eliminate racial identity and profiling in policing, the Board continues to seek the cooperation, collaboration, and ideas of all 535 California law enforcement agencies collecting RIPA data, communities, academics, and advocates to push for evidence-based reforms that ensure public safety for everyone — regardless of race or identity — in their respective communities.

⁸ Racial and Identity Profiling Advisory Board, Annual Report (2022 Report) (2022) pp. 184–199 <<https://oag.ca.gov/system/files/media/ripa-board-report-2022.pdf>> [as of Nov. 15, 2023].

ANALYSIS OF 2022 STOP DATA

A. Introduction

In the fifth year of RIPA stop data reporting, all 560 law enforcement agencies across the state were required to collect and submit stop data to the California Department of Justice (California DOJ). A total of 535 law enforcement agencies in California collected data on 4,575,725 pedestrian and vehicle stops conducted from January 1 to December 31, 2022.⁹ The remaining 25 law enforcement agencies reported zero stops for the 2022 reporting year.¹⁰

There were an additional 1,391,182 stops captured by the RIPA data in 2022 relative to 2021, reflecting the increased number of reporting agencies. Of the 58 agencies that collected stop data in 2021 and 2022, 25 agencies reported a decrease in the number of stops across years.¹¹

The collected data include demographic information of stopped individuals as perceived by the officer, descriptive information designed to provide context for the reason for the stop, actions taken by officers during the stop, and outcome of the stop. The purpose of collecting these data is to document law enforcement interactions with the public and determine whether certain identity groups experience disparate treatment during stops. Individuals may self-identify differently than how an officer perceives them. This distinction is important because racial and identity profiling occurs because of how people perceive others and act based on that perception rather than how individuals see themselves. Some of the demographic characteristics collected (e.g., race, ethnicity, or age) may be easier to perceive based on visible factors. Other identity characteristics (e.g., sexual orientation or disability) may not be as apparent and therefore may be perceived less consistently with how stopped individuals self-identify. The Legislature tasked law enforcement agencies with collecting data based on how officers perceive individuals.¹² This context is important to consider when examining results of analyses performed with the stop data.

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

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

9 Government Code section 12525.5, subdivision (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." During the annual closeout for 2022 stop data record collection, a subset of records were found to contain invalid or incomplete data. Department of Justice Client Services Program worked with the agencies to obtain corrected data for these records. During this process, 4,089 corrected records with a date of stop on the last day of the year, Dec. 31, 2022, failed to load to the RIPA analysis table and therefore were not included in the RIPA data file extract or analysis in the 2024 RIPA Board Report. The missing stop data records constitute 0.09% of all stop data records. The 4,579,814 stop data records used for analysis in the 2024 Board report and the December 31, 2022 missing stop data records are available for download at <<https://openjustice.doj.ca.gov/data>>.

10 The following agencies reported zero stops for the 2022 reporting year: Amador CO DA, Calaveras CO DA, Compton USD PD, Del Norte CO DA, Glenn CO DA, Inyo CO DA, Lassen CO DA, Los Angeles CO Coroner, Marin CO DA, Mariposa CO DA, Mono CO DA, Napa CO DA, Nevada CO DA, Sacramento CO Coroner, San Benito CO DA, San Francisco CO Med Examiner, San Jose USD PD, San Luis Obispo CO DA, San Luis Obispo Harbor Patrol, San Mateo CO Coroner, Sonoma-Marin Area Rail Transit, Trinity CO DA, Trinity CO Marshal, Tuolumne CO DA, and Yuba CO DA.

11 Please see Appendix A, Table A.20 for a breakdown of stops reported by law enforcement agencies.

12 Gov. Code, § 12525.5, subd. (b)(6).

B. Stop Data Demographics

1. Identity Demographics of Individuals Stopped by Officers

RIPA requires officers to collect perceived identity-related information about the individuals they stop on six key demographics: race or 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.

Race or Ethnicity.¹³ Officers perceived the highest proportion of individuals they stopped to be Hispanic/Latine(x) (42.9%, 1,964,714), followed by White (32.5%, 1,489,277), Black (12.5%, 571,424), Asian (5.5%, 250,383), Middle Eastern/South Asian (4.5%, 207,338), Multiracial (1.1%, 51,975), Pacific Islander (0.6%, 26,634), and Native American (0.3%, 13,977).¹⁴

Gender.¹⁵ RIPA regulations contain five gender categories, including male, female, transgender man/boy, transgender woman/girl, and gender nonconforming.¹⁶ Overall, the majority of individuals were perceived as cisgender male (70.9%, 3,246,024) or cisgender female (28.7%, 1,312,434),¹⁷ with all other groups collectively constituting less than one percent of stops.¹⁸

Age.¹⁹ Individuals perceived to be between the ages of 25 and 34 accounted for the largest proportion of individuals stopped within any age group (32.1%, 1,466,944). Individuals perceived to be between the ages of one and nine accounted for the smallest proportion (0.1%, 4,423) of individuals stopped.²⁰

13 Due to a technical error, three successfully submitted records are missing information for the perceived race or ethnicity of the stopped individual.

14 Officers may select multiple racial or ethnic categories per individual when recording stop data. To avoid counting the same stopped individual in multiple racial or ethnic groups, all stopped individuals whom officers perceived to be part of multiple racial or ethnic groups were categorized as Multiracial. The distribution of the race or ethnicity categories that officers selected when they selected more than one category was as follows: Asian (26.3%), Black (30.4%), Hispanic/Latine(x) (73.2%), Middle Eastern/South Asian (30.4%), Native American (18.2%), Pacific Islander (19.8%), and White (66.2%).

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

16 These categories match those found in the regulations informing RIPA stop data collection. (Cal. Code Regs., tit. 11, § 999.226, subd. (a)(6)(A) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].) For purposes of this Report, “male” refers to cisgender males and “female” refers to cisgender females. The amended RIPA regulations, which are effective January 1, 2024, replace references to the “gender nonconforming” category with the category “nonbinary person.” (See Cal. Code Regs., tit. 11, § 999.226, subd. (a)(6) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].) For clarity, the amended regulations also replace the “male” and “female” gender categories with “cisgender man/boy” and “cisgender woman/girl.” (See Cal. Code Regs., tit. 11, § 999.226, subd. (a)(6) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].) Future RIPA Reports will use the new gender categories.

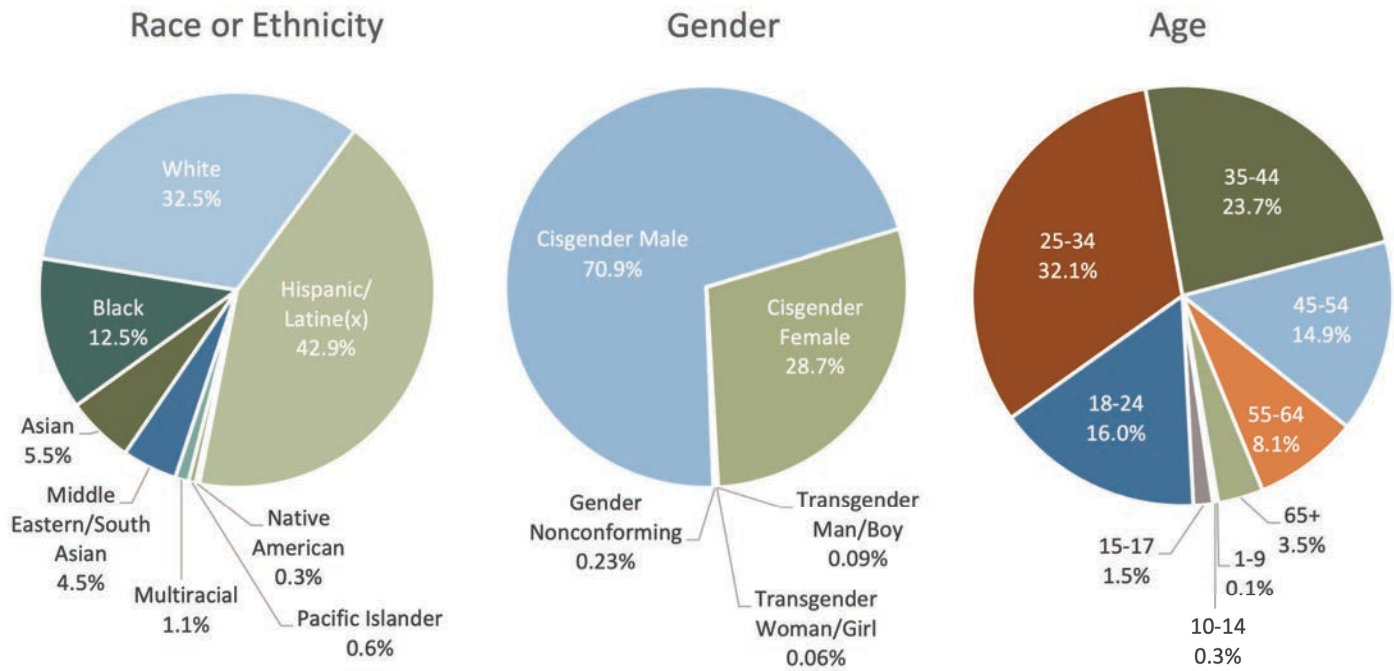
17 Cisgender is an adjective used to describe a person whose gender identity conforms with the sex they were assigned at birth.

18 The other groups were transgender man/boy (0.09%, 3,989), transgender woman/girl (0.06%, 2,721), and gender non-conforming (0.23%, 10,553).

19 Due to a technical error, 25 successfully submitted records are either missing age information or have a reported age of less than one or greater than 120.

20 Individuals whom officers stopped and perceived to be less than 10 years of age constituted less than one of every 500 individuals stopped. However, in some cases, officers may have (1) incorrectly recorded the age of these stopped individuals (i.e., typographical errors) or (2) recorded data in cases that are not reportable under the RIPA regulations (i.e., recording data for young passengers not suspected of committing a violation who also did not have reportable actions taken towards them). (See Cal. Code Regs., tit. 11, § 999.227, subd. (b) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].)

Figure 1. Race or Ethnicity, Gender, and Age Distributions of 2022 RIPA Stop Data



LGBT. Overall, stops of individuals perceived to be LGBT comprised less than one percent of the data (0.8%, 38,815).²¹ Of these 38,815 individuals, officers perceived 7,725 (19.9%) to be transgender. For many individuals, LGBT identity is not a consistently visible characteristic; therefore, officers’ perception of this characteristic may often depend on context. For example, based on social cues or conversations, an officer may perceive the driver and a passenger in a vehicle to be same-sex partners.²² An individual’s gender expression — how the person acts, dresses, and interacts to demonstrate their gender — may influence other people’s perception. Additionally, individuals who are seen as existing outside of gender norms in ways that are easily perceived often experience more significant surveillance or scrutiny from law enforcement and others. This is sometimes called hypervisibility.²³

Limited English Fluency. Officers perceived approximately 4.5 percent (206,850) of individuals stopped to have limited or no English fluency.

21 Officers that report the perceived gender of an individual to be transgender must also indicate they perceived the person to be LGBT. (See Cal. Code Regs., tit. 11, § 999.226, subd. (a)(6) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].)

22 RIPA seeks to collect perception data, and the implementing regulations prohibit an officer from asking individuals about their sexual orientation (in addition to gender, age, and ethnicity) in order to collect RIPA data. (Cal. Code Regs., tit. 11, § 999.226, subd. (a)(5)(8) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].) 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.

23 See, e.g., Fernandez and Williams, *We Deserve Better: A Report by the Members of BreakOUT!* (2014) p. 11 <https://issuu.com/youthbreakout/docs/we_deserve_better_report> [as of Nov. 15, 2023]; Shabalala, “Violence is Everywhere for Trans Women” - *Experiences of Gendered Violence in the Lives of Black Transgender Women in Post-Apartheid South Africa: A Critical Transfeminist Narrative Enquiry* (2020) University of Cape Town: Thesis Honors in Bachelor of Social Science, pp. 21–22 <http://www.psychology.uct.ac.za/sites/default/files/image_tool/images/117/Logos/thesis/VIOLEN~1.PD> [as of Nov. 15, 2023].

Disability.²⁴ Officers perceived 1.4 percent (64,432) of individuals stopped to have one or more disabilities.²⁵ Of individuals perceived to have a disability, the most common disability reported by officers was mental health disability (68.4%, 41,724).²⁶

2. Calls for Service

For each stop, officers must indicate whether they made the stop in response to a call for service.²⁷ Officers reported that 9.3 percent of stops were made in response to calls for service.²⁸

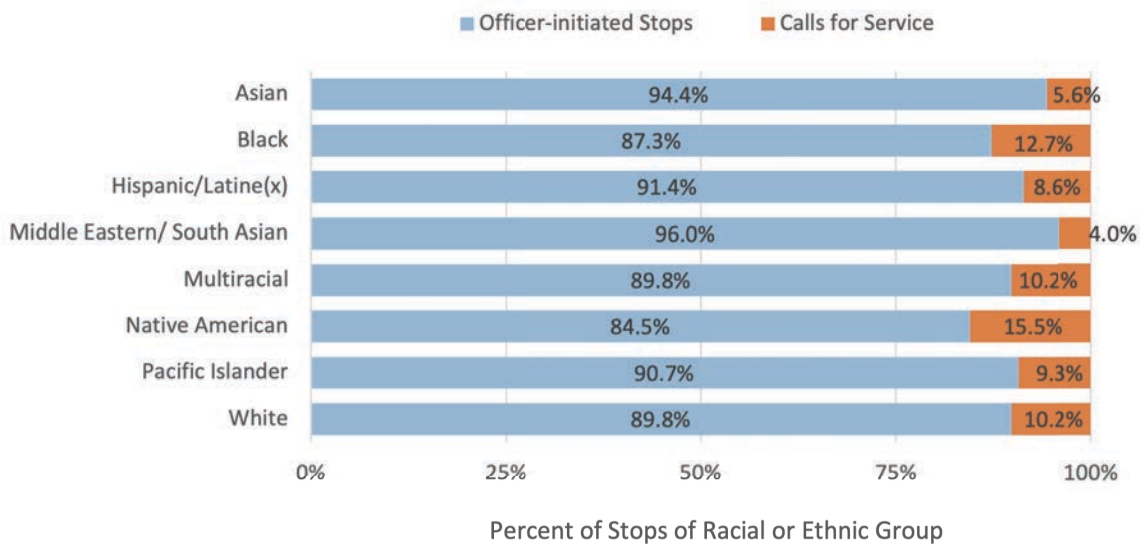
Race or Ethnicity. Relative to other racial or ethnic groups, the share of stops made in response to calls for service was highest for Native American individuals (15.5%) and lowest for Middle Eastern/South Asian individuals (4.0%).

Key Terms

Call for service – a stop made in response to a 911 call, radio call, or dispatch

Officer-initiated – a stop resulting from the officer’s observation, not in response to a call for service

Figure 2. Call for Service Status by Race or Ethnicity



24 Due to a technical error, 26 successfully submitted records are missing information for the perceived disability of the stopped individual.

25 Specific disability categories that the officer could report were blind/limited vision (0.04%), deafness or difficulty hearing (0.09%), developmental disability (0.04%), disability related to hyperactivity or impulsive behavior (0.01%), mental health disability (0.9%), other disability (0.1%), speech impaired (0.1%), and multiple disabilities (0.07%).

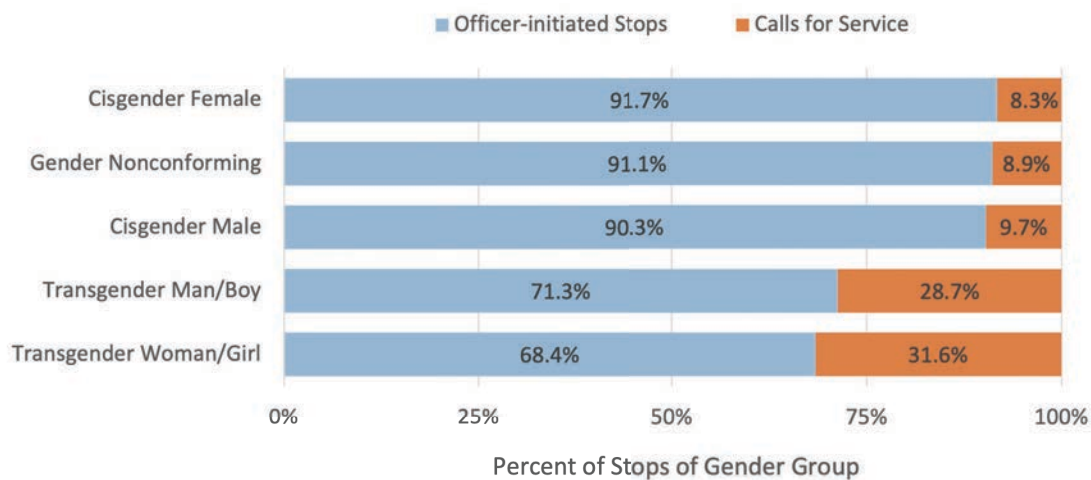
26 Individuals perceived to have multiple disabilities — including mental health disabilities — are not included in this statistic.

27 Calls for service are only reported if they resulted in a “stop,” as defined by the RIPA regulations. (Cal. Code Regs., tit. 11, § 999.226, subd. (a)(12) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].) Officers must note the primary reason for stop in addition to recording whether the stop was made in response to a call for service. (Cal. Code Regs., tit. 11, § 999.226, subd. (a)(12)-(14) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].) The RIPA regulations do not specify whether a stop made after a civilian flags down an officer on the street fits the definition of a call for service; accordingly, data entry for this field may vary across officers and agencies for stops where civilians flagged down officers. (See generally Cal. Code Regs., tit. 11, § 999.226 <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].)

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

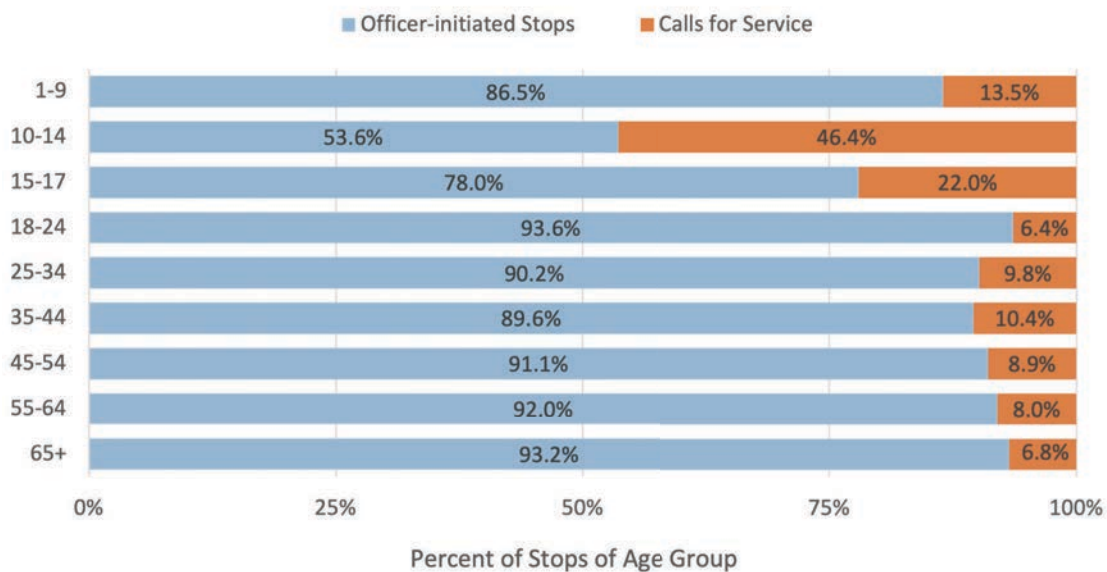
Gender. Relative to other genders, stopped individuals perceived as transgender women/girls had the highest proportion of stops initiated in response to a call for service (31.6%) while stopped individuals perceived as cisgender female had the lowest proportion (8.3%).

Figure 3. Call for Service Status by Gender



Age. Relative to other age groups, stopped individuals perceived to be between the ages of 10 and 14 had the highest proportion of stops initiated in response to a call for service (46.4%), whereas individuals between the ages of 18 and 24 had the lowest proportion (6.4%).

Figure 4. Call for Service Status by Age Group



LGBT. Stopped individuals whom officers perceived to be LGBT had a higher proportion (17.9%) of their stops reported as being in response to a call for service than individuals whom the officers did not perceive to be LGBT (9.2%).

Limited English Fluency. Stopped individuals whom officers perceived to have limited or no English fluency had a higher proportion of their stops reported as being in response to a call for service (11.1%) compared to English fluent individuals (9.2%).

Disability. Stopped individuals whom officers perceived as having a disability had a notably higher

proportion of their stops reported as being in response to a call for service (58.3%) compared to individuals whom officers did not perceive to have a disability (8.6%).

3. Primary Reason for Stop

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

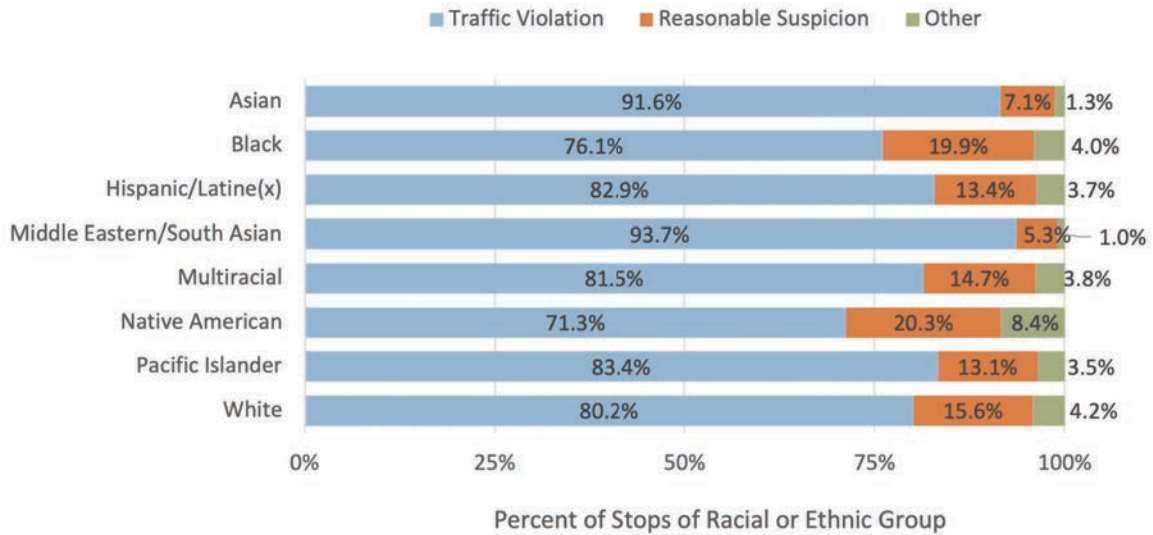
Officers may select from eight different primary reasons for a stop. The most common reason for a stop was a traffic violation (82.1%), followed by reasonable suspicion that the person was engaged in criminal activity (14.2%).²⁹ All other reasons collectively made up less than 4 percent of the data and are grouped together under the category of “Other” in the following sections.³⁰

Race or Ethnicity. Relative to other groups, Middle Eastern/South Asian individuals had the highest proportion of their stops reported as traffic violations (93.7%) and the lowest proportion of their stops reported as reasonable suspicion (5.3%) and “Other” (1.0%). Relative to other groups, Native American individuals had the highest proportion of their stops reported as reasonable suspicion (20.3%) and “Other” (8.4%) and the lowest proportion of their stops reported as traffic violations (71.3%).

29 “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. (See *Terry v. Ohio* (1968) 392 U.S. 1, 21.) Reasonable suspicion requires more than just an officer having a hunch that the person committed a crime, but it is a lesser standard than probable cause, which is required to arrest somebody. (See *Terry, supra*, 392 U.S. at pp. 20-21). In order to fill a gap in the existing regulations, officers currently select “Reasonable Suspicion” as the reason for stop when an officer suspects criminal activity. Although officers may have reasonable suspicion when initiating stops for traffic violations, the applicable regulations state that officers should not select the “Reasonable Suspicion” value when the reason for stop is a traffic violation. (Cal. Code Regs., tit. 11, § 999.226, subd. (a)(14)(A)(2) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].) Instead, officers should select the “Traffic Violation” value as the primary reason for stop. (Cal. Code Regs., tit. 11, § 999.226, subd. (a)(14)(A)(2) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].) Nevertheless, “Reasonable Suspicion” is also selected as the reason for stop where officers initiate contact for community caretaking purposes. “Community Caretaking” relates to an officer’s non-crime related duties that are not performed for the purpose of investigating a crime. A welfare or wellness check or the officer’s community caretaking function cannot serve as a basis for initiating a detention or search. Because no distinct value exists within the existing RIPA regulations that allows officers to capture when a stop is made during the course of a community caretaking contact, officers must select “Reasonable Suspicion” as the “Reason for Stop” and then select “Community Caretaking” as the offense code that serves as the basis for the stop. This designation in the regulations was not intended to suggest that people with mental health disabilities who are stopped for community caretaking are engaging in criminal activity. The amended RIPA regulations, effective January 1, 2024, include a new data element that captures whether the stop was made during the course of performing a welfare or wellness check or a community caretaking function. This new data element will be reported separately from, and in addition to, the “primary reason for stop” data element. (See Cal. Code Regs., tit. 11, § 999.226, subd. (a)(13) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].)

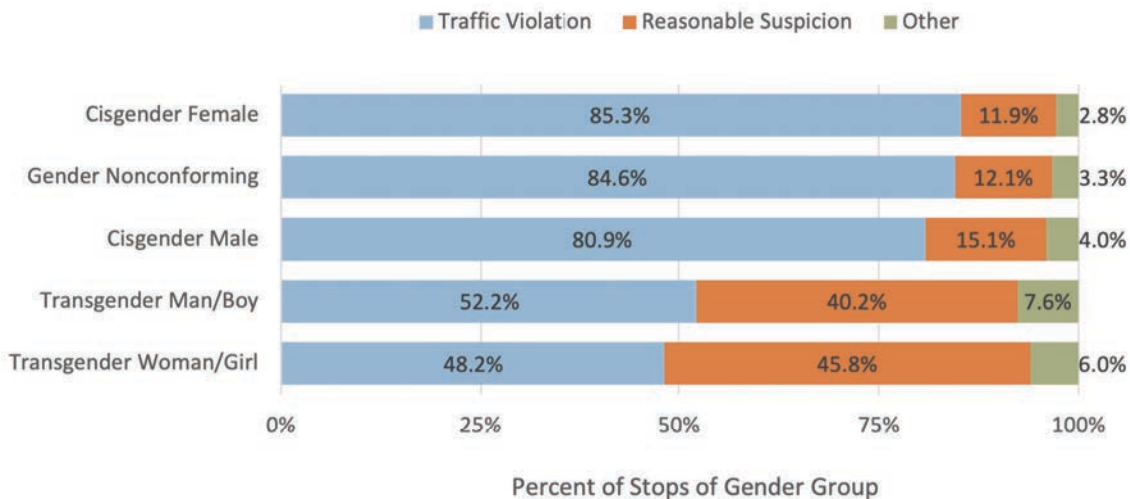
30 Other reasons for a stop that the officer could report included consensual encounter resulting in a search (1.2%), mandatory supervision (0.7%), warrants/wanted person (1.2%), truancy (0.4%), investigation to determine whether student violated school policy (0.03%), and possible violations of the Education Code (0.01%). These “Primary Reason for Stop” categories are combined in this section under the category of “Other.”

Figure 5. Primary Reason for Stop by Race or Ethnicity



Gender. Of all gender groups, cisgender female individuals had the highest proportion of their stops reported as traffic violations (85.3%) and the lowest proportion of their stops reported as reasonable suspicion (11.9%) and “Other” (2.8%). Relative to other genders, transgender women/girls had the lowest proportion of their stops reported as traffic violations (48.2%) and the highest proportion of their stops reported as reasonable suspicion (45.8%), while transgender men/boys had the highest proportion of their stops reported in the categories grouped together as “Other” (7.6%).

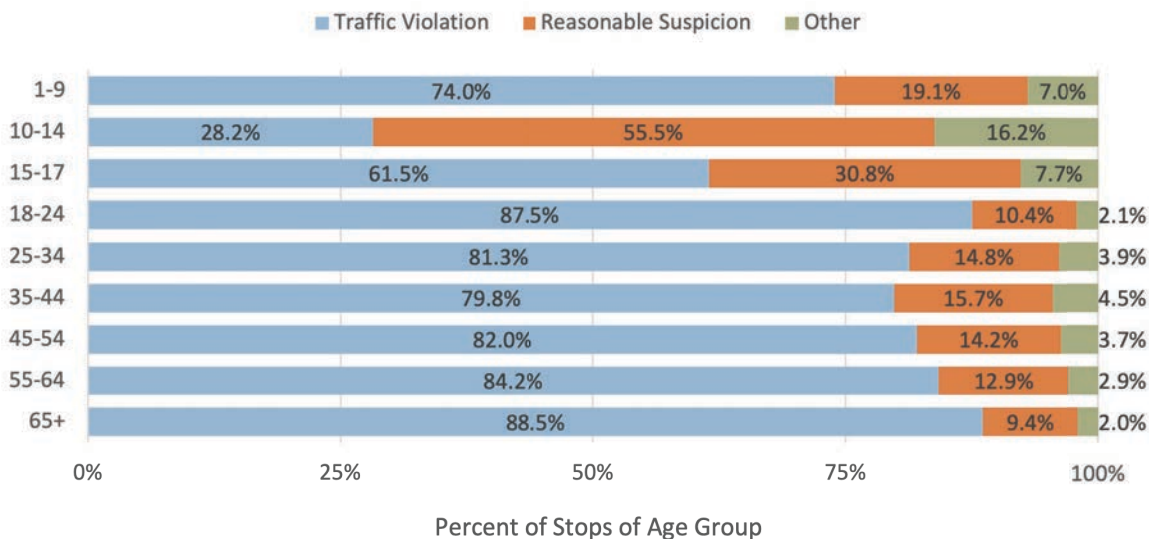
Figure 6. Primary Reason for Stop by Gender



Age. Individuals perceived to be 65 years or older had the highest proportion of their stops reported as traffic violations (88.5%) and the lowest proportion of their stops reported as reasonable suspicion (9.4%) and in the categories grouped together as “Other” (2.0%). Relative to other age groups, individuals perceived to be between the ages of 10 and 14 had the lowest proportion of their stops reported as traffic violations (28.2%) and the highest proportion of their stops reported as reasonable suspicion (55.5%) and in the categories grouped together as “Other” (16.2%).³¹

31 The data show a higher number of reported traffic violations than many readers may expect 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.

Figure 7. Primary Reason for Stop by Age Group



LGBT. Individuals perceived to be LGBT had a lower proportion of their stops reported as traffic violations (69.0%) and a higher proportion of their stops reported as reasonable suspicion (25.4%) and in the categories grouped together as “Other” (5.6%) than individuals who officers did not perceive to be LGBT (82.2% traffic violations, 14.1% reasonable suspicion, and 3.7% other reasons).

Limited English Fluency. Individuals perceived to have limited English fluency had a lower proportion of their stops reported as traffic violations (81.2%) and in the categories grouped together as “Other” (2.9%) compared to individuals whom officers perceived to be fluent in English (82.1% traffic violations and 3.7% other reasons). The opposite was true of reasonable suspicion stops, where individuals perceived to have limited English fluency had a higher proportion of their stops reported under this category than individuals perceived as English fluent (15.8% and 14.2%, respectively).

Disability. Stopped individuals perceived as having a disability had a much lower proportion of their stops reported as traffic violations (20.3%) and a markedly higher proportion of their stops reported as reasonable suspicion (65.4%) and in the categories grouped together as “Other” (14.4%) than individuals not perceived to have a disability (83.0% traffic violations, 13.5% reasonable suspicion, and 3.5% other reasons).³²

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 asking an individual to exit a vehicle, conducting a search, and handcuffing someone. A stopped individual may have multiple actions taken towards them in a single stop; officers must report all actions taken towards an individual during a stop.

Officers reported not taking any reportable action during 75 percent of stops and taking actions during 25 percent of stops. Overall, officers averaged nearly one and a half (1.4) reportable actions per individual they stopped. For stops during which officers took one or more actions, the average number

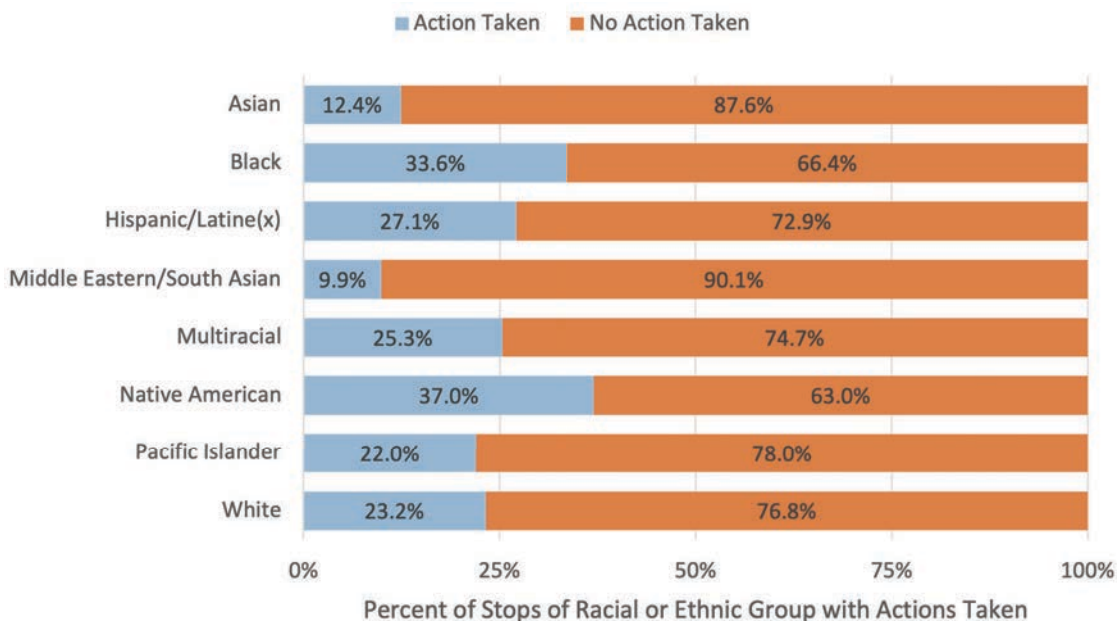
³² One possible explanation for why individuals perceived to have a disability have a higher proportion of reasonable suspicion stops is related to how community caretaking contacts are recorded. As mentioned previously, community caretaking relates to an officer’s non-crime related duties that are not performed for the purpose of investigating a crime. (See *supra* note 29) In 2022, stops for community caretaking were captured in the “Reasonable Suspicion” data element. (Cal. Code Reg., tit. 11, § 999.226, subd. (a)(10(A)(2) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].) For individuals perceived to have a disability, community caretaking contacts made up 22.5 percent of their reasonable suspicion stops compared to 2.3 percent for individuals not perceived to have a disability.

of actions taken by officers was 2.5. The average number of actions taken during stops for each identity group can be found in the Appendix.³³

Across all stops, the most common actions taken by officers were a curbside or patrol car detention (14.8%), a search of property or person (13.8%), handcuffing (10.4%),³⁴ and verbally ordered removal from a vehicle (4.8%).³⁵ Officers indicated taking each of the other reportable actions towards less than three percent of individuals they stopped.³⁶

Race or Ethnicity. Stopped individuals perceived to be Native American had the highest proportion, relative to other racial or ethnic groups, of their stops involving the officer taking one or more actions towards them (37.0%). Stopped individuals perceived to be Middle Eastern/South Asian had the lowest proportion of their stops involving officers taking actions towards them (9.9%).

Figure 8. Actions Taken During Stop by Race or Ethnicity



Of all the racial or ethnic groups, stopped individuals whom officers perceived to be Native American had the highest rate of being searched (22.4%) and handcuffed (17.8%). Stopped individuals whom officers perceived to be Black had the highest rate of being detained curbside or in a patrol car (20.2%) and ordered to exit a vehicle (7.1%). Stopped individuals whom officers perceived to be Middle Eastern/South Asian had the lowest rate for each of these actions (ranging from 1.6 % to 5.4%).

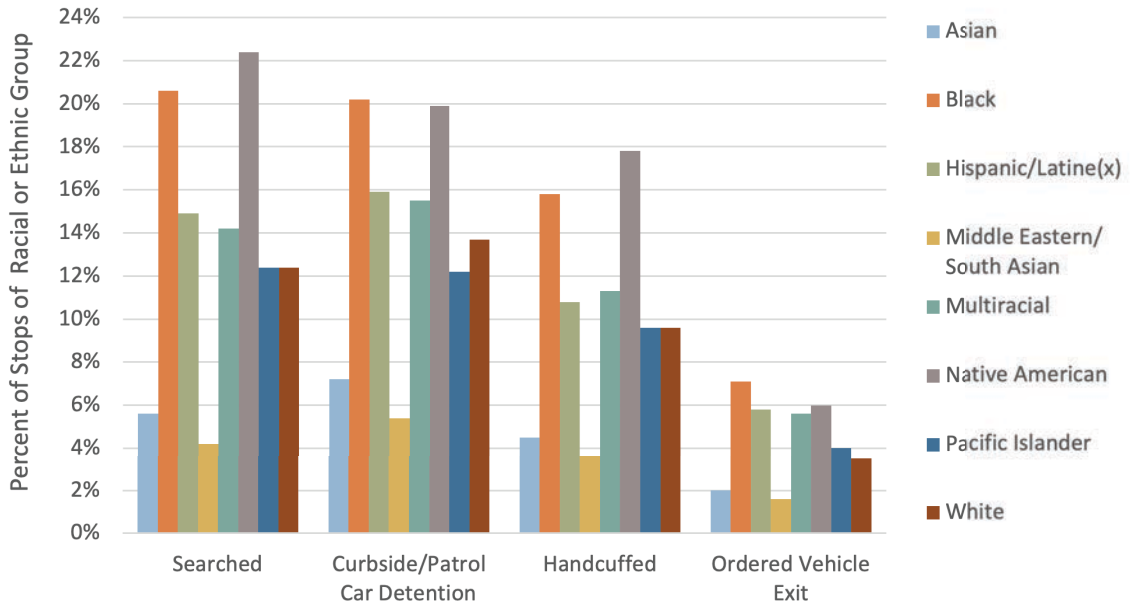
33 Please see Appendix A, Table A.6 for Stops by Identity Group and Average Actions Taken During Stops.

34 A report of “handcuffing” an individual in this section does not mean that the officers arrested the individual. The Result of Stop section of this chapter, beginning on page 41, discusses arrests. Additionally, Appendix A, Table A.17 displays the percentage of handcuffed individuals who experienced each of the following three stop results: arrested, no action taken, and result of stop other than an arrest or no action taken. Of the individuals handcuffed, officers arrested 70.4 percent, took some other form of action for 21 percent, and took no action towards 8.6 percent of individuals.

35 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 also combined.

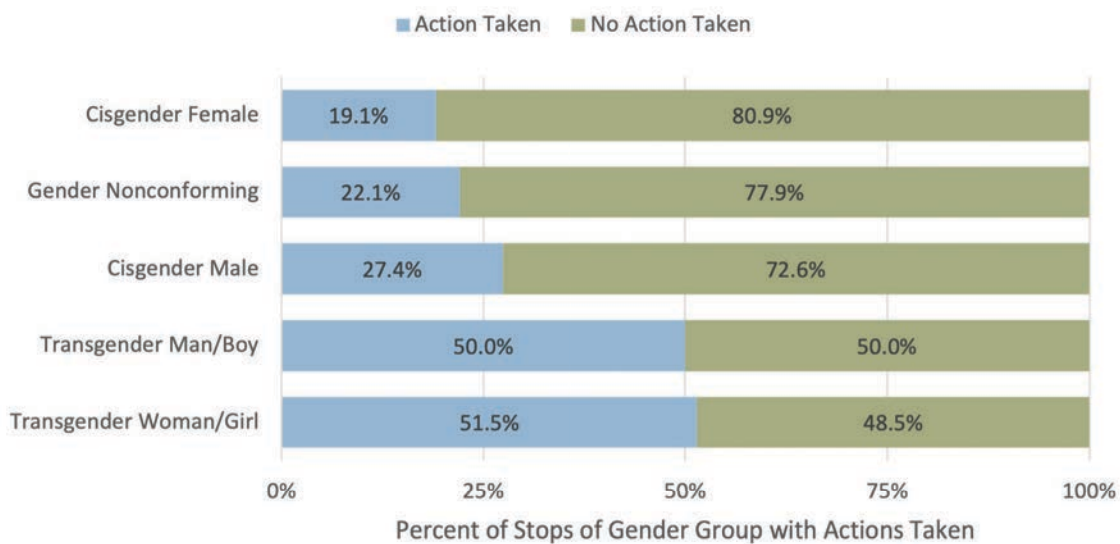
36 Other actions include: person removed from vehicle by physical contact (0.7%), field sobriety test (2.1%), canine removed from vehicle or used to search (0.1%), firearm pointed at person (0.6%), firearm discharged (<0.1%), electronic control device used (<0.1%), impact projectile discharged (<0.1%), canine bit or held person (<0.1%), baton or other impact weapon (<0.1%), chemical spray (<0.1%), other physical or vehicle contact (1.3%), person photographed (0.9%), asked for consent to search person (4.3%), received consent to search person (91.2% of cases where officers asked for consent), asked for consent to search property (2.9%), received consent to search property (89.0% of cases where officers asked for consent), property seized (1.9%), vehicle impounded (1.6%), and written statement (<0.1%). (See Cal. Code Regs., tit. 11, § 999.226, subd. (a)(16)(B) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].)

Figure 9. Actions Taken During Stop by Race or Ethnicity



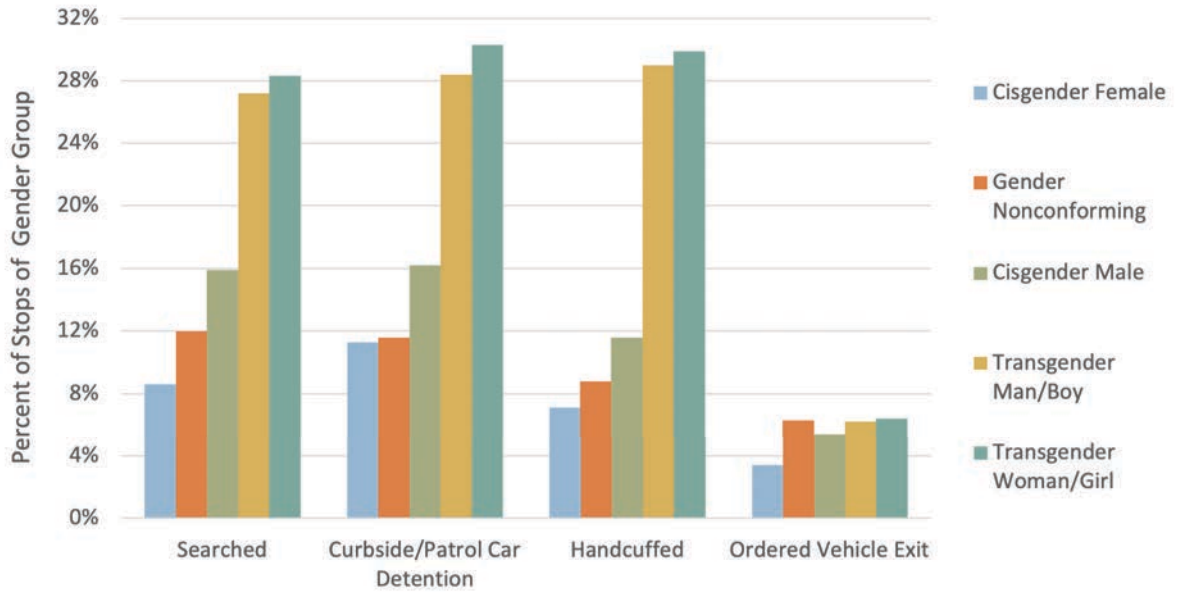
Gender. Stopped individuals perceived to be transgender women/girls had the highest proportion of their stops involving the officer taking actions towards them (51.5%). Individuals perceived to be transgender men/boys also had actions taken towards them during half of their stops (50.0%). Individuals perceived to be cisgender female (19.1%) had the lowest proportion of stops with actions taken towards them.

Figure 10. Actions Taken During Stop by Gender



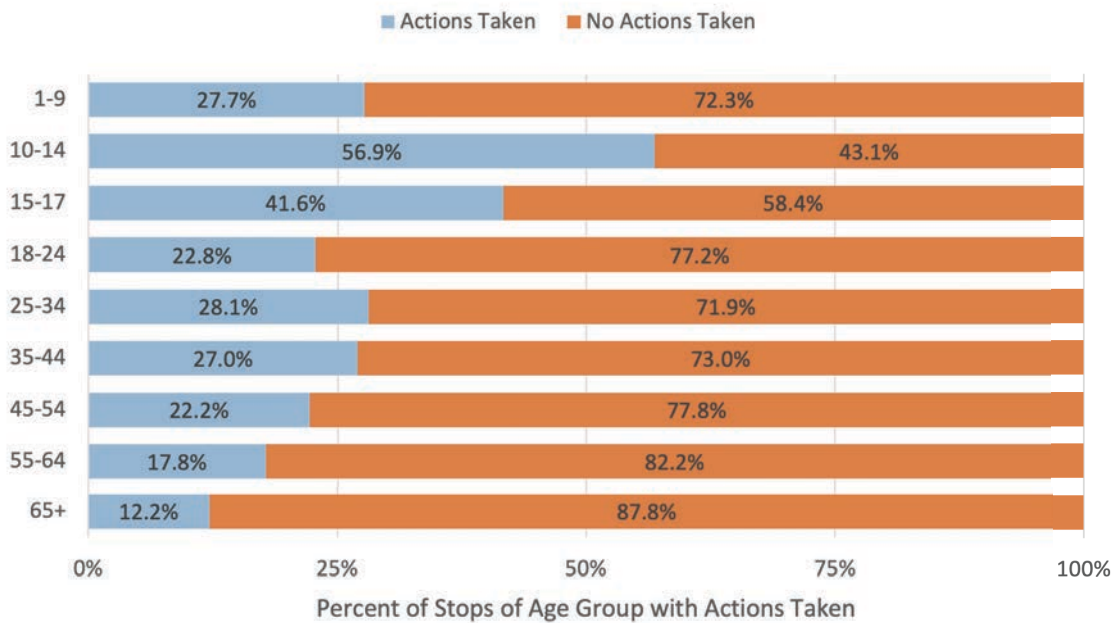
Stopped individuals whom officers perceived to be transgender women/girls had the highest rate of being searched (28.3%), detained curbside or in a patrol car (30.3%), handcuffed (29.9%), and being removed by vehicle order (6.4%); individuals perceived as cisgender female consistently had the lowest rates for each of these actions (8.6% searched, 11.3% detained curbside or in a patrol car, 7.1% handcuffed, and 3.4% removed from vehicle by order).

Figure 11. Actions Taken During Stop by Gender



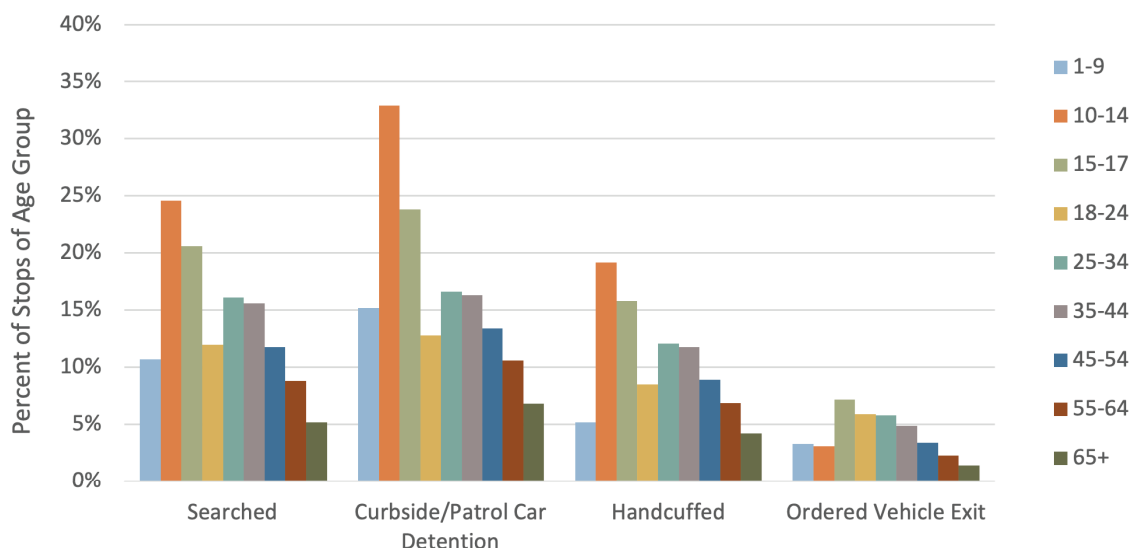
Age. Stopped individuals perceived to be between the ages of 10 and 14 had the highest proportion of their stops involve officers taking actions towards them (56.9%), while individuals perceived to be 65 or older had the lowest proportion (12.2%).

Figure 12. Actions Taken During Stop by Age Group



Relative to other age groups, individuals whom officers stopped and perceived to be between the ages of 10 and 14 had the highest rate of being searched (24.6%), detained on the curb or in a patrol car (32.9%), and handcuffed (19.2%), while individuals perceived to be between 15 and 17 years old had the highest rates of being removed from a vehicle by order (7.2%). Individuals aged 65 or older consistently had the lowest rate for each of these actions (ranging from 1.4% to 6.8%).

Figure 13. Actions Taken During Stop by Age Group



LGBT. Stopped individuals whom officers perceived to be LGBT had a higher proportion of stops in which officers took actions towards them (36.4%) than individuals officers did not perceive to be LGBT (24.9%).³⁷

Stopped individuals whom officers perceived to be LGBT were searched (20.2%), detained on the curb or in a patrol car (22.1%), handcuffed (17.8%), and removed from a vehicle by order (6.1%) at a higher rate than individuals officers did not perceive to be LGBT (13.7% searched, 14.7% detained on the curb or in a patrol car, 10.3% handcuffed, and 4.8% removed from a vehicle by order).

Limited English Fluency. Individuals perceived to have limited English fluency had a higher proportion of their stops involve officers taking actions towards them (29.1%) compared to individuals whom officers perceived to be fluent in English (24.8%).

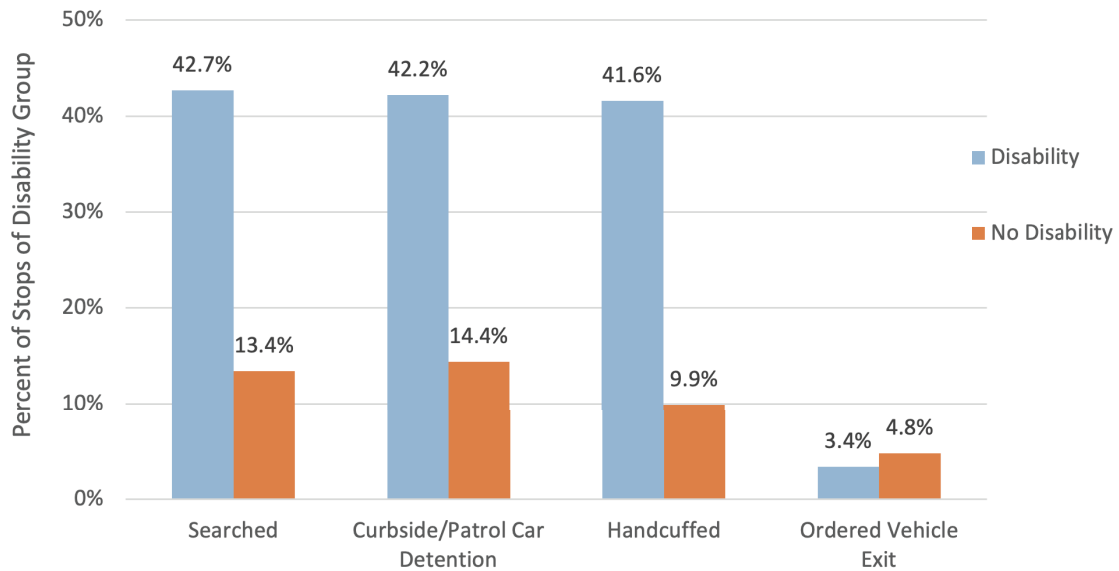
Stopped individuals whom officers perceived to have no or limited English fluency were searched (15.2%), detained on the curb or in a patrol car (15.4%), handcuffed (12.4%), and removed from a vehicle by order (6.4%) at a higher rate than those perceived to speak English fluently (13.7% searched, 14.7% detained on the curb or in a patrol car, 10.3% handcuffed, and 4.7% removed from a vehicle by order).

Disability. Stopped individuals perceived as having a disability had a higher proportion of their stops involve officers taking actions towards them (69.6%) than individuals not perceived to have a disability (24.4%).

Stopped individuals whom officers perceived to have a disability were searched (42.7%), detained on the curb or in a patrol car (42.2%), and handcuffed (41.6%) at a much higher rate than individuals perceived not to have a disability (13.4% searched, 14.4% detained on the curb or in a patrol car, and 9.9% handcuffed). Individuals whom officers perceived to have a disability had a lower rate of being removed from a vehicle by order (3.4%) compared to individuals who were not perceived as having a disability (4.8%).

37 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 them, 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.

Figure 14. Actions Taken During Stop by Disability Group



5. Result of Stop

Officers can select up to 13 different result of stop options. Officers may also select multiple results of 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 (42.4%), followed by a warning (31.6%), and then arrest (16.0%).³⁸ Officers indicated they took no reportable action towards nine percent of stopped individuals. Each of the other results represented less than five percent of the data.³⁹

If officers are more or less likely to report taking any action as a result of stopping individuals from one identity group relative to another, it may indicate that there was an unfounded suspicion of wrongdoing and that explicit or implicit bias may have influenced the officer in making the stop.⁴⁰ This is based on the assumption that a stop that does not result in further officer action was not necessary from a social standpoint, an assumption that may not be correct in all instances, particularly community caretaking stops.

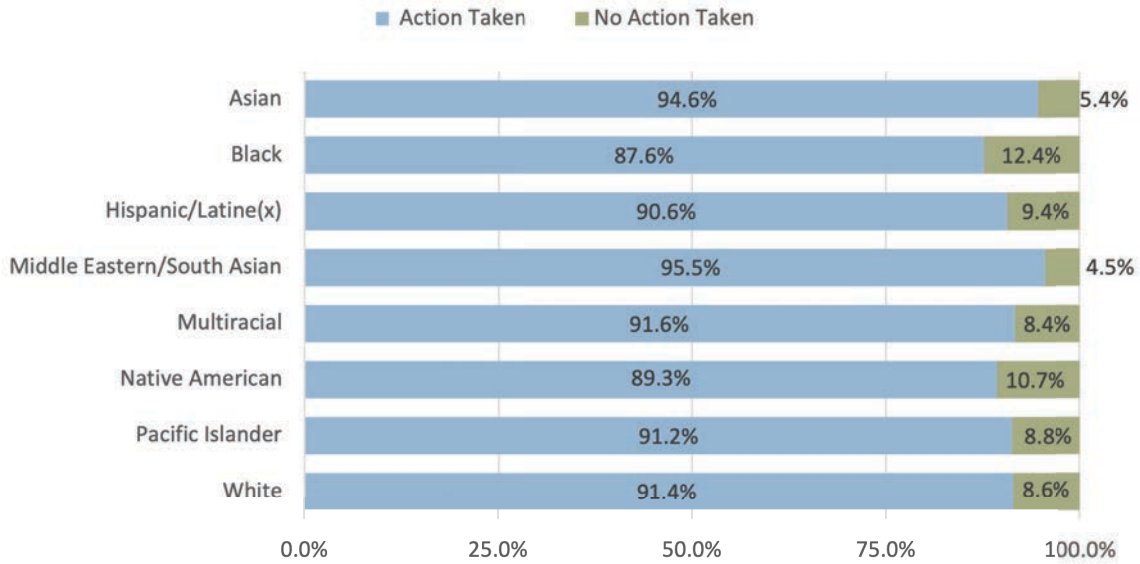
Race or Ethnicity. Officers reported taking no action as the result of stop most frequently during stops of individuals they perceived to be Black (12.4%) relative to stops of other racial or ethnic groups. Officers tended to take no action as the result of stop least often (4.5%) during stops of individuals they perceived to be Middle Eastern/South Asian.

38 Arrests here include three unique result types: in-field cite and release (6.9% of stopped individuals), custodial arrest without a warrant (7.1% of stopped individuals), and custodial arrest with a warrant (2.9% of stopped individuals). (See Cal. Code Regs., tit. 11, § 999.226, subd. (a)(18) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].) It is possible for multiple arrest conditions to apply to the same individual in a single stop.

39 Other result categories included field interview card completed (2.8%), noncriminal/caretaking transport (0.4%), contacted parent/legal guardian (0.2%), psychiatric hold (0.8%), contacted U.S. Department of Homeland Security (<0.1%), referred to a school administrator (<0.1%), or referred to a school counselor (<0.1%). (See Cal. Code Regs., tit. 11, § 999.226, subd. (a)(18) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].) 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.

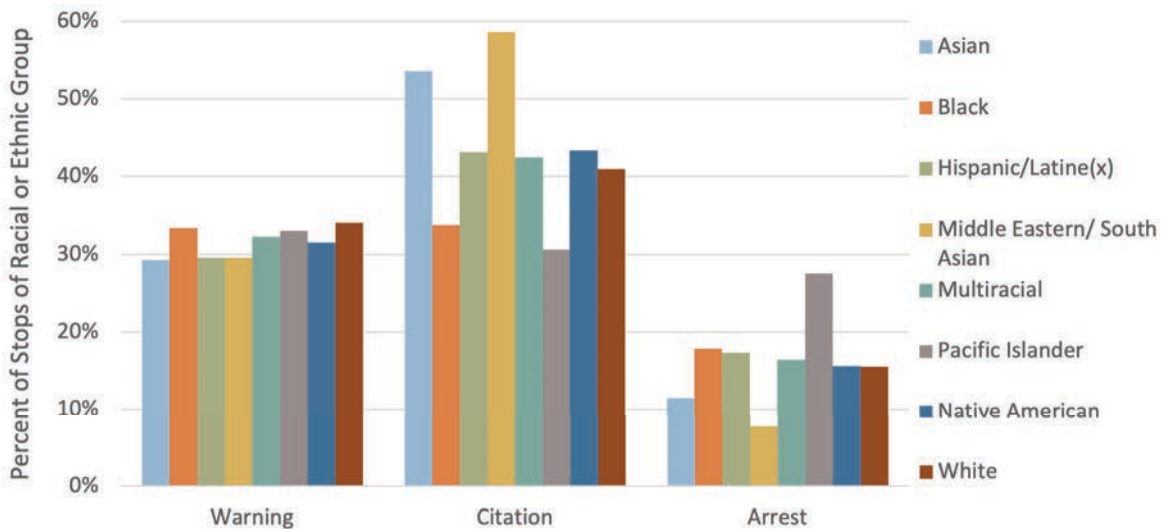
40 See U.S. DOJ, *Investigation of the Baltimore City Police Department* (Aug. 10, 2016) p. 28 <<https://www.justice.gov/opa/file/883366/download>> [as of Nov. 15, 2023] (stating that “low ‘hit rates’ [or actions taken as a result of stops] are a strong indication that officers make stops based on a threshold of suspicion that falls below constitutional requirements”).

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



Compared to other racial or ethnic groups, stopped individuals perceived as Middle Eastern/South Asian were cited at the highest rate (58.6%), while individuals perceived to be Native American were cited at the lowest rate (30.6%). Relative to other racial or ethnic groups, stopped individuals officers perceived to be White were warned at the highest rate (34.1%); Asian individuals were warned at the lowest rate (29.3%) followed closely by Hispanic/Latine(x) individuals (29.6%) and Middle Eastern/South Asian individuals (29.6%). Officers arrested stopped individuals they perceived to be Native American at the highest rate (27.5%) and individuals they perceived as Middle Eastern/South Asian at the lowest rate (7.7%), relative to other racial or ethnic groups.

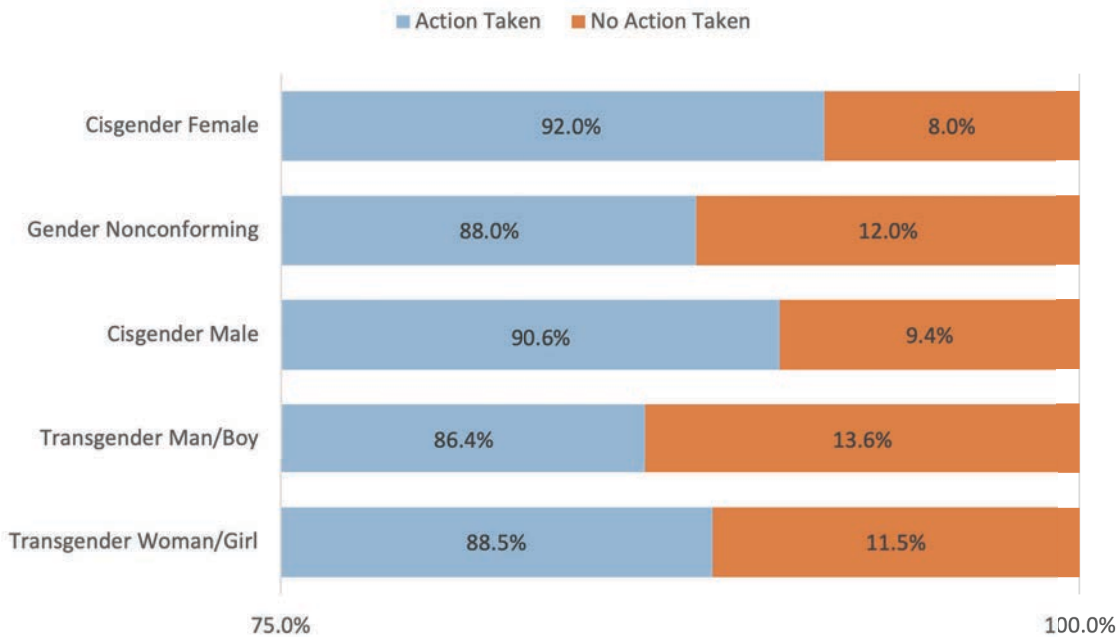
Figure 16. Warnings, Citations, and Arrests by Race or Ethnicity



Gender. Officers took no action as the result of a stop most often during stops of individuals they perceived to be transgender men/boys (13.6%), relative to other genders; this rate exceeded the no action rate during stops of cisgender males (9.4%). Similarly, officers took no action as the result of

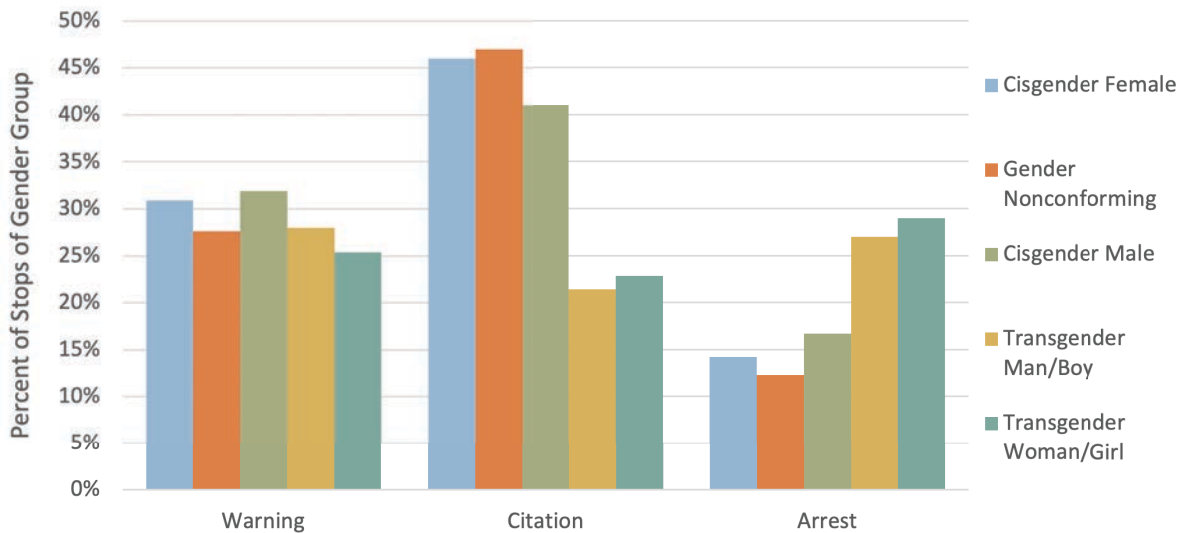
stops of individuals whom officers perceived to be transgender women/girls at a higher rate (11.5%) than individuals whom officers perceived to be cisgender females (8.0%). Additionally, officers took no action as the result of stop during stops of gender nonconforming individuals at a higher rate (12.0%) than individuals whom officers perceived to be cisgender.

Figure 17. Result of Stop – No Action by Gender



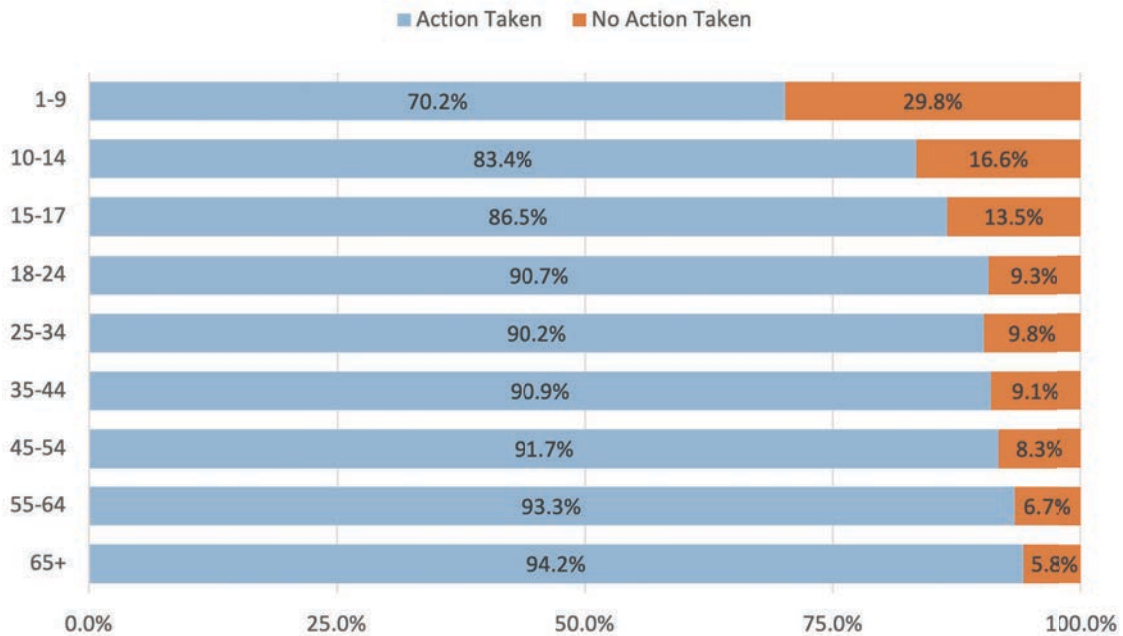
Citation rates ranged from 21.4 percent of stopped individuals perceived as transgender men/boys to 47 percent of stopped individuals perceived as gender nonconforming. Warning rates ranged from 25.4 percent of stopped individuals perceived as transgender women/girls to 31.9 percent of stopped individuals perceived as cisgender males. Finally, compared to other genders, officers arrested individuals perceived as transgender women/girls at the highest rate (29.0%) and arrested stopped individuals perceived as gender nonconforming at the lowest rate (12.3%).

Figure 18. Warnings, Citations, and Arrests by Gender



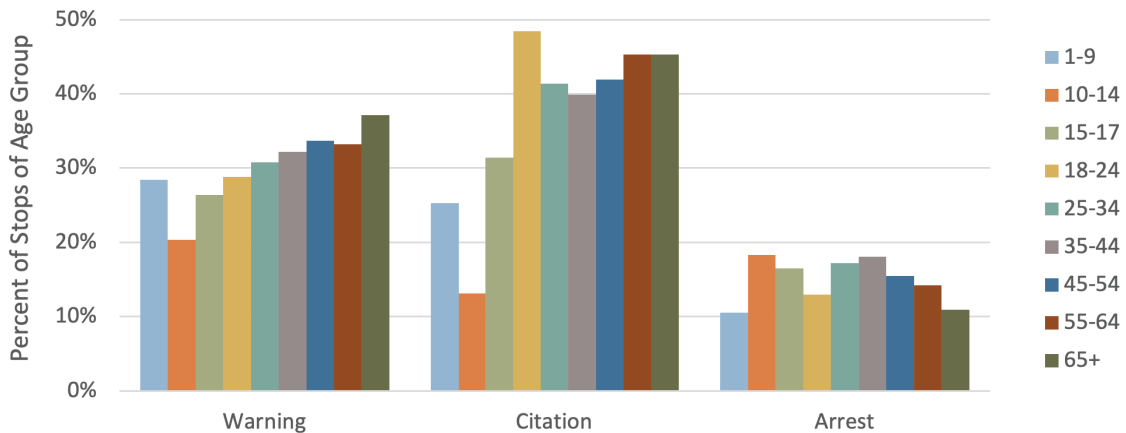
Age. The proportion of stopped individuals who had no action taken as the result of a stop tended to decrease as age groups increased, with individuals perceived to be between the ages of one and nine having the highest no action rate (29.8%) and individuals perceived to be 65 or older having the lowest no action rate (5.8%).

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



Citation rates ranged from 13.1 percent for stopped individuals perceived as 10 to 14 years old to 48.4 percent of individuals perceived as 18 to 24 years old. Relative to other age groups, individuals perceived as 10 to 14 years old had the lowest rate of being warned (20.3%), whereas individuals perceived as 65 and older had the highest rate of being warned (37.1%). Arrest rates ranged from 10.5 percent for stopped individuals perceived as one to nine years old to 18.3 percent for individuals perceived as 10 to 14 years old.⁴¹

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



LGBT. Officers took no action as the result of stop during a higher proportion of stops of people they perceived to be LGBT (11.3%) than during stops of people they did not perceive to be LGBT (9.0%). Individuals perceived to be LGBT had a lower rate of being cited (32.1%) or warned (26.9%) while

41 Penal Code section 26 states, in part, “All persons are capable of committing crimes except those belonging to the following classes: One — Children under the age of 14, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness. . . .” Despite this different legal standard for a person younger than 14, officers reported issuing citations to and arresting many individuals under the age of 14. Findings displaying unexpected numbers of seemingly young individuals being subject to enforcement actions may, in part, be explained by incorrectly entered age values by officers.

having a higher rate of being arrested (25.4%) than individuals whom officers did not perceive to be LGBT (42.5% cited, 31.6% warned, and 15.9% arrested).

Limited English Fluency. Officers took no action as the result of stop during a lower proportion of stops of individuals perceived to have limited or no English fluency (8.3%) than individuals perceived to be English fluent (9.1%). Individuals whom officers stopped and perceived to have no or limited English fluency had a lower rate of being cited (41.8%) or being warned (30.5%) while having a higher rate of being arrested (19.2%) when compared to individuals perceived to speak English fluently (42.5% cited, 31.6% warned, and 15.9% arrested).

Disability. Officers took no action as the result of stop during a higher proportion of stops of people they perceived to have a disability (13.7%) than during stops of people they perceived not to have a disability (9.0%). Further, stopped individuals whom officers perceived as having a disability had much lower rates of being cited (7.9%) or warned (18.0%) and higher rates of being arrested (25.9%) than individuals perceived to not have a disability (42.9% cited, 31.8% warned, and 15.9% arrested).

C. Tests for Racial or Ethnic Disparities

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

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

1. Residential Population Comparison

Comparing stop data to residential population data is a common method of analysis. This type of analysis assumes that the distribution of who is stopped likely resembles the demographics of residents within a comparable geographic region. But this is, of course, not always the case, as people may travel a considerable distance from where they live for a number of reasons (e.g., to go to work, visit family, etc.). Residential population demographics from the United States Census Bureau's 2021 American Community Survey (ACS) provided the benchmark for estimating the expected demographic breakdown of the 2022 stop data.⁴² Differences between stop population proportions and residential population proportions for each racial or ethnic group can be caused by several factors, including potential differences in exposure to criminogenic⁴³ factors, allocation of law enforcement resources, elements that draw large populations of non-residents to congregate in a place (e.g., retail sectors, employment centers, tourist attractions, etc.), and officer bias.

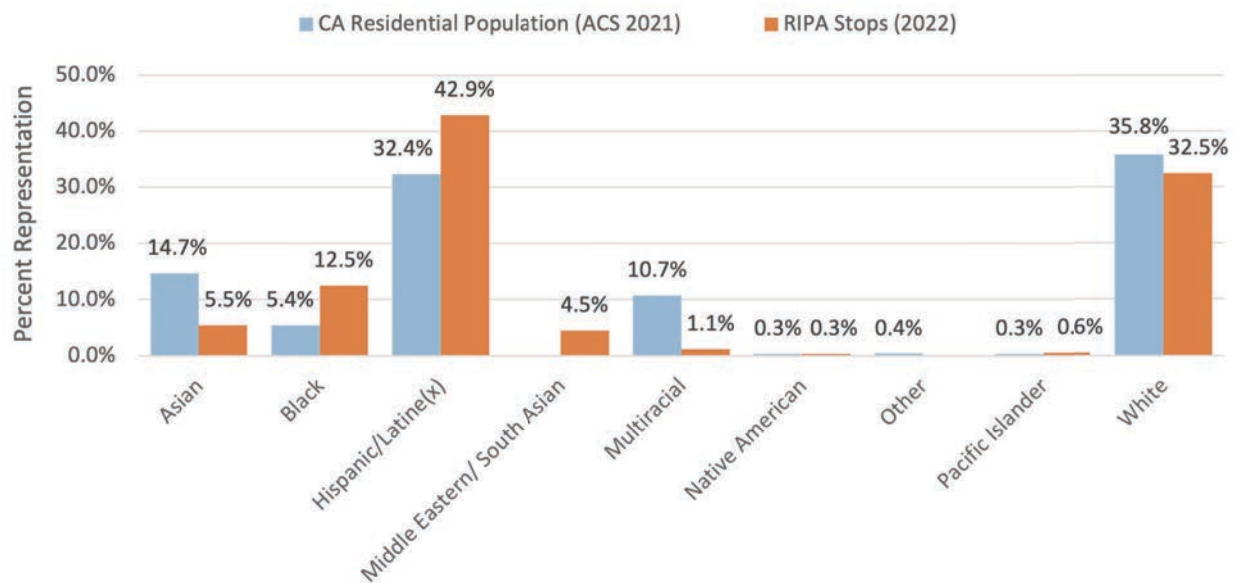
42 When these analyses were conducted, 2021 was the most recent year for which the 5-Year ACS data/information was available. The Census Bureau's methodology implemented for the 2020 ACS data, which is included in the 2021 ACS 5-Year file used for these analyses, is different from previous years due to the significant impact of the COVID-19 pandemic on the Census Bureau's data collection efforts. Please see Appendix B, Section B.1 of the Disparity Tests Methods Appendix for further information.

43 "Criminogenic" is defined as "(of a system, situation, or place) causing or likely to cause criminal behavior." (Oxford English Dict. Online (2021) <<http://www.oed.com>> [as of Nov. 15, 2023].)

Figure 21 displays the racial or ethnic distribution from the 2022 RIPA stop data of individuals whom officers stopped, alongside the distribution of residents from the ACS.⁴⁴

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 89.4 percent less frequently than expected, while Black individuals were stopped 131.5 percent more frequently than expected.⁴⁵ The proportion of stops of Native American individuals most closely matched estimates from residential population data (3.1% less frequently than expected).

Figure 21. Residential Population Comparison to Stop Data⁴⁶



Since all law enforcement agencies across the state were required to collect stop data in 2022, comparisons directly to the overall state population are more straightforward than in previous years of data collection, where only certain areas of the state had law enforcement agencies that were required to collect stop data. Accordingly, this year’s Report also contains per capita calculations.⁴⁷ Overall, for every 100,000 residents of California, officers reported conducting 11,597 stops. All racial or ethnic groups of color, with the exception of Asian and Multiracial individuals, had a higher per capita

44 See section B.1 of the Disparity Test Methods Appendix (Appendix B) for a detailed explanation of the methodology used for the overall comparison. Benchmarking using residential population data involves comparing the distribution of racial or ethnic groups stopped by officers to the distribution of residents in the areas served by the same agencies. In previous reports, not all agencies within the state collected RIPA data, which presented 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 a subset of reporting agencies, the ACS estimates were weighted to display a distribution more reflective of just the areas served by the reporting agencies in a given RIPA reporting year, rather than the state as a whole. However, since all agencies within the state collected RIPA data in 2022, the unweighted overall population of California serves as the benchmark metric for comparison in this Report.

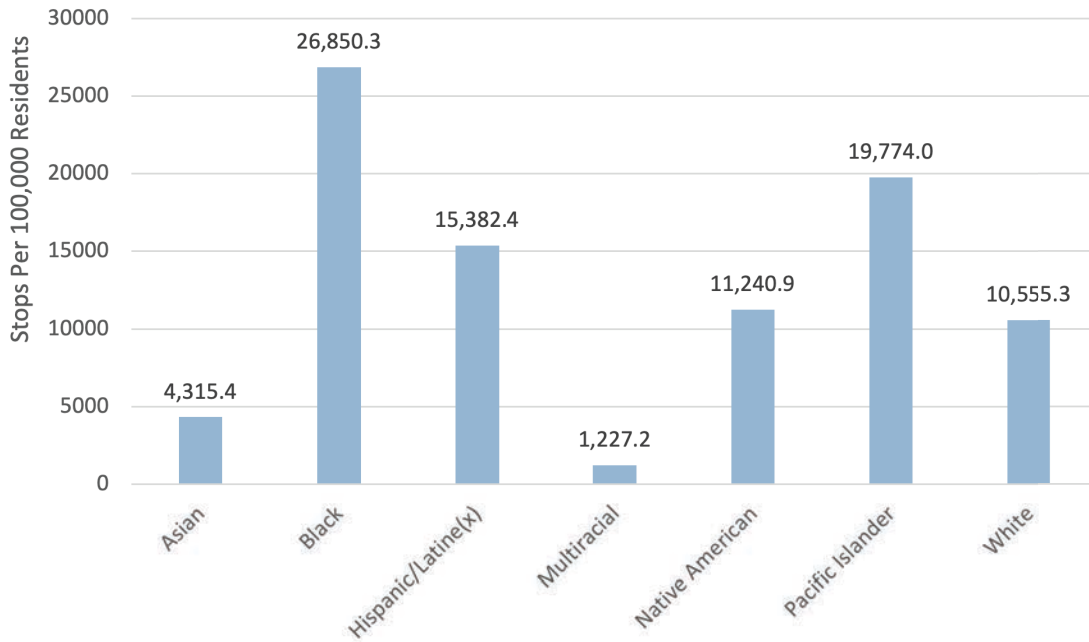
45 Stop data classifying the race or ethnicity of stopped individuals is based upon officer perception, while race or ethnicity in the ACS is based on self-identification. Some research indicates that it is more difficult to classify the race of multiracial individuals than it is to classify the race of monoracial individuals and that people may often classify multiracial individuals as monoracial. (See generally Iankilevitch et al., *How Do Multiracial and Monoracial People Categorize Multiracial Faces?* (2020) 11 Soc. Psychol. and Personality Science 688 <<https://doi.org/10.1177/1948550619884563>> [as of Nov. 15, 2023]; see also Chen and Hamilton, *Natural Ambiguities: Racial Categorization of Multiracial Individuals* (2012) 48 J. of Experimental Soc. Psychol. 152 <<https://doi.org/10.1016/j.jesp.2011.10.005>> [as of Nov. 15, 2023].)

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

47 See Appendix B, section B.2 for a detailed explanation of how per capita rates are calculated and Table C.1.1 for statewide population estimates reported in the 2021 ACS.

rate compared to White individuals, who were stopped 10,555 times per 100,000 White residents. Individuals perceived as Black had the highest per capita stop rate of 26,850 stops per 100,000 Black residents, followed by individuals perceived as Pacific Islander, who were stopped 19,774 times per 100,000 Pacific Islander residents. Individuals perceived as Hispanic/Latine(x) were stopped 15,382 times per 100,000 Hispanic/Latine(x) residents, while those perceived as Native American were stopped 11,241 times per 100,000 Native American residents.

Figure 22. Per Capita Stop Rates by Race or Ethnicity⁴⁸



As stops unfold, events can be separated into stages, such as the decision to stop someone, actions taken by officers that occurred during the stop, and the result of the stop. Disparities between groups compound across these stages of interactions with law enforcement. For example, if a group has been stopped more frequently than expected given their ACS population size, as is true with individuals perceived as Black or Hispanic/Latine(x), and those same groups have a higher percentage of their stops occur for certain reasons, the actual disparity compounds across these stages of interactions with law enforcement. As a specific example, not only were stops of Black individuals 2.5 times as frequent per capita compared to stops of White individuals, but within those more frequent stops a larger percentage (11.11% Black vs. 9.78% White) were for vehicle registration offenses.⁴⁹ Within vehicle registration stops, search rates of Black individuals are also higher than White individuals (13.26% for Black individuals vs. 8.34% for White individuals). Taken together, these disparities result in even more disparate per capita rates of searches occurring during vehicle registration stops (395.74 per 100,000 Black residents and 86.21 per 100,000 White residents — 4.6 times higher rate for individuals perceived as Black).

48 Because the ACS table used for these analyses does not contain a race category that is comparable to the Middle Eastern/South Asian group within the RIPA data, there is no per capita stop rate for this group in Figure 22. For more information about the ACS data used in this section, see section B.1 of Appendix B.

49 See Veh. Code, § 4000, subd. (a) or subd. (a)(1).

2. Discovery Rate Analysis

Researchers developed an empirical test that examines the rate at which officers discover contraband or evidence across the racial or ethnic groups of individuals they search. The test assumes that if officers are searching people of a particular identity group more frequently, but finding less contraband, the searches of individuals in that identity group may be, at least in part, because of their perceived identity.⁵⁰ Using this framework, we tested for differential treatment by conducting comparisons of search and discovery rates across identity groups.⁵¹

Discovery Rates

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

Descriptive Analysis. Overall, officers searched 13.8 percent of individuals they stopped. Officers discovered contraband or evidence from 27.3 percent of individuals they searched. Search and discovery rates varied across racial or ethnic groups. Out of all racial or ethnic groups, stopped individuals perceived as Native American had the highest search rates (22.4%), while stopped individuals perceived as Middle Eastern/South Asian had the lowest search rates (4.2%). Individuals perceived as White were searched 12.4 percent of the time. This means that the search rate of Native American individuals was 1.8 times the search rate of White individuals. On the other end of the search rate distribution, officers searched individuals perceived to be Middle Eastern/South Asian less than half as often as they searched individuals perceived to be White.

Search discovery rates did not vary as widely across racial or ethnic groups as did search rates. The rate at which officers discovered contraband or evidence during stops in which they conducted searches ranged from 24.2 percent of individuals perceived as Middle Eastern/South Asian to 29.8 percent of individuals officers perceived as White.

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

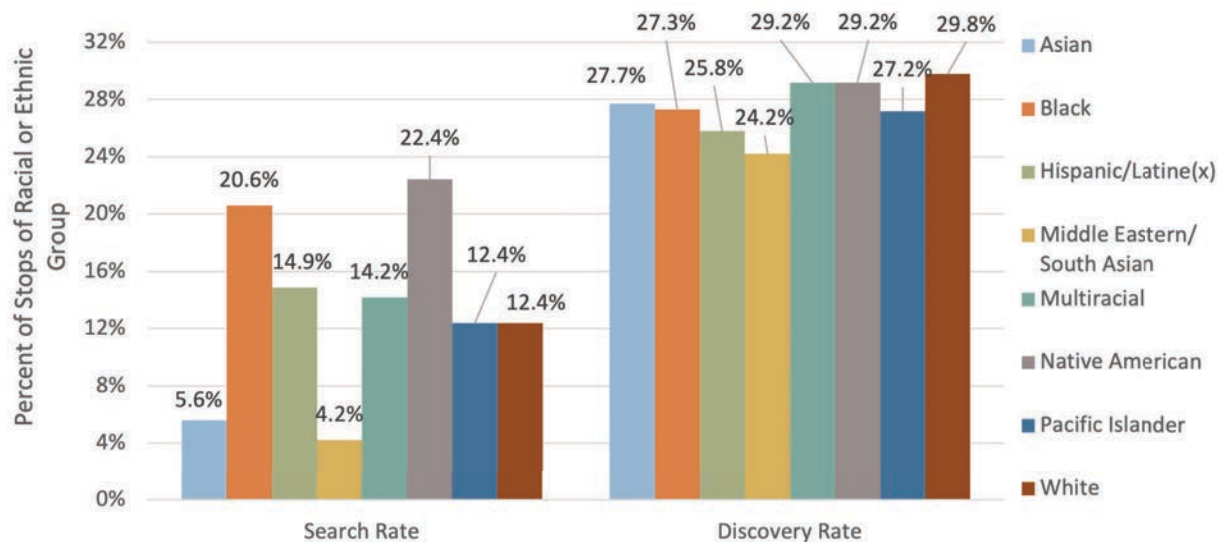


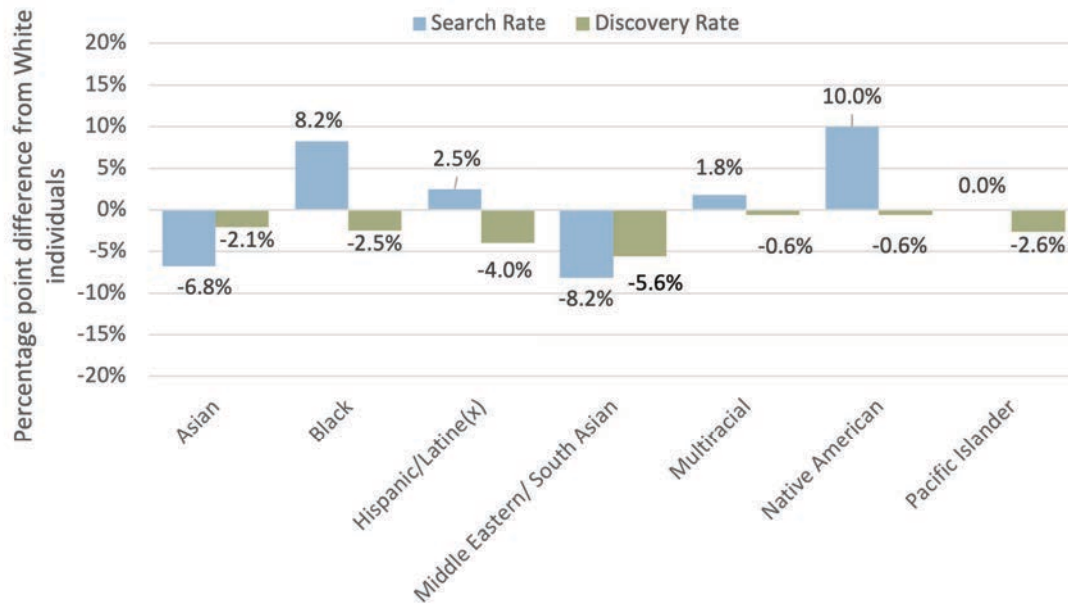
Figure 23 displays the difference in search and discovery rates for each racial or ethnic group of color from the search and discovery rates for individuals perceived as White (12.4% and 29.8%, respectively). All racial or ethnic groups of color had higher search rates than individuals perceived as White, except

50 See section B.3 of Appendix B for a discussion of the limitations of this type of analysis.

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

for individuals perceived as Asian, Middle Eastern/South Asian, and Pacific Islander. Individuals perceived as Pacific Islander were searched at the same rate as individuals perceived as White (12.4%). Search rate disparities were largest for individuals perceived to be Native American, who officers searched 10 percent more often than individuals they perceived as White (22.4% vs. 12.4%). Officers also searched individuals perceived to be Black (+8.2%), Hispanic/Latine(x) (+2.5%), and Multiracial (+1.8%) more often than stopped individuals perceived to be White. Discovery rates were lower during stops with searches of all racial or ethnic groups of color (-2.1% Asian, -2.5% Black, -4.0% Hispanic/Latine(x), -5.6% Middle Eastern/South Asian, -0.6% Multiracial, -0.6% Native American, and -2.6% for Pacific Islander individuals).

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



Regression Analysis. To consider how multiple variables may be associated with officers’ decisions to search and whether officers discover contraband or evidence, these data were also analyzed using statistical models.⁵² 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 or ethnic groups of color and White individuals are equally likely to reveal contraband.” If the test provides strong enough evidence that disparities between groups are larger than can reasonably be explained by chance alone, then we can say that our findings are *statistically significant*. In other words, the evidence provided by the data shows a very low likelihood that chance explains the resulting disparity.

The regression analysis was applied to: (1) search rates overall and (2) discovery rates overall. The results showed multiple statistically significant differences in search and discovery rates across racial or ethnic groups, especially when comparing individuals perceived as Black to individuals perceived as White (see Table 1). Compared to White individuals, Black individuals had a higher probability of being searched (+0.6 percentage points) despite being less likely to be found in possession of contraband or evidence (-2.0 percentage points). All other racial or ethnic groups of color were less likely to be searched and less likely to be found in possession of contraband or evidence.⁵³ These analyses were repeated for all agencies excluding California Highway Patrol and for each individual agency in order to consider the impact of different locales on the findings; these results can be found in Appendix C.⁵⁴

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

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

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

Table 1. Summary of Search and Discovery Rate Regression Analysis Findings by Race or Ethnicity

Race or Ethnicity Group	Search Rates	Discovery Rates
Asian	*** ↓ 3.8%	*** ↓ 1.8%
Black	*** ↑ 0.6%	*** ↓ 2.0%
Hispanic/Latine(x)	*** ↓ 0.4%	*** ↓ 1.6%
Other	*** ↓ 2.8%	*** ↓ 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. The following racial or ethnic groups were combined into the “Other” group in order to gain the statistical power needed to conduct this analysis: Middle Eastern/South Asian, Multiracial, Native American, and Pacific Islander.

D. Firearm Discharge Comparison to Assembly Bill 71 Data

In its 2023 report, the Board discussed how comparisons between instances where officers indicated discharging their firearms within the 2021 RIPA data and data on firearms discharges by officers collected in accordance with Assembly Bill No. 71 (2015-2016 Reg. Sess.) (AB 71), codified in Government Code, section 12525.2, revealed many discrepancies between the two sources.⁵⁵ The data collected under AB 71 includes more detailed information surrounding incidents where officers discharged their firearms, such as what part of the civilian’s body received injury (when applicable), whether the officer perceived the civilian to be armed, and whether the civilian was confirmed to be armed and with what. Previous comparisons performed by the California DOJ revealed the AB 71 data on firearm discharges by officers to be a more reliable source of information regarding these incidents.⁵⁶ Accordingly, the Board stressed that interpreting lethal force data reported under RIPA for the calendar year of 2021 required caution.⁵⁷

With the 2024 Report containing the first full year examination of statewide stop data collection, the Board once again reviewed how well the 2022 RIPA data regarding instances where officers indicated discharging their firearms aligned with the AB 71 data.⁵⁸ Results of these comparisons revealed that the 2022 RIPA data contained 370 stops where officers indicated discharging their firearms, whereas the 2022 AB 71 data contained 246 incidents, meaning there were 124 more stops that appeared to involve the discharge of a firearm by a peace officer reported under RIPA. However, of these 370 stops reported under RIPA, only 62 (16.8%) had a date of stop that matched with the date of an incident reported by the same agency under AB 71. Given that the date upon which stops occurred is an objective factor that records for a given incident should share across databases, this provides evidence of a greater level of discrepancy between the two databases than the difference in raw counts alone. Additionally, only having 62 (25.2%) date matches of the 246 incidents reported under AB 71 may indicate that a sizeable portion of instances that involved the discharge of a firearm by an officer under AB 71 were either not reported or recorded improperly under RIPA.

Although a majority of stops where officers reported discharging their firearms under RIPA did not align

55 See Racial and Identity Profiling Advisory Board, *Annual Report (2023 Report)* (2023) p. 58 <<https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>> [as of Nov. 15, 2023].

56 *Ibid.*

57 *Ibid.*

58 See Cal. DOJ Criminal Justice Statistics Center, *Use of Force Incident Reporting* (2022) <<https://data-openjustice.doj.ca.gov/sites/default/files/2023-06/USE%20OF%20FORCE%202022f.pdf>> [as of Nov. 15, 2023] (summarizing AB 71 data and providing an alternative source for information collected on lethal uses of force by law enforcement agencies).

with similar data reported under AB 71, it was also the case that most agencies that reported making stops in 2022 did not report having such instances across both databases. In 2022, three out of every four reporting agencies (402 out of 535, 75.1%) reported zero stops involving the discharge of a firearm by an officer under both RIPA and AB 71. This means that, for most agencies, the number of stops that involved the discharge of a firearm by officers was likely correct under RIPA — particularly when reporting zero discharges. However, for the other 133 agencies, it was often unclear whether reported stops containing data indicating a firearm was discharged were accurate accounts of shootings or if the entries were erroneous or missing.

E. Data Anomalies

The California DOJ reported to the Board regarding observed data anomalies in the data reported by 92 law enforcement agencies. These anomalies were identified where the agency reported months with large fluctuations in reported stops and where the agency reported some months with no stops at all. In September 2023, the DOJ sent letters to the 92 agencies asking for an explanation regarding this observation in the data. The DOJ has received responses to its inquiry and will evaluate the information and report back to the Board early next year.

POLICY-FOCUSED DATA ANALYSES

A. EVOLVING ISSUES REGARDING PRETEXTUAL STOPS

1. Introduction

Many calls to end pretextual stops have focused on disparities in enforcement and who is stopped or searched by the police. Although it is important to examine the disparities in stop and search rates, they only tell part of the story of individuals subjected to pretextual stops and the impact on their lives. A pretext stop occurs when an officer stops someone for a lawful traffic violation or minor infraction, intending to use the stop to investigate a hunch regarding a different crime that by itself would not amount to reasonable suspicion or probable cause.⁵⁹ During pretextual stops, a person may be searched or handcuffed and could have force used against them.

Pretextual stops are allowed because of *Whren v. United States*, (1996) 517 U.S. 806, where the United States (U.S.) Supreme Court held that as long as an officer can point to an objective reason for the stop, then the officer's subjective motives or hunches, which research and data show may be susceptible to racial bias, do not affect the legality of the stop.⁶⁰ One law review article asserted, "*Whren* is in many ways the *Plessy* of its era. It endorsed racial discrimination, and thereby encouraged its spread."⁶¹ Another law review article called pretextual stops and searches "America's most egregious police practice."⁶²

In prior RIPA reports, the Board examined new policies emerging in California and throughout the nation to address pretextual stops and searches. These previous reports specifically discussed policies by law enforcement agencies, district attorneys' offices, and states aimed at reducing or eliminating pretextual stops. The Board is beginning to examine the effectiveness of these policies, their impact on racial and identity disparities observed in the data, and any lessons learned from their implementation.

Previous RIPA reports reviewed data regarding the reasons for stop, actions taken during stops, and results of stops. This year, the Board delves deeper into the results of stops, including stops where field interview cards are completed or when the stopped individual is charged with resisting arrest. These results of stops show notable disparities, and the data indicates the results may have little to no connection to the original reasons for the stop, such as traffic infractions, suggesting they may be pretextual stops. This year, the Board also takes a first look at officer assignment type and discusses how the assignment type — such as specialized units — and other specific policing strategies may increase the likelihood for pretextual stops.

- 59 The amended RIPA regulations, effective in 2024, define "reasonable suspicion" as requiring a set of specific facts that would lead a reasonable person to believe that the stopped person is committing a crime, recently committed a crime, or is about to commit a crime. (Cal. Code Regs., tit. 11, § 999.224, subd. (a)(16) <<https://oag.ca.gov/system/files/media/RIPA%202022%20Rulemaking%20Final%20Text%20of%20Regulations.pdf>> [as of Nov. 15, 2023].) Reasonable suspicion cannot be based solely on a hunch or instinct. "Reasonable suspicion" requires a lesser standard of proof than "probable cause to arrest or search." (Cal. Code Regs., tit. 11, § 999.224, subd. (a)(16) <<https://oag.ca.gov/system/files/media/RIPA%202022%20Rulemaking%20Final%20Text%20of%20Regulations.pdf>> [as of Nov. 15, 2023].) "Probable cause to arrest or search" is defined in the amended RIPA regulations as a set of specific facts that would lead a reasonable person to objectively believe and strongly suspect that a crime was committed by the person to be arrested. "Probable cause to arrest" requires a higher standard of proof than "reasonable suspicion." (Cal. Code Regs., tit. 11, § 999.224, subd. (a)(14)–(15) <<https://oag.ca.gov/system/files/media/RIPA%202022%20Rulemaking%20Final%20Text%20of%20Regulations.pdf>> [as of Nov. 15, 2023]; see also Asirvatham and Frakes, *Are Constitutional Rights Enough? An Empirical Assessment of Racial Bias in Police Stops* (Aug. 2020) Duke L. School Pub. L. & Legal Theory Series No. 2020-56, p. 5 <<http://dx.doi.org/10.2139/ssrn.3673574>> [as of Nov. 15, 2023].)
- 60 *Whren v. United States* (1996) 517 U.S. 806, 813.
- 61 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, 550-551 (the U.S. Supreme Court decision that upheld the constitutionality of racial segregation under the "separate but equal" doctrine).
- 62 Haywood, *Ending Race-Based Pretextual Stops: Strategies for Eliminating America's Most Egregious Police Practice* (2022) 26 Rich. Pub. Int. L.Rev. 47, 47.

2. Analysis of Successes and Lessons Learned from New Pretext Policies

In its examination of policies to address pretextual stops and searches, the Board reviewed two different policy approaches. The Los Angeles Police Department (LAPD) limits all traffic stops unless there is a public safety concern — determined by the officers on a case-by-case basis — while Virginia specifically identifies and prohibits stops for several low-level traffic violations. Since many of the policies are still new, the data on their effectiveness is still evolving. Nevertheless, the data may provide some information regarding the potential impact of these policies.

a. New Pretext Policies – Two Test Cases: LAPD and Virginia

In 2022, LAPD was one of the first law enforcement agencies in California to implement a new policy aimed at reducing the use of pretextual stops.⁶³ The new policy restricts pretext stops in two ways: (1) limits the circumstances in which traffic stops can be made by officers; and (2) requires officers to articulate a reason to believe the person stopped has committed a serious crime.⁶⁴ Specifically, the new LAPD policy allows officers to make traffic stops only if the violation significantly interferes with public safety or if they have information to suspect the person has committed a serious crime.⁶⁵ The policy states: “[P]retextual stops shall not be conducted unless officers are acting upon articulable information in addition to the traffic violation, which may or may not amount to reasonable suspicion, regarding a serious crime (i.e., a crime with potential for great bodily injury or death).”⁶⁶ Advocates have expressed concerns that because the policy gives officers wide discretion to determine if a stop is for public safety, the policy may not be effective at curbing disparities.⁶⁷ Indeed, studies show more discretion can lead to an increased opportunity for bias.⁶⁸ LAPD has been collecting RIPA data since July 1, 2018. Although we only have approximately six months of RIPA data reported in 2022 under the new policy, the Board will take a preliminary look at LAPD’s stop data to see if there are any changes in search and yield rates or any reduction in disparities.

In 2020, Virginia was one of the first states to enact a law reducing pretext stops and creating a new traffic enforcement system.⁶⁹ The policy established what is known as a primary and secondary traffic enforcement system, where an officer can only stop someone for a primary public safety violation and not solely for a defined secondary violation, such as an expired registration.⁷⁰ Virginia’s policy identifies six secondary traffic violations, including driving “(i) without a light illuminating a license plate, (ii) with defective and unsafe equipment, (iii) without brake lights or a high mount stop light, (iv) without an exhaust system that prevents excessive or unusual levels of noise, (v) with certain sun-shading materials and tinting films, and (vi) with certain objects suspended in the vehicle.”⁷¹ Similar to California, officers in the state of Virginia are required to collect data on their stops and searches under

63 L.A. County Board of Police Commissioners, *Department Manual Vol. 1: 240.06 Policy Limitation on Use of Pretextual Stops* (Mar. 2022) pp. 1–2 <http://www.lapdpolicecom.lacity.org/030122/BPC_22-042.pdf> [as of Nov. 15, 2023].

64 *Ibid.*

65 *Ibid.*

66 *Ibid.*

67 See, e.g., PushLA, *Letter to L.A. County Board of Police Commissioners, Opposition-Relative to Policy Revision Regarding Pretextual Stops* (Feb. 8, 2022), pp. 1–3 <<https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2022/02/Public-Comment-Regarding-Pretextual-Stops-BOPC-22-023-Part-II.pdf>> [as of Nov. 15, 2023].

68 Ridgeway, *Assessing the Effect of Race Bias in Post-Traffic Stop Outcomes Using Propensity Scores* (2006) 22 J. Quant. Criminol. 1 <<https://www.rand.org/pubs/reprints/RP1252.html>> [as of Nov. 15, 2023] (analyzing discretionary actions taken after traffic stops in Oakland, California, and finding that police were more likely to subject Black drivers to pat-down searches and probable cause searches, as compared to White drivers); Eberhardt, *How Racial Bias Works -- and How to Disrupt It* (June 2020) TED <https://www.ted.com/talks/jennifer_l_everhardt_how_racial_bias_works_and_how_to_disrupt_it/transcript?language=en> [as of Nov. 15, 2023]; Quattlebaum, *Let’s Get Real: Behavioral Realism, Implicit Bias, and the Reasonable Police Officer* (2018) 14 Stan. J. C.R. & C.L. 1, 17 <<https://law.stanford.edu/publications/lets-get-real-behavioral-realism-implicit-bias-and-the-reasonable-police-officer/>> [as of Nov. 15, 2023] (citing Casey et al., *Addressing Implicit Bias in the Courts* (2013) 49 Ct. Rev. 64, 67).

69 VA House Bill No. 5058 (2020 1st Special Sess.) <<https://legiscan.com/VA/bill/HB5058/2020/X1>> [as of Nov. 15, 2023].

70 *Ibid.*

71 *Ibid.*

the state’s Community Policing Act.⁷² Virginia officers began reporting their data in July 2020 and the new state law became effective in March 2021, which provides several months of data before and after the new law took effect.

Preliminarily, it appears the policies contributed to an overall reduction in stops and searches,⁷³ and LAPD data indicate there is a higher likelihood of contraband discovered when searches were conducted.⁷⁴ Despite the reduction in stops and searches overall in Virginia, disparities still persist in who is stopped and searched.⁷⁵ One positive outcome, though, is that in Virginia, even though the police are more likely to stop and search Black drivers, the number of Black drivers who were stopped and searched was nearly half the rate from prior years of reporting.⁷⁶ LAPD data analyzed below shows similarly an overall reduction in stops and searches, a slight increase in discovery rates, and a slight decrease in disparities of persons stopped who were perceived to be Black.

The Board provides a brief review of the relevant data and lessons other agencies or states should consider in crafting or amending new policies.

i. Reduction in Overall Stops and Searches

Both policies have seen similar results in reducing the number of overall stops and searches. The LAPD pretext policy went into effect March 1, 2022. Police practices may vary by time of year due to crime trends, tourism, holidays, weather, or other unknown factors. In particular, the COVID-19 pandemic-related shutdowns were widespread when they began in 2020, making that year of RIPA data unique in many aspects. For these reasons, we summarized differences in stop totals and characteristics between the months of March and December in 2021 (before the pretext policy) and March and December 2022 (after the pretext policy). We refer to this comparison as the “comparison period.”

a) Total Stops

There were 20.8 percent fewer stops in 2022 between the months of March and December compared to the comparable period in 2021.

72 Va. Code Ann. § 52-30.2 (prohibiting racial profiling and mandating collection of data).

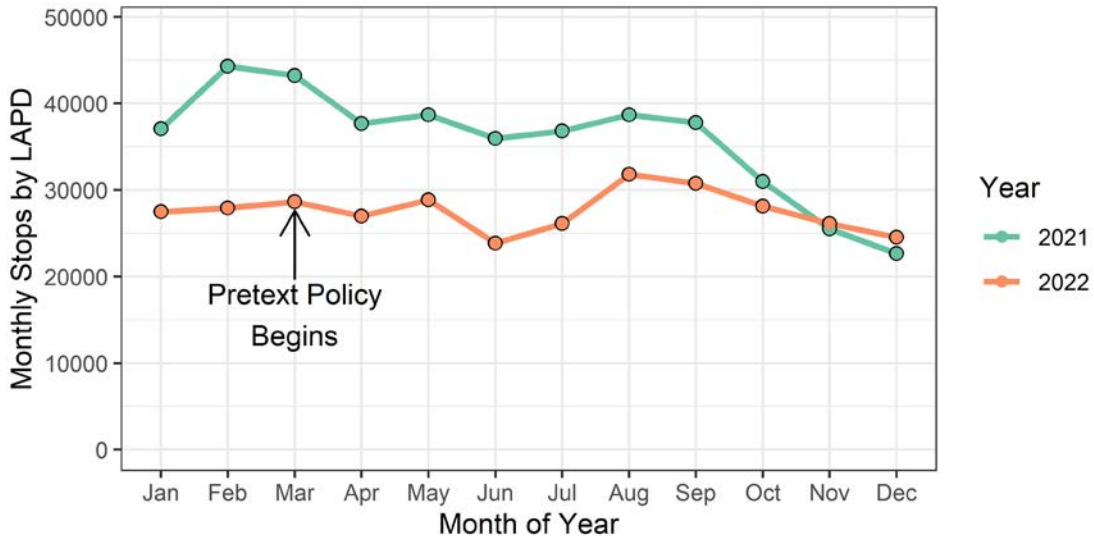
73 Jany and Poston, *Minor Police Encounters Plummet After LAPD Put Limits on Stopping Drivers and Pedestrians*, L.A. Times (Nov. 14, 2022) <<https://www.latimes.com/california/story/2022-11-14/minor-traffic-stops-plummet-in-months-after-lapd-policy-change>> [as of Nov. 15, 2023]; Oliver, *Virginia’s Traffic Stops Decline, But Disparities Persist*, Axios (Oct. 12, 2022) <<https://www.axios.com/local/richmond/2022/10/12/virginia-traffic-stops-disparities>> [as of Nov. 15, 2023].

74 Jany and Poston, *Minor Police Encounters Plummet After LAPD Put Limits on Stopping Drivers and Pedestrians*, *supra* note 73.

75 Va. Dept. of Crim. J. Services, *Report on Analysis of Traffic Stop Data Collected Under Virginia’s Community Policing Act* (Sept. 2022) <<https://rga.lis.virginia.gov/Published/2022/RD533/PDF>> [as of Nov. 15, 2023].

76 Paviour, *Black Drivers in Virginia Still More Likely to Be Stopped as Searches Drop*, NPR (Aug. 3, 2023) <<https://www.vpm.org/news/2023-08-03/black-hispanic-drivers-traffic-stops-policing-virginia-dcjs>> [as of Nov. 15, 2023].

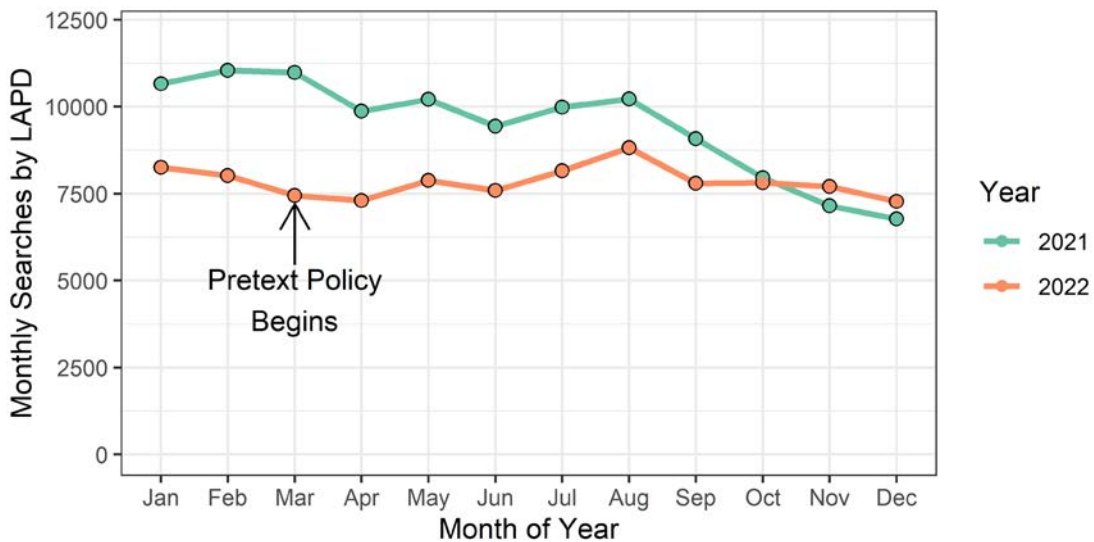
Figure 25. Monthly Stop Totals for Los Angeles Police Department 2021 and 2022



b) Total Searches

The LAPD performed 15.2 percent fewer searches after the pretext policy was in place between the months of March and December 2022 compared to the same period during 2021.

Figure 26. Monthly Search Totals for Los Angeles Police Department 2021 and 2022



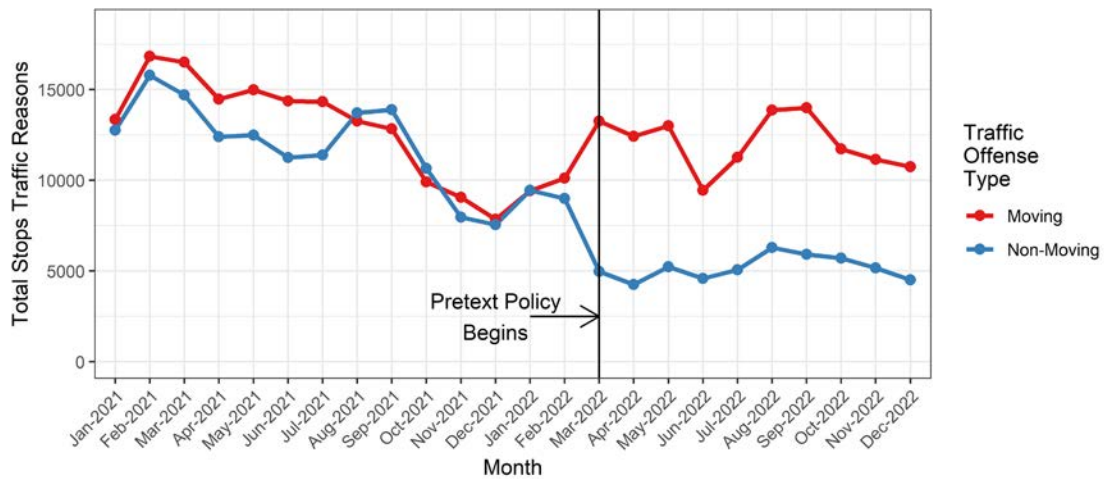
c) Reasons for Stop

Following the implementation of the pretext policy (vertical line), the total number of stops for common moving violations increased, while the total number of stops for common non-moving violations decreased. Common LAPD traffic violations were identified as Vehicle or Penal Codes that were among the top 100 most frequent codes reported by LAPD officers (2018-2022). These top 100 traffic reasons for stop account for more than 95 percent of all LAPD stops for traffic violations. The top 100 Vehicle and Penal Codes were then classified as either moving or non-moving.⁷⁷ Non-moving

⁷⁷ For the purpose of these analyses, moving violations are defined as a violation of the traffic laws regulating driver behavior while operating a vehicle, such as speeding or failing to signal before a turn. For the purpose of these analyses, all of the top 100 most common offense codes for traffic violations that did not meet the definition of a moving violation were classified as non-moving violations.

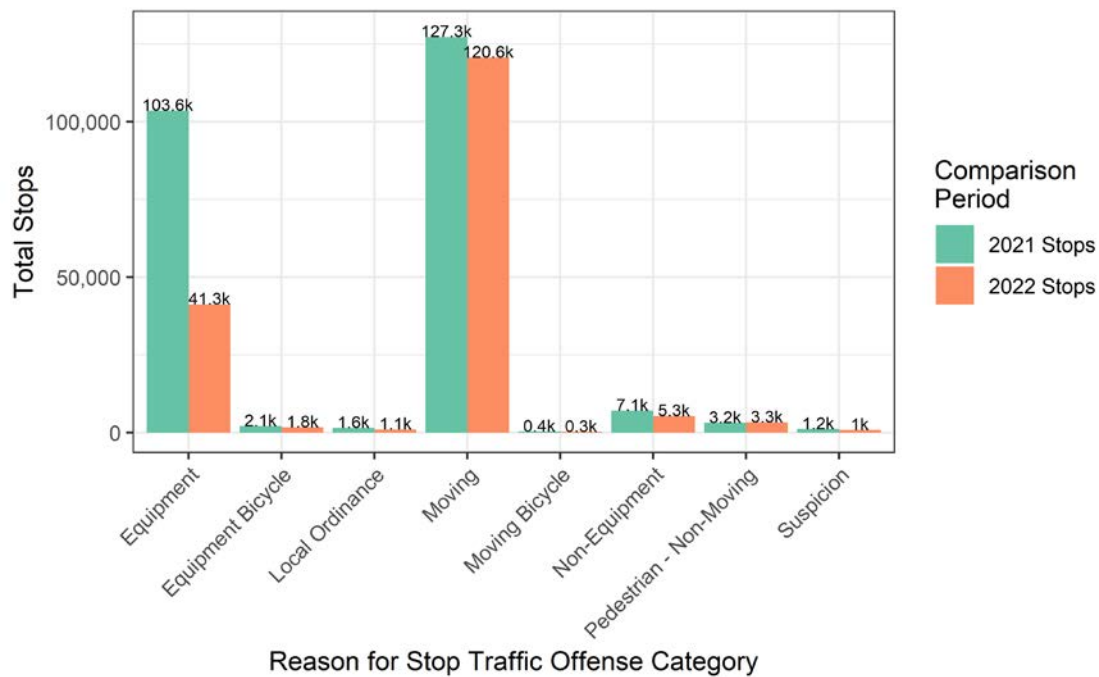
violations were further separated into equipment violations, bicycle-related, local ordinance, suspicion of engaging in criminal activity (e.g., operating vehicle without owner’s consent), pedestrian roadway offenses, and other non-moving violations (e.g., double parking, etc.).⁷⁸

Figure 27. Total Traffic Moving and Non-Moving Violation Stops (common violation codes)



A dramatic reduction in the number of traffic violation stops for common equipment violations occurred after the LAPD pretext policy was implemented (60.2% reduction in total stops for equipment violations between 2022 and 2021 comparison periods). The number of traffic stops for reasons in other traffic violation categories saw lesser reductions (16.6% reduction for equipment bicycle, 32% reduction for local ordinance, 5.2% reduction for moving, 21.6% reduction for moving bicycle, 24.8% reduction for non-equipment, 4.4% increase for pedestrian non-moving, 19.9% reduction for suspicion).

Figure 28. Before and After Pretext Policy – Number of Stops by Type of Common Traffic Offenses



78 Appendix A, Table A.21 displays how each of the top 100 most common traffic violation offense codes was coded within these categories.

A study conducted by the L.A. Times also found that the initial data from the LAPD showed an overall reduction in stops and searches during stops for minor offenses.⁷⁹ Prior to the implementation of the new policy, 21 percent of all stops were for minor infractions. Under the new policy, minor infractions accounted for 12 percent of all traffic and pedestrian stops.⁸⁰ There has also been a reduction in consent searches, or searches where an officer requests to search without having an articulable suspicion a crime has been committed (from 30% to 24% of all searches).⁸¹ In Virginia, under the new policies, the overall number of stops was reduced by 7.5 percent and stops that resulted in a search decreased from 3.8 percent to 2.4 percent.⁸²

These new policies may be effective at focusing police resources and time on more serious offenses.⁸³ Indeed, research shows that these pretextual stops or stops for minor infractions generally are more costly to communities.⁸⁴ A review of RIPA data demonstrated that officers in 2019 spent nearly 80,000 hours on traffic stops that led to no enforcement action — not even writing a ticket or giving a warning.⁸⁵ Of those hours, 28,000 were associated with stops for non-moving violations, such as expired registration.⁸⁶ These stops also cost communities and police departments a significant amount of money.⁸⁷ A review of data estimated that Sacramento County Sheriff’s Department spent \$35.5 million and San Diego County Sheriff’s Department spent \$43.9 million annually on enforcing traffic violations that resulted in a warning or no action taken.⁸⁸

The Board will continue to monitor the effects of reducing stops for minor infractions and their cost savings to communities. Below, the Board begins to examine the effect of these new policies on the discovery of contraband. Both the costs savings and the discovery of contraband may be ways to test the overall effectiveness of these policies.

ii. Increase in Finding Contraband

The LAPD discovered contraband during a higher percentage of RIPA reported stops with searches after the pretext policy was in place from March through December 2022 (37.9% discovery rate) compared to the same time period in 2021, before the pretext policy was in place (36.0% discovery rate).

79 Jany and Poston, *Minor Police Encounters Plummet After LAPD Put Limits on Stopping Drivers and Pedestrians*, *supra* note 73.

80 *Ibid.*

81 *Ibid.*

82 Oliver, *Virginia’s Traffic Stops Decline, But Disparities Persist*, *supra* note 73.

83 Catalyst Cal. and ACLU of So. Cal., *Reimagining Community Safety in California: From Deadly and Expensive Sheriffs to Equity and Care-Centered Wellbeing (Reimagining Community Safety in California)* (Oct. 2022) <https://catalyst-ca.cdn.prismic.io/catalyst-ca/756c4775-6bc1-448b-8447-e609133951ed_CATALYST+CA+%26+ACLU+-+REIMAGINING+COMMUNITY+SAFETY+2022.pdf> [as of Nov. 15, 2023].

84 *Ibid.*

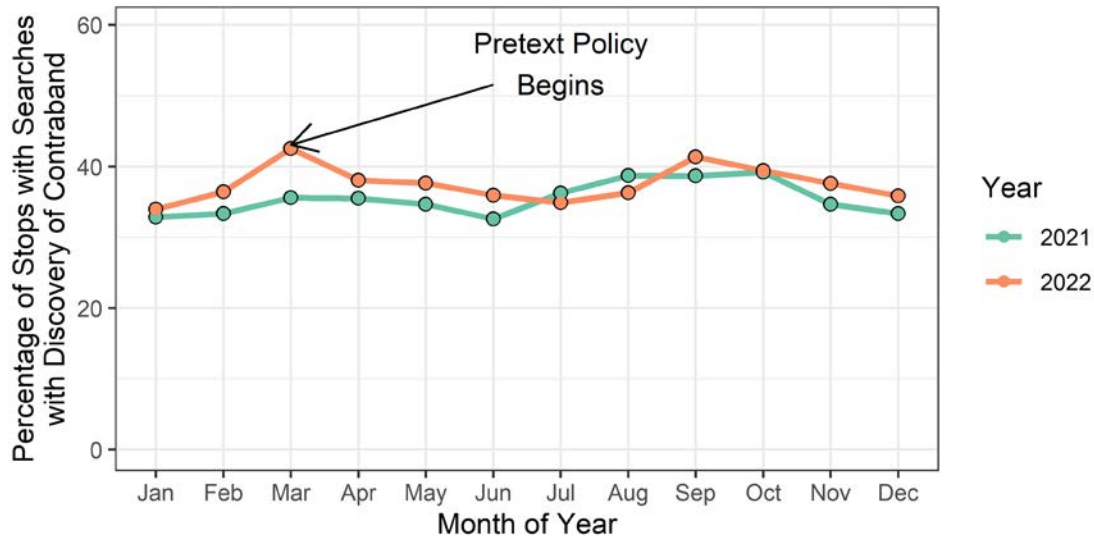
85 Lofstrom et al., *Racial Disparities in Traffic Stops* (Oct. 2022) Pub. Pol’y. Inst. Cal., p. 11 <<https://www.ppic.org/publication/racial-disparities-in-traffic-stops/>> [as of Nov. 15, 2023].

86 *Ibid.*

87 Catalyst Cal. and ACLU of So. Cal., *Reimagining Community Safety in California*, *supra* note 83.

88 *Ibid.*

Figure 29. Discovery Rate of Stops with Searches for Los Angeles Police Department 2021 and 2022



Other researchers working with the RIPA data discovered that stops and searches associated with pretextual stops (such as consent searches) do not often result in the discovery of evidence or contraband, and that reducing stops for minor infractions actually increases the probability that contraband will be found.⁸⁹ The Public Policy Institute of California found that searches during traffic stops are less likely to lead to the discovery of contraband rather than stops for reasonable suspicion.⁹⁰

Consistent with these findings, data indicate that under the new policy, LAPD officers are more successful in locating contraband when conducting a search.⁹¹ In a 2022 study of RIPA data, the L.A. Times showed that officers found illegal contraband in 26 percent of their searches, which marked a slight increase in the discovery rates.⁹²

Researchers have theorized that because LAPD officers are more purposeful in who they stop and search, there are higher success rates from those searches.⁹³ These data may indicate in part that these policies can “strike an effective balance between keeping the public safe and respecting the rights of individuals.”⁹⁴ During one interview, an LAPD Sergeant observed, “What we’re doing is we’re explaining ourselves more and identifying the reasoning behind it, instead of, ‘Well, I just had a hunch. I saw the guy and he looked like he might have been doing something. He gave me that look.’”⁹⁵

iii. Addressing Disparities

Another consideration in assessing the effectiveness of these policies is if there is an impact on disparities observed in stops and searches.

a) Racial or Ethnic Composition of Stops Compared to Los Angeles Residential Population

The figure below compares the racial or ethnic composition of stops during 2021 (before, shown in teal) and 2022 (after, shown in orange) pretext policy comparison periods with the racial or ethnic composition of the residential population of the City of Los Angeles (shown in blue, American

89 See Lofstrom et al., *Racial Disparities in Traffic Stops*, *supra* note 85, at pp. 23–25.

90 Lofstrom et al., *Racial Disparities in Law Enforcement Stops* (2021) Pub. Pol’y. Inst. Cal., p. 22.

91 Jany and Poston, *Minor Police Encounters Plummet after LAPD Put Limits on Stopping Drivers and Pedestrians*, *supra* note 73.

92 *Ibid.*

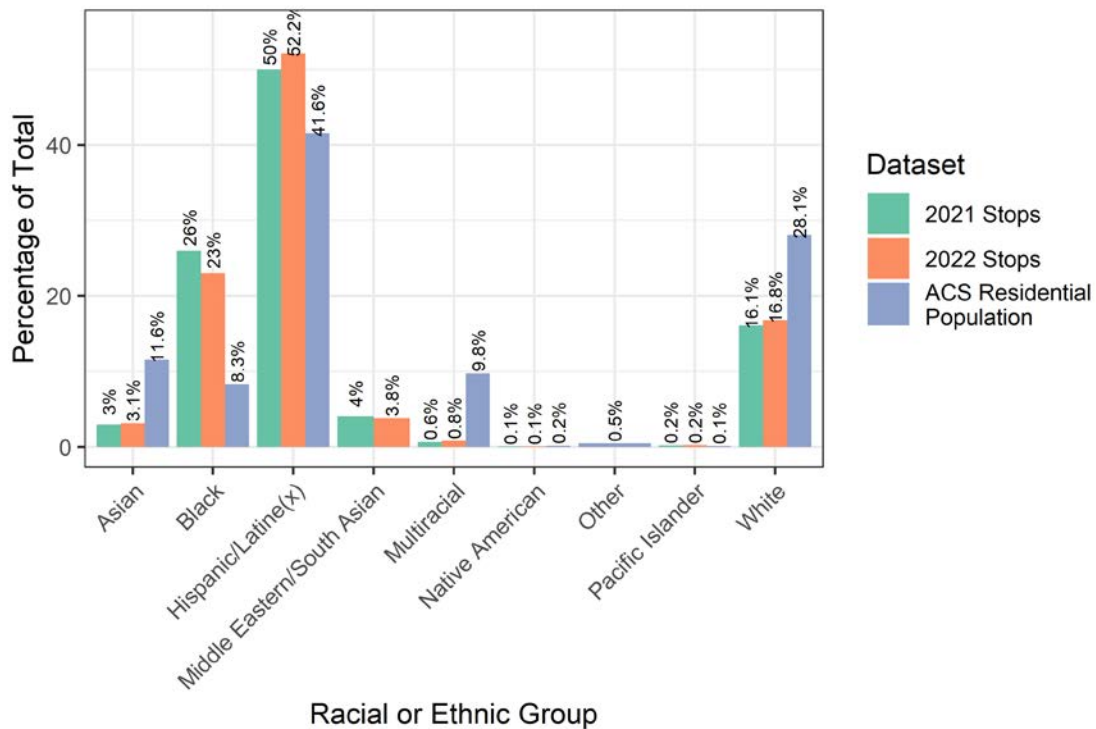
93 *Ibid.*

94 *Ibid.*

95 *Ibid.*

Community Survey, 5-Year, 2021). Black, Hispanic/Latine(x), and Pacific Islander individuals were overrepresented in stops in between the 2021 and 2022 comparison periods relative to their percentage of the city population. White, Asian, and Multiracial individuals represented a lower percentage of stops in both 2021 and 2022 relative to their percentage of the city population. The disparity in stop numbers for individuals perceived as Black (difference between percentage of stops and percentage of residents) was reduced slightly in 2022 after the pretext policy was implemented. The disparity in stop numbers for individuals perceived as Hispanic/Latine(x) (difference between percentage of stops and percentage of residents) slightly increased in 2022 after the pretext policy was implemented.

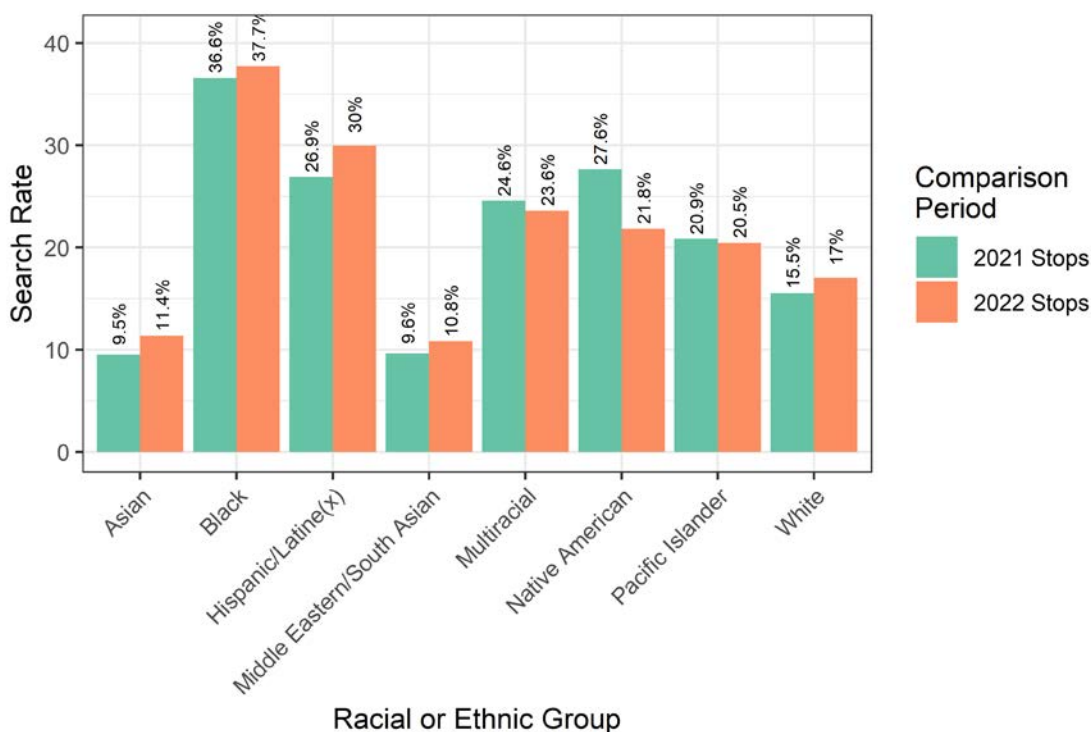
Figure 30. Before and After Pretext Policy – LAPD Racial or Ethnic Composition Compared to Los Angeles City Residential Population



b) Percentage of Stops with Searches and Total Searches

While the number of stops overall decreased, disparities increased for search rates. The overall percentage of LAPD stops with searches increased between 2021 and 2022 comparison periods (26.3% of stops with searches in 2021 and 28.2% of stops with searches in 2022). Overall, individuals perceived as Black or Hispanic/Latine(x) had higher search rates than average (Black individuals had rates of 36.6% in 2021 and 37.7% in 2022; Hispanic/Latine(x) individuals had rates of 26.9% in 2021 and 30% in 2022). Individuals perceived as Asian, White, Middle Eastern/South Asian, Multiracial, and Pacific Islander were searched during a lower percentage of stops than average for both comparison periods. Individuals perceived as Native American exceeded the annual average in 2021, but not during the 2022 comparison period. A majority of groups (Asian, Black, Hispanic/Latine(x), Middle Eastern/South Asian, and White) were searched during a slightly higher percentage of stops during the comparison periods in 2022 compared to 2021.

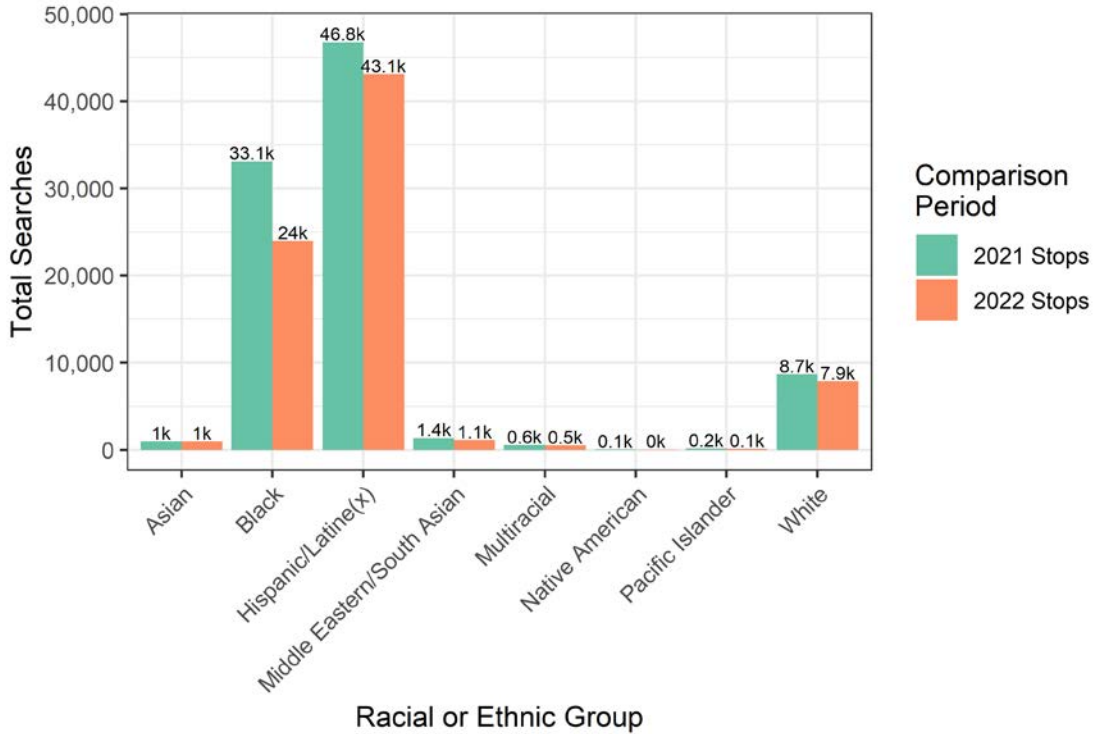
Figure 31. Before and After Pretext Policy – LAPD Percentage of Stops with Searches by Racial or Ethnic Group



The overall number of LAPD stops with searches decreased between 2021 (91,661 total searches) and 2022 (77,769) comparison periods, leading to a 15.2 percent decline in total searches. The largest decrease in searches between comparison periods by racial or ethnic group occurred among individuals perceived as Black (9,145 fewer searches of individuals perceived as Black, a 27.6% decrease in total searches of individuals perceived as Black). Individuals perceived as Hispanic/Latine(x) were searched 3,655 fewer times total (46,772 searches in 2021 compared to 43,117 searches during the 2022 comparison period), a 7.8 percent decrease. Individuals perceived as White were searched 789 fewer times total during the comparison periods (8,678 searches in 2021 compared to 7,889 searches in 2022), a 9.1 percent decrease. Other perceived racial and ethnic groups account for smaller total reductions in the number of searches between the 2021 and 2022 comparison periods.⁹⁶

96 During the 2022 comparison period, there were 225 fewer searches of Middle Eastern/South Asian individuals, 33 fewer searches of Multiracial individuals, 17 fewer searches of Native American individuals, 29 fewer searches of Pacific Islander individuals, and one more search of individuals perceived as Asian compared to the 2021 comparison period.

Figure 32. Before and After Pretext Policy – Total Number of Searches by Racial or Ethnic Group



In Virginia, there is also evidence of a decrease in searches of Black drivers from 5.2 percent to 2.8 percent.⁹⁷ However, despite the reduction in stops and racial disparities during searches, disparities remained virtually the same in terms of who was stopped.⁹⁸ Advocacy organizations in Virginia have argued that additional measures may be needed to reduce these disparities and address additional issues related to pretextual stops, including (1) prohibiting consent searches in traffic stops, (2) creating a civilian traffic enforcement agency, and (3) identifying overly-enforced misdemeanors.⁹⁹

Similarly, in Los Angeles, advocates and the Los Angeles Police Protective League (a police union) also recommended further reforms to traffic enforcement.¹⁰⁰ Advocates proposed expanding the pretext stop policy to “eliminate enforcement of non-moving and equipment-related traffic violations by police; [and] remove police enforcement of moving violations that do not demonstrably increase safety.”¹⁰¹ The union also argued that certain types of calls for service “may not necessitate an armed response.”¹⁰²

Many agencies, district attorneys, and lawmakers have taken positive steps to limit pretextual stops and address disparities, but research and data demonstrate there are additional opportunities to reduce disparities. The RIPA Board and many leaders throughout the state and country are calling for changes in the law to reduce the types of stops and searches officers can conduct, in addition to broader policy

97 Va. Dept. of Crim. J. Services, *Report on Analysis of Traffic Stop Data Collected Under Virginia’s Community Policing Act*, *supra* note 75; Oliver, *Virginia’s Traffic Stops Decline, But Disparities Persist*, *supra* note 73.

98 Va. Dept. of Crim. J. Services, *Report on Analysis of Traffic Stop Data Collected Under Virginia’s Community Policing Act*, *supra* note 75; Oliver, *Virginia’s Traffic Stops Decline, But Disparities Persist*, *supra* note 73.

99 Oliver, *Virginia’s Traffic Stops Decline, But Disparities Persist*, *supra* note 73.

100 City of Los Angeles, *Traffic Enforcement Study and Outreach Report* (Apr. 2023) p. 65 <https://ens.lacity.org/ladot/enforce_reports/ladotenforce_reports3669170610_04102023.pdf> [as of Nov. 15, 2023] (recommending expansion of Los Angeles’s policy limiting use of pretextual stops to eliminate police enforcement of non-moving and equipment-related violations).

101 *Ibid.*

102 Los Angeles Police Protective League, *Alternative Unarmed Response to Certain Calls for Service* (Mar. 2023) p. 1 <https://mcusercontent.com/6a0707887484bfcead01dcf9d/files/673f0eaa-11ca-0de9-ae6a-a3c69a787978/Alternative_Response_to_911_Calls_for_Service_1_.pdf> [as of Nov. 15, 2023]; City of Los Angeles, *Traffic Enforcement Study and Outreach Report*, *supra* note 100, at p. 65.

reforms, such as implementing civilian traffic enforcement or automated enforcement programs. Such reforms will not only help reduce racial and identity profiling but also help ensure that scarce law enforcement resources are redirected to more effective policing strategies.

iv. Public Safety Considerations under New Pretext Policies

The potential impact of these policies on public safety is still unknown; however, there are multiple studies, including those conducted by the National Highway Traffic Safety Administration (NHTSA) that address ways to improve public safety by reducing certain types of traffic stops. NHTSA is a government agency whose mission is to “[reduce] deaths, injuries and economic losses from motor vehicle crashes.”¹⁰³

In its 2023 Report, the Board highlighted studies conducted by the NHTSA and the National Transportation Safety Board (NTSB) related to traffic safety. The NTSB study relied upon stop data from the Stanford Open Policing Project. The study found that state patrol traffic stops are not associated with reducing motor vehicle deaths, nor is there a significant association between increased stops and reducing the risk of motor-vehicle-related deaths.¹⁰⁴ The NHTSA study, released in 2022, discussed “high visibility enforcement,” where agencies increase their presence and use media campaigns to target certain types of traffic violations.¹⁰⁵ The study concluded that increased police presence as well as the use of media education and outreach plans were effective at reducing the number of seatbelt violations, but there was no measurable difference for campaigns related to distracted driving, driving under the influence, speeding, and aggressive driving.¹⁰⁶ Given these findings, particularly the lack of association between increased stops and reducing motor-vehicle-related deaths, NTSB recommends agencies consider alternative approaches to policing, including the use of automated speed enforcement technology.

Advocates have cautioned that these approaches to public safety should not increase surveillance or biased enforcement based on where they are placed in communities.¹⁰⁷ In other words, this equipment should not be placed disproportionately in Black and Brown communities, which could potentially have the opposite effect; rather than reducing disparities, it could create additional opportunities for increasing them. If these changes are implemented, advocates recommend that they are coordinated with the communities most impacted by inequitable traffic enforcement and only implemented as part of a package of reforms.¹⁰⁸ Because of this, agencies and legislatures may wish to consider additional public safety approaches that are not associated with increased surveillance.

There are several proposed alternatives that do not rely only on police or the criminal legal system to “solve” these problems. The first alternative is to improve infrastructure by creating road features that naturally slow traffic and discourage traffic violations.¹⁰⁹ A study from New York City concluded that the city could reduce the need for armed police officers in traffic and reduce traffic crashes by improving its infrastructure.¹¹⁰ Since implementing these changes, New York City has seen a 50 percent reduction in the number of people killed or seriously injured.¹¹¹ Developing bike lanes resulted in a 90 percent drop

103 National Highway and Traffic Safety Admin., *About* <<https://www.nhtsa.gov/about-nhtsa>> [as of Nov. 15, 2023].

104 National Transportation Safety Board, *Reducing Speeding-Related Crashes Involving Passenger Vehicles* (2017), NTSB/SS17/01 <<https://www.nts.gov/safety/safety-studies/Pages/DCA15SS002.aspx>> [as of Nov. 15, 2023].

105 Taylor et al., *Synthesis of Studies That Related Amount of Enforcement to Magnitude of Safety Outcomes* (June 2022) National Highway Traffic Safety Admin., p. 14 <<https://rosap.ntl.bts.gov/view/dot/62379>> [as of Nov. 15, 2023].

106 *Ibid.*

107 City of Los Angeles, *Traffic Enforcement Study and Outreach Report*, *supra* note 100, at p. 63.

108 *Ibid.*

109 Transportation Alternatives, *The Case for Self-Enforcing Streets* (June 2020) p. 9 <<https://static1.squarespace.com/static/5cab9d9b65a707a9b36f4b6c/t/5eec1235fe73d720da412589/1592529462229/CaseForSelfEnforcingStreets.pdf>> [as of Nov. 15, 2023]; City of Los Angeles, *Traffic Enforcement Study and Outreach Report* (Apr. 2023) p. 63 <https://ens.lacity.org/ladot/enforce_reports/ladotenforce_reports3669170610_04102023.pdf> [as of Nov. 15, 2023].

110 Transportation Alternatives, *The Case for Self-Enforcing Streets*, *supra* note 109, at p. 2.

111 *Ibid.*

in claims of a person cycling on a sidewalk. Installing speed cameras reduced the number of people injured by 50 percent and reduced speeding by 60 percent.¹¹² Another study in Massachusetts found that “when streets are designed to protect vulnerable road users and prevent risky driving behavior, fatalities, and serious injuries can be dramatically reduced and potentially eliminated making police enforcement of traffic violations unnecessary.”¹¹³ Similarly, a study conducted by the Los Angeles County Department of Transportation evaluated opportunities for improving public safety and making traffic enforcement fairer, safer, and more equitable. The study recommended that changes to roadway infrastructure could improve public safety.¹¹⁴ However, they cautioned that these changes must be implemented with consideration of privacy-related concerns (such as the use of red light cameras) and with community input, specifically in communities that may be overly policed.¹¹⁵

A second approach is to reduce fines and fees to allow community members to make needed repairs to their vehicles instead of imposing fines that may reduce a person’s financial ability to make the repairs.¹¹⁶ The New York City study also found that universally low fines and fees were effective enough to deter traffic violations.¹¹⁷ For example, the automated speed enforcement cameras have a \$50 fine and were effective at reducing speeding by 60 percent.¹¹⁸ Other cities have eliminated fines and instead provide drivers with vouchers to conduct needed repairs on their vehicle to make the roads safer.¹¹⁹ Similarly, the Los Angeles Department of Transportation study concluded that reducing fines and fees could improve safety and driver equity by not adding barriers to making needed repairs because of financial burdens imposed by fines.¹²⁰ These changes shift traffic enforcement from a punitive focus to an approach that prioritizes public safety, which is the public policy underlying California’s traffic laws.

A third approach, discussed in section 3., is to shift certain responsibilities to civilian traffic personnel so officers can focus on more serious calls.¹²¹

Ultimately, the goal of these reforms is to address inequities in policing — specifically those observed during traffic stops — by building safer streets and reducing fines, in order for communities to reduce or eliminate the use of armed peace officers for traffic enforcement.¹²² The International Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement (UN HRC Expert), a body of the United Nations Human Rights Council, visited the United States in 2023 and produced a report in September highlighting several of these ideas. The UN HRC Expert suggested creating civilian traffic response units and unarmed civilian first responder programs for mental health crises as a way to address these inequities.¹²³

The Los Angeles Police Protective League points out that creating a civilian traffic enforcement program would “free up officers to focus more on violent crime, solve more cases, and improve officer

112 *Ibid.*

113 LivableStreets Alliance, *Dismantling Law Enforcement’s Role in Traffic Safety: A Roadmap for Massachusetts* (Apr. 2022) p. 11 <https://assets.nationbuilder.com/livablestreetsalliance/pages/7390/attachments/original/1649863050/Dismantling_Law_Enforcements_Role_in_Traffic_Safety_report.pdf?1649863050> [as of Nov. 15, 2023].

114 City of Los Angeles, *Traffic Enforcement Study and Outreach Report*, *supra* note 100, at p. 63.

115 *Ibid.*

116 *Ibid.*

117 Transportation Alternatives, *The Case for Self-Enforcing Streets*, *supra* note 109, at p. 20.

118 *Ibid.*

119 Jany, *Minneapolis Police No Longer to Ticket for Equipment Violations Under New Policy*, *Star Tribune* (Jan. 2020) <[Minneapolis police no longer to ticket for equipment violations under new policy \(startribune.com\)](https://www.startribune.com/minneapolis-police-no-longer-to-ticket-for-equipment-violations-under-new-policy/)> [as of Nov. 15, 2023].

120 City of Los Angeles, *Traffic Enforcement Study and Outreach Report*, *supra* note 100, at p. 64.

121 Los Angeles Police Protective League, *Alternative Unarmed Response to Certain Calls for Service*, *supra* note 102.

122 City of Los Angeles, *Traffic Enforcement Study and Outreach Report*, *supra* note 100, at p. 64; Transportation Alternatives, *The Case for Self-Enforcing Streets*, *supra* note 109, at p. 20 <<https://static1.squarespace.com/static/5cab9d9b65a707a9b36f4b6c/t/5eec1235fe73d720da412589/1592529462229/>>; LivableStreets Alliance, *Dismantling Law Enforcement’s Role in Traffic Safety: A Roadmap for Massachusetts*, *supra* note 113, at p. 13.

123 U.N. Human Rights Council, *Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement*, *supra* note 5, at p. 29.

morale.”¹²⁴ Moving forward, communities and the Legislature should consider how these alternative approaches to traffic enforcement could address public safety concerns.

3. Calls for Additional Measures to Address Pretextual Stops

In previous reports, the Board called upon the Legislature, community leaders, and law enforcement agencies to end the use of pretextual stops, consider using alternative approaches to traffic that do not involve armed peace officers, and use data as a way to create transparency and establish policies to reduce disparities. Since then, the California Legislature has proposed two laws to address pretextual stops. The U.S. House of Representatives also considered a bill that would financially support cities in developing a civilian traffic enforcement system.

a. Legislative Efforts

i. Senate Bill 50

California Senate Bill No. 50 (2023-2024 Reg. Sess.) (SB 50) was proposed in 2023 to restrict stops for certain minor traffic infractions. The Board discusses this legislative effort to address pretextual stops since it may inform future legislation. Building on the work of the Board, SB 50 was proposed to address pretextual stops and searches by (1) restricting officers from conducting stops for specific traffic violations and (2) amending the California Vehicle Code to allow for the creation of civilian traffic enforcement programs.¹²⁵ The bill prohibited stops for certain infractions unless there is a separate, independent basis to initiate the stop.¹²⁶ Specifically, the original text of the bill prohibited stops for:

- (1) Registration;¹²⁷
- (2) Positioning of a license plate;¹²⁸
- (3) Lighting equipment “illuminating, if the violation is limited to a single brake light, headlight, rear license plate, or running light, or a single bulb in a larger light of the same;”¹²⁹
- (4) Bumper equipment;¹³⁰ and
- (5) Bicycle equipment.¹³¹

Officers would have been prohibited from making a stop for these violations, and the bill would have allowed an officer to mail a ticket to the registered owner. Finally, the bill would have permitted “officers or other government employees” to conduct traffic stops.¹³² The bill’s author noted that “research shows that pretext stops do not significantly benefit public safety, yet use[] valuable resources that could be directed to more effective public safety approaches.”¹³³

The Prosecutors Alliance of California, one of the bill’s sponsors, argued that pretext stops fail to meaningfully improve public safety and result in profiling of individuals.¹³⁴ They expressed concern that pretext stops are not effective in locating contraband and result in the disparate treatment of individuals.¹³⁵

124 Zahniser, *LAPD Should Stop Handling Many Non-Emergency Calls, Police Union Says* (2023) L.A. Times <<https://www.latimes.com/california/story/2023-03-01/lapd-officers-want-to-stop-responding-to-nonviolent-calls>> [as of Nov. 15, 2023].

125 Sen. Bill No. 50 (2023-2024 Reg. Sess.) <https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB50#99INT> [as of Nov. 15, 2023].

126 *Ibid.*

127 *Id.* at § 2.

128 *Ibid.*

129 *Ibid.*

130 *Ibid.*

131 *Ibid.*

132 *Ibid.*

133 Sen. Com. on Pub. Safety, *Analysis of Sen. Bill No. 50 (2023-2024 Reg. Sess.) as amended Feb. 13, 2023* (Mar. 24, 2023) p. 5 <https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB50#> [as of Nov. 15, 2023].

134 *Id.* at p. 9.

135 *Ibid.*

Although the Los Angeles Police Protective League did not support the bill, they proposed that certain types of calls for service should not necessitate an armed police response. The union identified 28 types of calls that could be handled appropriately by a sworn officer and would not require a law enforcement response.¹³⁶

Those opposing the bill expressed concern that by reducing pretextual stops, officers could lose the ability to detain a person to investigate an unrelated hunch and potentially discover contraband.¹³⁷ They referenced several individual cases where narcotics or weapons were seized.¹³⁸ Finally, they expressed concern that notifying a driver of a violation by mail may not address an urgent issue with the vehicle.¹³⁹ The RIPA data, however, show that a vast majority of these stops do not yield contraband. The exception of finding contraband does not prove the rule.

In a letter supporting the bill, the Board encouraged the Legislature to eliminate all pretextual stops and searches rather than only limiting when a person could be stopped for specific traffic infractions.¹⁴⁰ The Board explained:

The issue of pretextual stops is much more pervasive than eliminating enforcement of the Vehicle Code sections identified in SB 50. Without prohibiting the conduct entirely, community members remain vulnerable to pretextual stops; for example, an officer may stop someone for speeding pretextually in order to investigate an unrelated hunch.¹⁴¹

The Board hopes that in the future, the Legislature will consider eliminating all pretextual stops and searches in addition to limiting stops for specific traffic codes and finding non-peace officer solutions to traffic enforcement.¹⁴² The Board emphasizes that its recommendations seek to refocus law enforcement policies to avoid relying on hunches or high discretion stops and searches, and instead focus on intelligence-led stops and searches based on objective information suggesting criminal activity, which can be more effective.

ii. Assembly Bill 93

Another bill proposed in the California Legislature would have ended the use of consent only searches. As introduced, Assembly Bill No. 93 (2023-2024 Reg. Sess.) (AB 93) was consistent with the Board's prior recommendation to eliminate consent searches. The legislation provided that "[t]he consent of a person given to a peace officer to conduct a search shall not constitute lawful justification for a search. A warrantless search conducted solely on the basis of a person's consent is a violation of that person's rights under this section."¹⁴³

136 The proposed limitations include: non-criminal and/or non-violent homeless and quality of life related calls, non-criminal mental health calls, non-violent juvenile disturbances or juveniles beyond parental control (will not go to school), calls to schools unless the school administration initiates a call for an emergency police response or makes a mandatory reporting notification, public health order violations, non-violent calls for service at city parks, under the influence calls (alcohol and/or drugs) where there is no other crime in progress, welfare checks, non-fatal vehicle accidents, parking violations, driveway tows, abandoned vehicles, person dumping trash, vicious and dangerous dog complaints where there is no attack, calls for service for loud noise or party calls where there is no victim, landlord/tenant disputes, loitering/trespassing with no indication of danger, some alarm responses, syringe disposal, DOT standby, homeless encampment clean-ups, panhandling, illegal vending, gambling, fireworks, urinating in public, drinking in public, and 927-D where there is no indication of foul play. (Los Angeles Police Protective League, *Alternative Unarmed Response to Certain Calls for Service* (Mar. 2023) <https://mcusercontent.com/6a0707887484bfcead01dcf9d/files/673f0eaa-11ca-0de9-ae6a-a3c69a787978/Alternative_Response_to_911_Calls_for_Service_1_.pdf> [as of Nov. 15, 2023].)

137 Sen. Com. on Pub. Safety, *Analysis of Sen. Bill No. 50 (2023-2024 Reg. Sess.) as amended Feb. 13, 2023*, *supra* note 133, at pp. 9–10.

138 *Ibid.*

139 *Ibid.*

140 See Appendix D, D.1.2 (Racial Identity and Profiling Board, *Letter: Support for Senate Bill 50, As Amended Feb. 13, 2023* (Mar. 21, 2023)).

141 *Ibid.*

142 See Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at p. 89.

143 Assem. Bill No. 93 (2023-2024 Reg. Sess.) § 3 <https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_

Even though the bill did not pass in the 2023 legislative session, it is important to discuss the positive aspects of the legislation as it was proposed, because of the need to eliminate consent searches, which may be explicitly or implicitly racially motivated. The author of the bill noted that consent searches are inherently vulnerable to bias because they are not based on objective criteria, and police have full discretion to choose when and whom to search.¹⁴⁴ Citing RIPA's 2023 Report, the bill's author noted the RIPA data "reveal[] that Black individuals were four times as likely and Latino individuals were 2.4 times as likely to be asked for a consent search during a traffic stop as White individuals. During stops where officers perform consent searches, officers are least likely to find contraband in the possession of those who are Black."¹⁴⁵ The author also asserted that "[l]imiting consent searches will help stop unjustifiable police interactions that lead to more intrusive and at worst lethal encounters with communities of color."¹⁴⁶

Those opposing the bill argued: (1) it removes a law enforcement tool; (2) it removes a person's free choice to be searched by an officer; and (3) the bill would restrict searches based on reasonable suspicion.¹⁴⁷ However, the text of the bill only addresses consent searches; it does not prohibit consensual encounters.¹⁴⁸ Searches are permitted if there is another independent legal basis for the search, such as reasonable suspicion.¹⁴⁹ Further, the RIPA data shows that consent searches are not as successful at yielding contraband as other intelligence-led searches. Therefore, officers would not be losing an effective crime-fighting "tool."

In a letter to the Legislature, the RIPA Board expressed its support for the bill. The Board asserted: (1) data show suspicionless searches are a significant source of disparities because there is no objective criteria of who to search and why, making these stops vulnerable to the biases of the officers; and (2) data show that consent searches are not an effective law enforcement tool compared to intelligence-led stops.¹⁵⁰ The Board also explained that the California Highway Patrol (CHP), the largest law enforcement agency in the state, rarely uses consent searches compared to other agencies.¹⁵¹ CHP's policy restricting consent searches began in 2001 after a lawsuit lead by the American Civil Liberties Union (ACLU). During the lawsuit, the ACLU produced data showing CHP rarely conducted consent searches¹⁵² and when they did, Black individuals were twice as likely to be searched and those who are Hispanic/Latine(x) were three times more likely to be searched as individuals perceived to be White.¹⁵³ As a result of these findings, CHP issued a moratorium on using consent searches from 2001 to 2006.¹⁵⁴ Since then, CHP has implemented policies that continue to restrict consent searches and allow them only under certain circumstances, discussed in more detail below.¹⁵⁵

RIPA data show that in 2021, CHP reported asking for consent to search a person or their property during roughly 0.1 percent of stops, whereas the other 57 law enforcement agencies that collected

id=202320240AB93#97AMD> [as of Nov. 15, 2023].

- 144 Assem. Floor Analysis, *3d Reading of Assem. Bill No. 93 (2023-2024 Reg. Sess.) As Amended Feb. 23, 2023* (Mar. 8, 2023) p. 1 <https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240AB93> [as of Nov. 15, 2023].
- 145 *Ibid.*
- 146 *Ibid.*
- 147 *Id.* at p. 2.
- 148 Assem. Bill No. 93 (2023-2024 Reg. Sess.) as amended Feb. 23, 2023, *supra* note 143.
- 149 *Ibid.*
- 150 Assem. Com. on Pub. Safety, *Analysis of Assem. Bill No. 93 (2023-2024 Reg. Sess.) As amended Feb. 23, 2023* (Mar. 6, 2023) pp. 5–6 <https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240AB93> [as of Nov. 15, 2023].
- 151 *Id.* at p. 6; see section D.1.1 of Appendix D for a copy of the RIPA Board's March 16, 2023 Letter to the Legislature in Support of AB 93.
- 152 CHP officers had conducted 1,370 consent searches, a small fraction of the three million stops CHP conducted in 2000. (See ACLU of No. Cal., *California Highway Patrol Bans Consent Searches Following Review of Data Collection Showing Discriminatory Pattern* (Apr. 2001) <<https://www.aclu.org/press-releases/california-highway-patrol-bans-consent-searches-following-review-data-collection>> [as of Nov. 15, 2023].)
- 153 *Ibid.*
- 154 *Ibid.*
- 155 California Highway Patrol, *General Order: Search and Seizure Policy, 100.91* (Aug. 2019).

data in 2021 reported asking for consent to perform searches during 7.7 percent of stops.¹⁵⁶ CHP also conducted “consent only” searches during approximately 0.01 percent of stops, whereas other law enforcement agencies reported conducting “consent only” searches during 2.7 percent of stops.¹⁵⁷ Similarly, in 2022, CHP reported asking for consent to search a person or their property during roughly 0.04 percent of stops, whereas the other 534 enforcement agencies that collected data in 2022 reported asking for consent to perform searches during 8.2 percent of stops. CHP also conducted consent only searches during approximately 0.01 percent of stops, whereas the other reporting agencies reported conducting consent only searches during 3.1 percent of stops.

CHP’s policy distinguishes between two types of consent searches: (1) protective consent searches; and (2) investigatory consent searches.¹⁵⁸ A protective consent search is allowed under the policy if the officer can articulate a need to protect themselves or others.¹⁵⁹ An investigatory consent search is permitted if the search is based on a reasonable suspicion evidence of criminal activity.¹⁶⁰ The policy further limits uniformed employees from asking for consent to search without supervisor approval unless they have reasonable suspicion or probable cause a crime has been committed.¹⁶¹ Finally, CHP requires that the officer obtain written consent from the person if they are going to conduct a consent search.¹⁶² The Board has recommended eliminating the practice of consent searches entirely, but CHP’s approach could serve as a successful model for limiting consent searches.

In its letter to the Legislature regarding AB 93, the Board encouraged the Legislature to take an additional step to eliminate all suspicionless searches, including probation or supervision searches. When an individual is placed on supervision, which can include probation, parole, post-release community supervision, or mandatory supervision, often a term of that supervision requires the individual to allow officers to search them at any time, with or without a warrant or their consent.¹⁶³ In order to conduct the search, the officer only needs to have knowledge the person is on probation and has a search condition; the officer does not need to suspect the person has committed a crime.¹⁶⁴

Those opposing this change have expressed that (1) probation searches are an important tool to determine if a person is dangerous, and (2) stops and searches are good for the individual on parole because they keep the person accountable and potentially act as a deterrence mechanism. However, as the Board explains, the RIPA data show supervision searches generally are not as effective at yielding contraband as intelligence-led searches¹⁶⁵ and there are disparities in who is subjected to these searches.¹⁶⁶ Studies instead demonstrate that “[w]hat does make a difference in increasing public safety ... is engaging [with those on supervision] as community members, rather than potential reoffenders.”¹⁶⁷

156 See Appendix D, D.1.1, Racial and Identity Profiling Board, *Letter to the Legislature in Support of AB 93*, Mar. 16, 2023.

157 *Ibid.*

158 California Highway Patrol, *General Order: Search and Seizure Policy*, 100.91, *supra* note 155.

159 *Ibid.*

160 *Ibid.*

161 *Ibid.*

162 *Ibid.*

163 See *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, 133–134; see also Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at p. 72 (listing the types of supervision that could subject an individual to a suspicionless search during a traffic stop).

164 See *People v. Sanders*, *supra* note 163, 31 Cal.4th at p. 333; *People v. Reyes*, *supra* note 163, 19 Cal.4th at pp. 750–754; *In re Jaime P.*, *supra* note 163, 40 Cal.4th at pp. 133–134.

165 Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at p. 73.

166 *Ibid.*; see also Appendix D, D.1.1, Racial and Identity Profiling Board, *Letter to the Legislature in Support of AB 93*, Mar. 16, 2023.

167 White, *Probation Conditions Relaxed During the Pandemic. Some Say They Should Stay That Way* (June 2020) The Appeal <<https://theappeal.org/coronavirus-probation-parole-technical-violations/>> [as of Nov. 15, 2023].

The effect of probation searches on keeping a person accountable is also suspect, given the known disparities in enforcement of probation violations.¹⁶⁸ Annually, California spends \$2 billion to re-incarcerate people for technical violations, such as missing an appointment with a probation officer.¹⁶⁹ These technical violations have been seen as a tripwire that contributes to mass incarceration that severely impacts communities of color.¹⁷⁰ The Board has suggested that “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.”¹⁷¹

Moving forward, the Board hopes the Legislature will consider additional measures to end probation inquiries and probation searches, instead requiring probable cause or reasonable suspicion to search.

iii. Prior Board Recommendations

The Board hopes their recommendations will eventually be adopted by the Legislature and agencies in their entirety, including:

- Identifying and taking action to limit enforcement of traffic laws and minor offenses that pose a low risk to public safety and show significant disparities in the rate of enforcement.¹⁷² (Addressed in part in SB 50)
- Limiting armed law enforcement responses to traffic enforcement by allowing for stops only if there is a concern for public safety, and exploring amending the Vehicle Code to move traffic enforcement out of law enforcement’s purview (e.g., to a civilian traffic unit).¹⁷³ (Addressed in part in SB 50)
- Prohibiting certain searches, such as consent searches or supervision searches, during traffic stops and instead requiring probable cause for any search.¹⁷⁴ (Addressed in part in AB 93)
- Eliminating all pretextual stops and subsequent searches and ensuring that a stop or search is based on reasonable suspicion or probable cause, respectively.¹⁷⁵ (Not yet addressed by the Legislature)

This year and in future reports, the Board will continue to monitor the RIPA data to inform the Legislature and communities of ways to make policing safer and more equitable.

iv. Federal Legislation

Another bill proposed this year, H.R. No. 852, the “Investing in Safer Traffic Stops Act,” addressed the creation of civilian traffic enforcement programs. This bill would establish a grant program that would aid communities trying to establish a civilian traffic enforcement system.¹⁷⁶ The U.S. Attorney General would be responsible for creating the program and awarding grantees from local, state, or tribal governments to help create them.¹⁷⁷ The grant would award \$100,000,000 for each fiscal year from

168 See, e.g., Racial and Identity Profiling Advisory Board, *2022 Report*, *supra* note 8, at p. 117; see also Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at pp. 72–73 <<https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>> [as of Nov. 15, 2023]; Racial and Identity Profiling Advisory Board, *Annual Report* (2021) pp. 74–77 <<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2021.pdf>> [as of Nov. 15, 2023].

169 See Sen. Com. on Pub. Safety, *Analysis of Assem. Bill No. 1950 (2019-2020 Reg. Sess.)*, p. 4 <<https://csgjusticecenter.org/publications/confined-costly/?usState=CA#primary>> [as of Nov. 15, 2023] (citing The Council of State Governments Justice Center, *Confined and Costly: How Supervision Violations are Filling Prisons and Burdening Budgets* (2019)).

170 See Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010) pp. 12–15.

171 Racial and Identity Profiling Advisory Board, *2022 Report*, *supra* note 8, at p. 118.

172 Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at p. 89.

173 *Ibid.*

174 *Ibid.*

175 *Ibid.*

176 H.R. No. 852, 118th Cong., 1st. Sess. (2023).

177 *Ibid.*

2024-2029.¹⁷⁸ The bill also defines civilian for purposes of the program as a person who is not a law enforcement officer.¹⁷⁹

The bill’s author explained the bill was a direct response to the death of Tyre Nichols, who was beaten to death by police officers in 2023 after a stop for a minor traffic violation. The author stated, “What happened to Tyre Nichols could happen to any Black person in America . . . We have the power to prevent traffic stops from taking a deadly turn by putting enforcement where it belongs – in the hands of civilians or cameras.”¹⁸⁰ The UN HRC Expert also recommended that to reduce the number of killings by law enforcement, lawmakers should “gradually withdraw all armed officers from routine traffic enforcement and remove their authority to stop cars only for minor traffic violations.”¹⁸¹

b. Federal Policies: U.S. Department of Justice Investigation of the Minneapolis Police Department

After the murder of George Floyd, both the United States Department of Justice (U.S. DOJ) and the Minnesota Department of Human Rights launched separate investigations into whether the Minneapolis Police Department (MPD) engaged in a pattern or practice of constitutional violations.¹⁸² Both investigations found that MPD engaged in pretextual traffic stops,¹⁸³ consent searches, and used field interview cards in a discriminatory manner that deprived individuals of their constitutional rights.¹⁸⁴

As a result of these findings, the City of Minneapolis entered into a settlement agreement with the Minnesota Department of Human Rights requiring MPD to change some of its policies. The U.S. DOJ issued its findings and made recommendations, but deferred to the settlement agreement reached between MPD and Minnesota Department of Human Rights, which included comprehensive reforms and policies to address the issues raised in the U.S. DOJ’s report.¹⁸⁵ The settlement agreement required the implementation of new policies prohibiting certain types of traffic stops¹⁸⁶ and requiring MPD to mail notices for those violations to the registered owners instead.¹⁸⁷ The policy makes an exception for commercial vehicles, similar to SB 50 discussed above.¹⁸⁸ The policy also allows for officers to stop or detain a driver for “operating a vehicle in an unsafe manner or creating an imminent hazard to safety, even if they are engaged in one or more of the non-citable offenses.”¹⁸⁹ However, the mere fact

178 *Ibid.*

179 *Ibid.*

180 Holder, *Proposal Would Reward Cities That Take Cops out of Traffic Stops*, Bloomberg (Feb. 2023) <<https://www.bloomberg.com/news/articles/2023-02-08/bill-in-congress-rewards-removing-police-from-traffic-stops>> [as of Nov. 15, 2023].

181 U.N. Human Rights Council, *Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement*, *supra* note 5, at p. 29.

182 U.S. DOJ, *Investigation of the City of Minneapolis and the Minneapolis Police Department* (June 2023) p. 64 <<https://www.justice.gov/opa/press-release/file/1587661/download>> [as of Nov. 15, 2023]; Settlement Agreement, *Minnesota Department of Human Rights v. City of Minneapolis* (Minn. Dist. Ct., 2023, No. 27-cv-23-4177) pp. 1–2, 118 <<https://lms.minneapolismn.gov/Download/FileV2/30804/MDHR-v-City-of-Minneapolis-Settlement-Agreement.pdf>> [as of Nov. 15, 2023].

183 U.S. DOJ, *Investigation of the City of Minneapolis and the Minneapolis Police Department*, *supra* note 182, at pp. 34–35; Settlement Agreement, *Minnesota Department of Human Rights v. City of Minneapolis*, *supra* note 182, at p. 39.

184 U.S. DOJ, *Investigation of the City of Minneapolis and the Minneapolis Police Department*, *supra* note 182, at p. 1; Settlement Agreement, *Minnesota Department of Human Rights v. City of Minneapolis*, *supra* note 182, at pp. 1–2.

185 U.S. DOJ, *Investigation of the City of Minneapolis and the Minneapolis Police Department*, *supra* note 182, at p. 89.

186 The traffic stops that were prohibited were for: failure to display registration tabs or driving with expired registration; failure to illuminate license plate; rim or frame obscuring license plate; driving with only one functioning and visible headlight, brake light, or tail light; driving with only one functional side view mirror present; driving without a rearview mirror, with the rearview mirror obstructed, or with an item dangling from the rear view mirror; driving without working windshield wipers; failure to signal a lane change or turn, unless the driver is operating the vehicle in an unsafe manner; obstructed window; and window tint unless it creates an imminent hazard to safety. (Settlement Agreement, *Minnesota Department of Human Rights v. City of Minneapolis*, *supra* note 182, at pp. 43–44.)

187 *Ibid.*

188 *Id.* at p. 43.

189 *Id.* at p. 44.

someone has engaged in multiple violations does not mean they constitute an imminent safety hazard; instead, officers must articulate a danger based on the “totality of the circumstances.”¹⁹⁰ In addition to limiting traffic stops, the settlement also prohibits the use of consent searches during pedestrian or vehicle stops.¹⁹¹

The settlement also addresses the use of field interview cards, discussed in detail below.¹⁹² The policy requires officers conducting a field interview to inform individuals that they do not need to respond to the officer’s questions and are free to leave.¹⁹³ The officer is also required to explain the reason for the encounter and that the individual does not need to provide identification to the officer.¹⁹⁴ The policy further prescribes that an officer may not use a person’s choice to walk away and not answer questions as the basis for forming reasonable suspicion.¹⁹⁵

These data-driven policy reforms, which the U.S. DOJ deemed “comprehensive,” may provide a road map to improve policing in agencies and create legislative reforms throughout the state of California.¹⁹⁶ Many of these recommendations have previously been made by the Board, and the Board is encouraged to see some of those changes being adopted around the country.

c. Additional Calls to End Pretext Stops by Advocates and Victims of Police Violence

In 2023, the killing of Tyre Nichols again brought a national spotlight to the grave consequences of a pretext traffic stop escalating to an officer using deadly force. Tyre Nichols, a young Black man from Memphis, lost his life after being brutally beaten, Tased, and pepper sprayed following a pretextual traffic stop for a minor infraction.¹⁹⁷ Mr. Nichols was driving home after photographing the sunset when he was pulled over for “reckless driving.”¹⁹⁸ It is still unclear why he was stopped or what conduct led the officers to believe he was driving recklessly, but according to investigators, the stop was pretextual in nature.¹⁹⁹ Investigators examining the case noted they were unable to verify that Mr. Nichols violated any laws prior to the stop being initiated.²⁰⁰ At some point during the stop, Mr. Nichols fled on foot.²⁰¹

Mr. Nichols was pursued by multiple deputies who were part of a specialized unit whose focus was on “high-crime neighborhoods” or “hot spots.”²⁰² The unit was created to address specific crimes, such as gang offenses or drug trafficking, and had a history of abusing the constitutional rights of individuals, including using excessive force, conducting illegal searches, and engaging in discriminatory policing.²⁰³ Studies have shown that specialized teams like this unit use aggressive policing tactics and traffic stops as a pretext to investigate other crimes.²⁰⁴

190 *Ibid.*

191 *Ibid.*

192 A field interview card is a document law enforcement officers can elect to fill out during a contact with an individual. These cards can contain information regarding who the person is with, what they are wearing, any social media accounts, or nicknames of the person.

193 Settlement Agreement, *Minnesota Department of Human Rights v. City of Minneapolis*, *supra* note 182, at pp. 49–50.

194 *Id.* at p. 50.

195 *Ibid.*

196 See U.S. DOJ, *Investigation of the City of Minneapolis and the Minneapolis Police Department*, *supra* note 182, at p. 89.

197 *What We Know About Tyre Nichols’ Death and the Memphis Officers Charged with His Murder*, CBS News (Feb. 2023) <<https://www.cbsnews.com/news/tyre-nichols-death-investigation-memphis-police-officers-charges-what-we-know/>> [as of Nov. 15, 2023].

198 *Ibid.*

199 *Ibid.*

200 *Ibid.*

201 *Ibid.*

202 Lopez, *Policing the Wrong Way: Memphis’s Scorpion Is the Latest Special Police Unit to Come Under Scrutiny (Policing the Wrong Way)*, N.Y. Times (Feb. 2023) <<https://www.nytimes.com/2023/02/01/briefing/memphis-scorpion-unit-tyre-nichols-death.html>> [as of Nov. 15, 2023].

203 *Ibid.*

204 *Ibid.*; see generally L.A. County Board of Police Commissioners, *Report of the Rampart Independent Review Panel*

Mr. Nichols’ brutal killing raises ongoing questions about law enforcement’s involvement in traffic stops, particularly pretextual stops that do not serve a public safety purpose. After his death, Mr. Nichols’ family expressed that they wish to “[i]mprove police-data transparency, end the use of armed officers for traffic enforcement, abandon pretextual stops, and disband all specialty task forces.”²⁰⁵ This year, the Board examines these issues and sheds light on factors that contribute to pretextual stops as well as increased use of force incidents.

4. Important Factors Associated with Pretext Stops: Specific Results of Stop and Assignment Type

During pretextual stops and searches, officers stop the person for the purpose of investigating an unrelated suspicion or a hunch. The data can provide guidance on certain stop outcomes that may be connected to pretextual stops. By looking at the results of stops, agencies, municipalities, and communities can examine enforcement actions that result in disparate treatment of individuals and address some of the root causes of pretextual stops. Similarly, assessing the data on use of force rates associated with these outcomes can illuminate the experiences of those stopped and help communities identify the impact of specific types of stops. The data also helps communities examine the impact of specialized policing teams whose primary focus is on certain stop outcomes, such as gang enforcement or narcotics enforcement.

Former Supreme Court Justice Powell cautioned that “an overbroad code ordinance tends to be invoked only where there is no other valid basis for arresting an objectionable or suspicious person...and that the opportunity for abuse is . . . self-evident.” – Powell, J. concurring opinion Cf. Lewis v. City of New Orleans, 415 U.S. 130, 136.

a. Pretextual Policing and the Results of Stop: Resisting Arrest and the Use of Field Interview Cards

Disparate treatment related to stop outcomes or actions taken during a stop offers opportunities for insight into how these stops unfold and could also provide guidance regarding the types of policing strategies that may drive disparities. This year the Board reviews data for two types of stop outcomes: (1) when someone is charged with resisting arrest only; and (2) when a field interview card is completed at the end of a stop.

i. Resisting Arrest

Examining the result of stop where someone is charged with resisting arrest and no other underlying violation may be an indicator of a pretext stop because the individual did not receive a citation for the

(Nov. 2000) <<https://exonerations.newkirkcenter.uci.edu/groups/sites/default/files/2020-06/OTH%20Rampart%20independent%20review%20panel.pdf>> [as of Nov. 15, 2023]; L.A. Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on Los Angeles Police Department* (1991) <<https://ia600302.us.archive.org/5/items/ChristopherCommissionLAPD/Christopher%20Commission%20LAPD.pdf>> [as of Nov. 15, 2023]; Leonard, *Judge Finds Three LAPD Officers ‘Factually Innocent’ of Filing False Gang Reports*, NBC L.A. (May 2022) <<https://www.nbclosangeles.com/investigations/lapd-false-gang-innocent-calgang/2902392/>> [as of Nov. 15, 2023]; Amicus Brief in Support of Appellee filed in *Baltimore City Police Department, et. al. v. Ivan Potts* (Md. App. Ct. 2019) Misc. No. 6 <<https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2020/01/Potts-Md.-BGL-Amicus-Brief.pdf>> [as of Nov. 15, 2023] (certified question in related matter, *United States v. Baltimore Police Department* (D. Md. Oct. 23, 2019) No. 1:17-cv-00099-JKB); Watkins, *N.Y.P.D. Disbands Plainclothes Units Involved in Many Shootings*, N.Y. Times (June 2020) <<https://www.nytimes.com/2020/06/15/nyregion/nypd-plainclothes-cops.html>> [as of Nov. 15, 2023]; Barns, *Police-Community Relations: A Study of Racial Disparity and the Effects of Hot Spots Policing Leadership Strategies* (2018) N.C. A&T State U. <doi:10751787> [as of Nov. 15, 2023]; Guariglia, *Police Use of Artificial Intelligence 2021 in Review* (Jan. 2022) Electronic Frontier Foundation <<https://www.eff.org/deeplinks/2021/12/police-use-artificial-intelligence-2021-review>> [as of Nov. 15, 2023].

²⁰⁵ Lowery, *Why There Was No Racial Reckoning*, The Atlantic (Feb. 2023) <<https://www.theatlantic.com/ideas/archive/2023/02/tyre-nichols-death-memphis-george-floyd-police-reform/672986/>> [as of Nov. 15, 2023].

original reason for stop, such as a broken tail light. The U.S. DOJ conducted several investigations of law enforcement departments and specifically examined resisting arrest charges.²⁰⁶ The U.S. DOJ found racial disparities in who was alleged to be resisting arrest. Data also showed that in these incidents, there was likely no evidence to stop the person in the first place, since they were not arrested or ticketed for the underlying basis for the stop.²⁰⁷

In California, resisting arrest can be charged as a misdemeanor and with or without accompanying charges.²⁰⁸ During a resisting arrest incident, an officer may allege they received an injury during the encounter. In this particular analysis, the Board looks specifically at misdemeanor resisting arrest charges without an alleged injury charged as a part of the crime and the sole charge is resisting arrest.

Penal Code section 148, subdivision (a), provides the following elements the prosecution must prove beyond a reasonable doubt to convict a person of a resisting arrest:

- (1) The person was a peace officer lawfully performing or attempting to perform their duties as a peace officer;²⁰⁹
- (2) The person willfully resisted, obstructed, or delayed a peace officer in the performance or attempted performance of those duties;²¹⁰ and
- (3) When the person acted they knew, or reasonably should have known, that the person was a peace officer performing or attempting to perform their duties.²¹¹

The law further explains that an officer is not “lawfully performing their duties” if they are unlawfully arresting or detaining someone, including using unreasonable or excessive force.²¹²

The law allows a person to be charged solely with this offense because “resisting” also includes obstructing or delaying an officer in the performance of their duties.²¹³ For example, if a person is stopped for a traffic violation and refuses to exit their vehicle at the demand of an officer, the person could be charged with delaying or obstructing the officer during the performance of their duties. Below, the Board investigates the link between pretextual policing and resisting arrest, with a specific focus on the type of stop, disparities in enforcement, and use of force rates.

a) RIPA Data Analysis

Scope and Reasons for Stops

Stops that involved a stand-alone or sole charge for resisting, obstructing, or delaying an officer (commonly referred to under California law as “resisting arrest”) were identified by three criteria. These criteria included: 1) the stop included a result of custodial arrest without a warrant; 2) Penal

206 U.S. DOJ Civil Rights Division, *Investigation of the Louisville Metro Police Department and Louisville Metro Government* (Mar. 2023) <https://www.justice.gov/d9/press-releases/attachments/2023/03/08/2023.3.8_impd_findings_report_0.pdf> [as of Nov. 15, 2023]; U.S. DOJ Civil Rights Division, *Investigation of the Ferguson Police Department* (Mar. 2015) <https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf> [as of Nov. 15, 2023]; U.S. DOJ Civil Rights Division, *Investigation of the Baltimore City Police Department*, *supra* note 40.

207 U.S. DOJ Civil Rights Division, *Investigation of the Louisville Metro Police Department and Louisville Metro Government*, *supra* note 206; U.S. DOJ Civil Rights Division, *Investigation of the Ferguson Police Department*, *supra* note 206; U.S. DOJ Civil Rights Division, *Investigation of the Baltimore City Police Department*, *supra* note 40.

208 CALCRIM No. 2656 (2022 ed.) (defining the elements of the offense of Resisting Peace Officer, Public Officer, or EMT); Pen. Code, § 148, subd. (a).

209 Pen. Code, § 148, subd. (a).

210 *Ibid.*

211 *Ibid.*

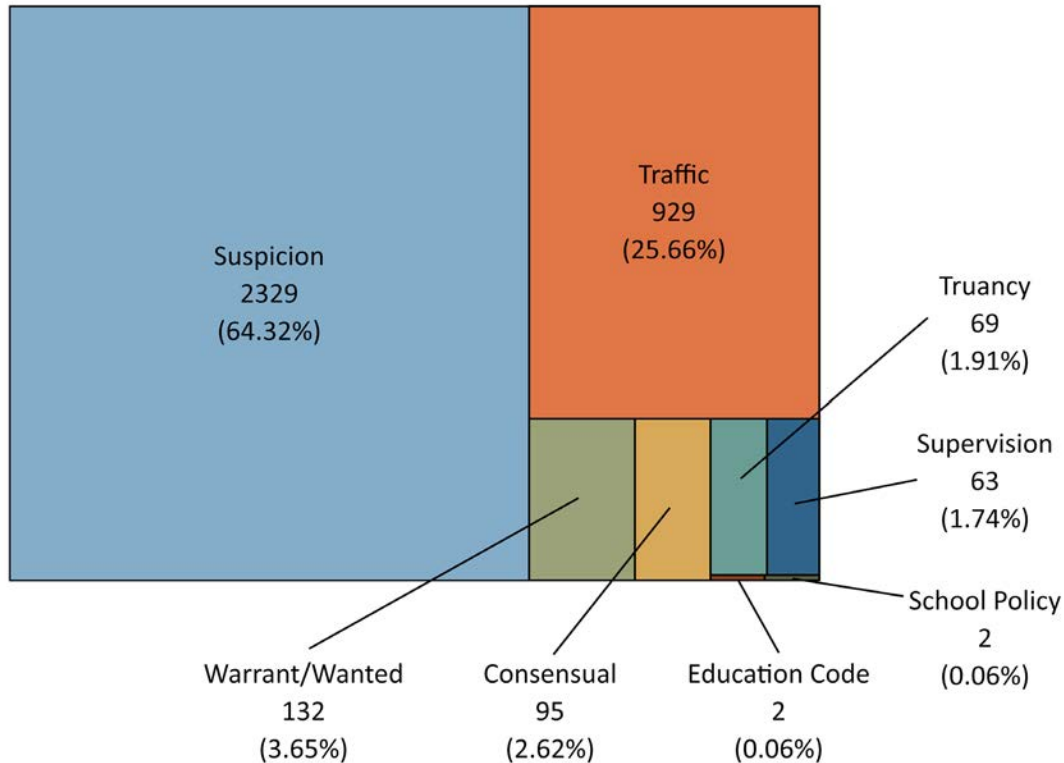
212 CALCRIM No. 2656 (2022 ed.), *supra* note 208; see *People v. White* (1980) 101 Cal.App.3d 161, 167.

213 Pen. Code, § 148, subd. (a); CALCRIM No. 2656, *supra* note 208; *People v. White*, *supra* note 212, 101 Cal.App.3d at p. 167.

Code section 148, subdivision (a)(1)²¹⁴ was listed as the offense code for the custodial arrest; and 3) the officer listed no other offenses under the result of stop (warnings, citations, other custodial arrest results, in-field cite and release results). The number of stops that met these criteria —sole resisting arrest stops — totaled 3,621 in 2022 (0.08%).

The largest portion of these sole resisting arrest stops were initiated for reasonable suspicion of criminal activity (2,329, 64.3% of sole resisting arrest stops), followed by traffic violations (929, 25.7%). The remaining sole resisting arrest stops were initiated for knowledge of a warrant/wanted person (132), consensual encounters resulting in a search (95), known supervision status (63), truancy (69), suspected Education Code violations (2), and suspected school policy violations (2).

Figure 33. Reasons for Stops Among Sole Resisting Arrest Stops – Total and Percent

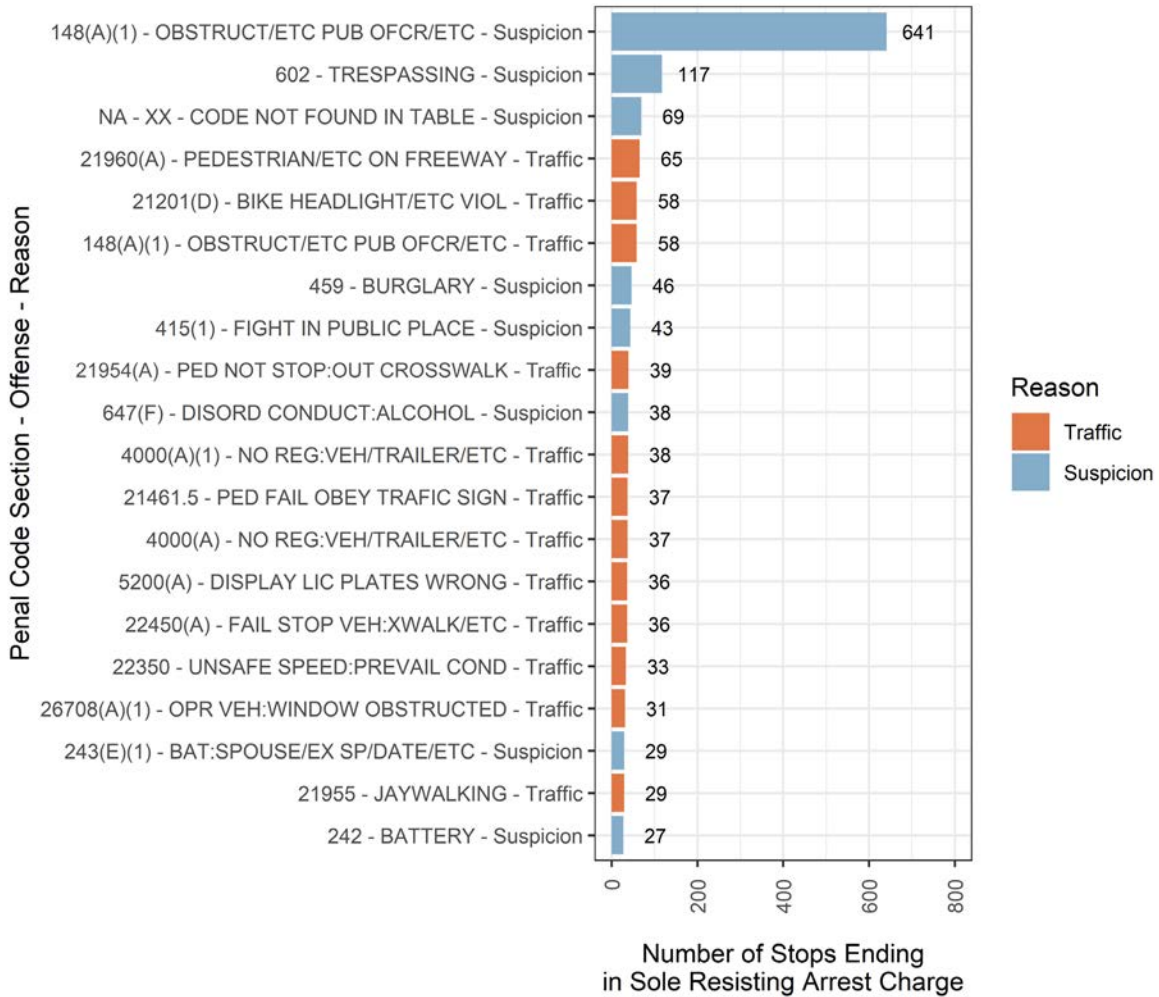


Among sole resisting arrest stops, the most common reason for stop was a suspected violation of Penal Code section 148, subdivision (a)(1) (641, 17.7% of sole resisting arrest stops). Traffic violations comprised 12 of the top 20 reasons for stops resulting in a sole resisting arrest charge. These traffic violations include four pedestrian violations, one bicycle-related violation, and four equipment violations.²¹⁵

214 Resisting arrest is defined in California law to include when a person is alleged to resist, obstruct, or delay an officer in the performance of their duties. On page 72, the Board lists the legal requirements under Penal Code section 148, subdivision (a).

215 Vehicle Code sections 21960, subdivision (a), 21954, subdivision (a), 21461.5, and 21955 were identified as pedestrian related traffic violations. Vehicle Code section 21201, subdivision (d) was identified as a bicycle-related violation. Vehicle Code sections 4000, subdivision (a), 4000, subdivision (a) (1), 5200, subdivision (a), and 26708, subdivision (a) (1) were identified as equipment violations.

Figure 34. Top 20 Reasons for Stop Among Sole Resisting Arrest Stops²¹⁶



216 Many of the narrative fields addressing the reason for stop described stopping the person for resisting arrest without further explanation. Other narrative fields involved allegations of obstructing an officer in the performance of their duties; for example, some fields stated “obstructed officers during traffic stop” or “running from an officer,” although they did not report any reasonable suspicion the person had committed a crime. (*Illinois v. Wardlow* (2000) 528 U.S. 119, 124.) The final grouping involves stops for traffic offenses that resulted in resisting arrest charges. These entries raise questions because officers may be making stops without reasonable suspicion, and the data demonstrates there are disparities in who is arrested for these offenses. (Pen. Code, § 148, subd. (a).)

Reason for Stop Narratives – Traffic Violation Stops that Resulted in Resisting Arrest Charges

Reviewing reason for stop narratives can help elucidate why the officers listed “resisting arrest” as the basis for their stops. Table 2 displays 12 randomly selected officers’ narrative descriptions where Penal Code section 148, subdivision (a), is the reason for stop. One theme the narratives show is that many of the stops for resisting arrest stem from the stopped individual engaging in alleged conduct that obstructs an officer in their duties. Another theme is stops associated with a person running or fleeing from officers. The last theme is stops where a person is suspected of being intoxicated or disturbing the peace (e.g., fighting in a public place, unreasonably loud noise, or attempting to provoke a fight).

Table 2.

Reason for Stop Narratives – Resisting Arrest Stops
“Driver drove through a solid red light and was stopped for the CVC violation. The driver refused to identify himself and requested to be taken to jail.”
“Driver was double parked and conducted an illegal u-turn on a one-way street thus causing a public safety to the community. During the traffic stop, driver failed to provide identification to the officers.”
“Suspect was arrested for A PC resisting arrest.”
“Interfered with police investigation. Fought with officers. Kicked officers”
“Subject had active warrant”
“Subject went into crime scene”
“Obstructed while trespassing”
“Subject refused to follow commands. Subject was asked to sit on the curb. Subject then got up and walked away.”
“Person engaged in physical fight, while officers attempted to remove, subject pulled away and attempted to re-engage.”
“Rep stated heard female screaming for help and sounds of her being assaulted.”
“Subject ran from a stolen vehicle”
“148 / 647f” ²¹⁷

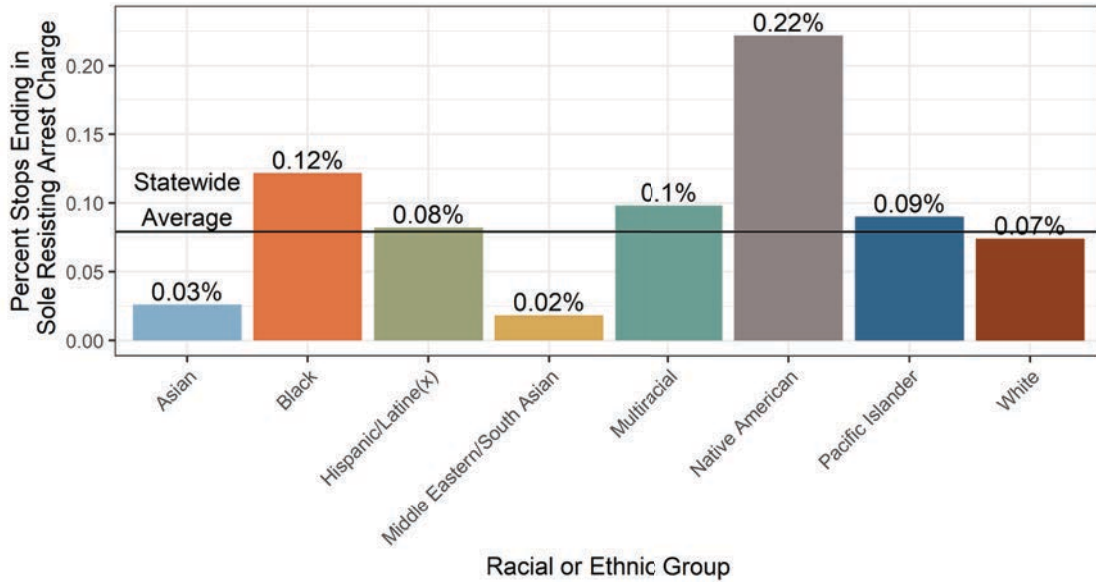
In reviewing these narrative descriptions, the Board hopes to better understand the context in which officers stop a person for resisting arrest and how those stops unfold.

²¹⁷ This entry is not compliant with RIPA regulations, which state: “When reporting the ‘Reason for Stop,’ the officer shall also provide a brief explanation (250-character maximum) regarding the reason for the stop. This explanation shall include additional detail beyond the general data values selected for the ‘Reason for Stop.’ Officers shall not include any personal identifying information of the persons stopped or Unique Identifying Information of any officer in this explanation.” (Cal. Code Regs., tit. 11, § 999.226, subd. (a)(14)(B) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].)

Per Resident Resisting Arrest by Identity Group

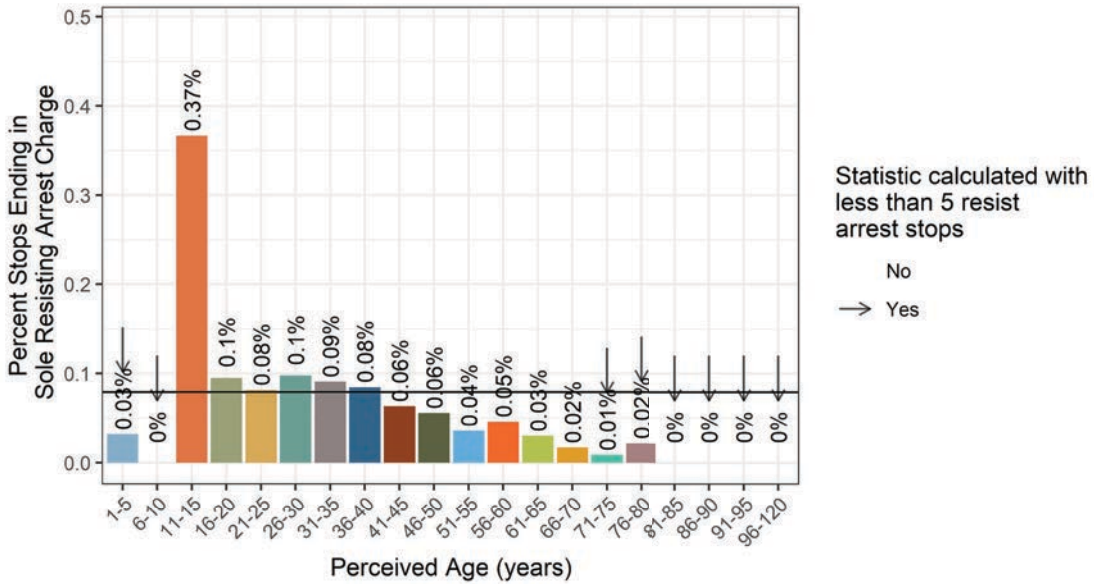
In 2022, there were 3,621 stops resulting in a sole resisting arrest charge among a total of 4,575,725 stops, a statewide average of 0.08 percent of stops. Individuals perceived as Native American had the highest percentage of stops that resulted in a sole resisting arrest charge among perceived racial or ethnic groups (0.22%, 2.8 times the state average). Other racial or ethnic groups with above average percentages of stops resulting in sole resisting arrest charges include individuals perceived as Black (0.12%), Multiracial (0.1%), Pacific Islander (0.09%), and Hispanic/Latine(x) (0.08%). Groups with below average percentages of stops resulting in sole resisting arrest charges are individuals perceived as Middle Eastern/South Asian (0.02%), Asian (0.03%), and White (0.07%).

Figure 35. Percent of Stops Resulting in Sole Resisting Arrest Charges by Racial or Ethnic Group



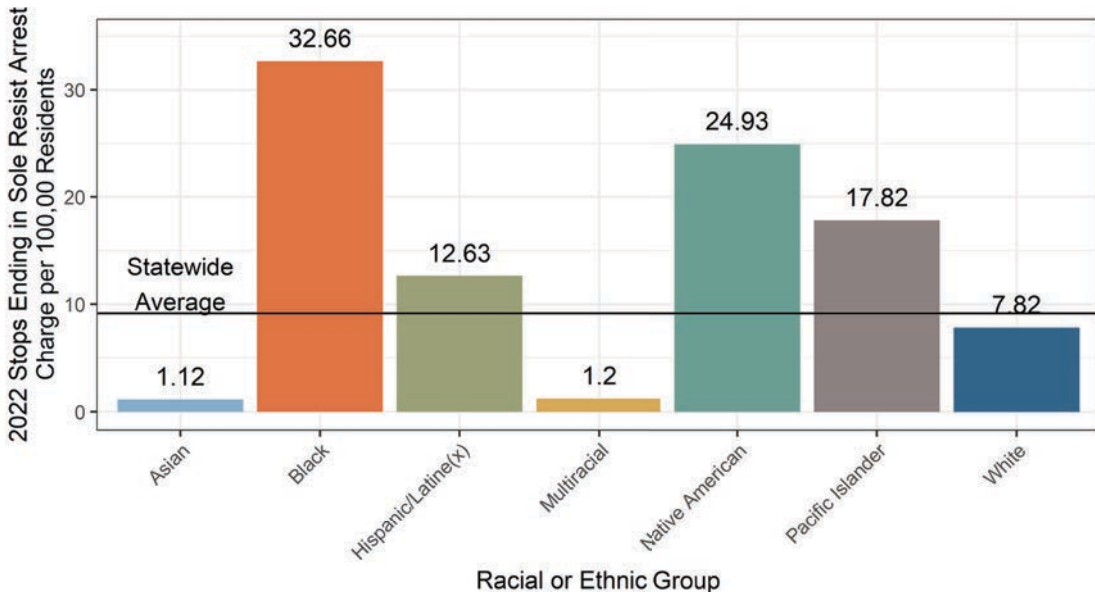
Individuals perceived as being between the ages of 11 and 15 had the highest percentage of stops that resulted in a sole resisting arrest charge among perceived age groups (0.37%, 94 total, 4.6 times the state average). All perceived age groups between 11 and 40 years old exceeded the state average (ages 16-20 [0.1%, 433 stops total], ages 21-25 [0.08%, 603 stops], ages 26-30 [0.1%, 818 total], ages 31-35 [0.09%, 529 total], and ages 36-40 [0.08%, 496 total]). All other perceived age groups had lower percentages of stops than the statewide average.

Figure 36. Percent of Stops Resulting in Sole Resisting Arrest Charges by Age Group



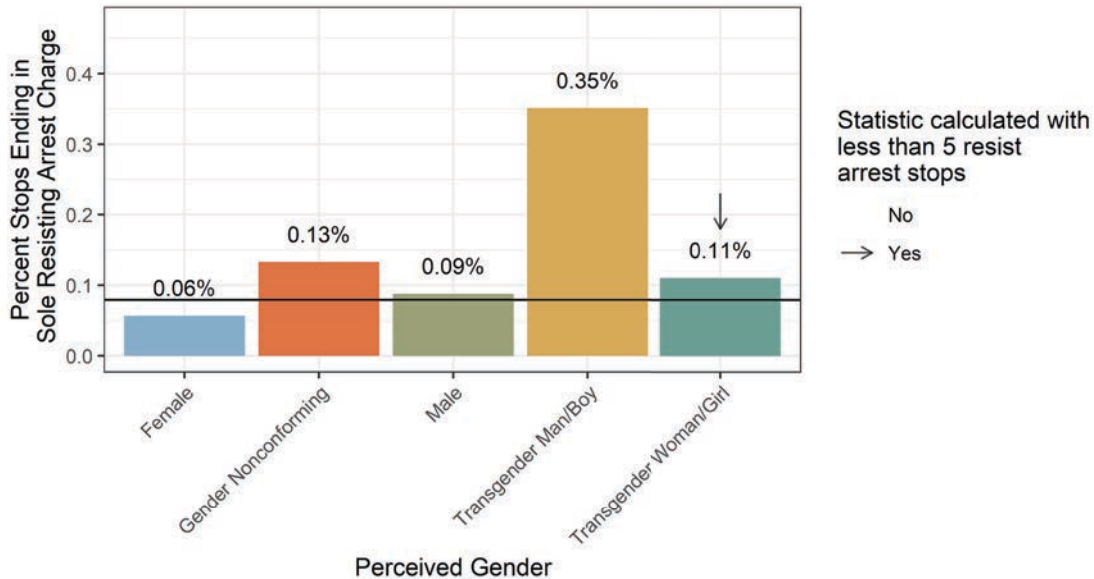
Based on the number of stops resulting in sole resisting arrest charges and the number of estimated California residents from the 2021 5-Year American Community Survey, an average of 9.2 stops per 100,000 residents resulted in a sole charge of resisting arrest in the state (line on Figure 37 below). Individuals perceived as Black had the highest per capita rate of stops that resulted in a sole charge of resisting arrest (32.7 stops per 100,000 residents, 3.3 times the statewide average). Individuals perceived as Black accounted for 19.2 percent of all stops that resulted in a sole charge of resisting arrest, while accounting for only 5.4 percent of the California residential population. Other racial or ethnic groups with higher than average per capita occurrences of stops resulting in a sole resisting arrest charge include individuals perceived as Native American (24.9 per 100,000), Pacific Islander (17.8 per 100,000), and Hispanic/Latine(x) (12.6 per 100,000). Racial or ethnic groups that had below average occurrence of stops that result in sole resisting arrest charges were individuals perceived as Asian (1.1 per 100,000), Multiracial (1.2 per 100,000), and White (7.8 per 100,000).

Figure 37. Occurrence of Sole Resisting Arrest Stops among Racial or Ethnic Groups per 100,000 California Residents in 2022



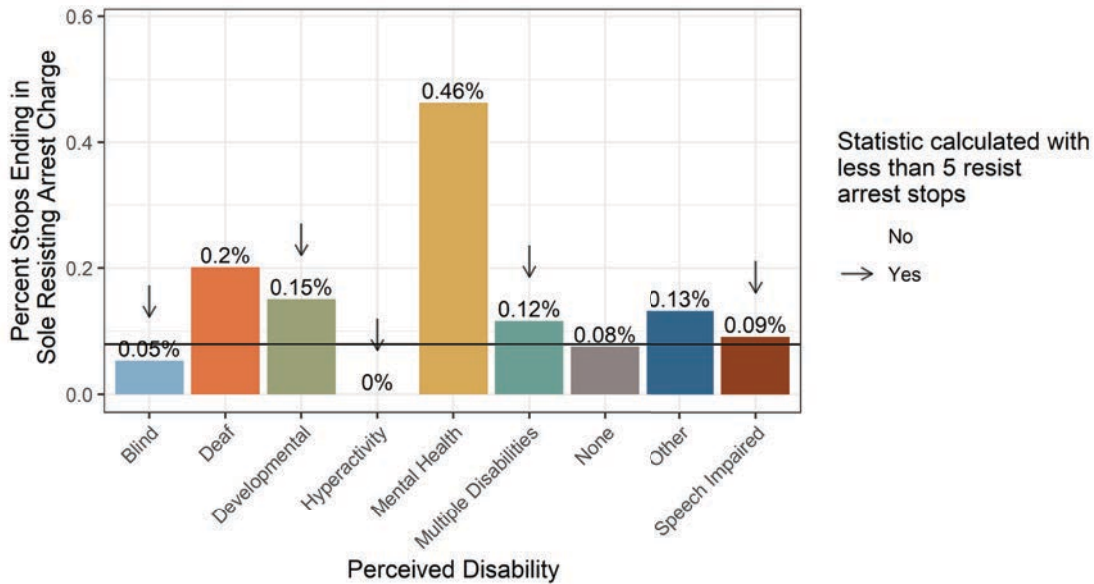
Individuals perceived as transgender men/boys had the highest percentage of stops resulting in a sole resisting arrest charge among perceived gender groups (0.35%, 4.4 times the state average). Other perceived gender identities with above average percentages of stops that result in sole resisting arrest charges include individuals perceived as gender nonconforming (0.13% of stops), transgender woman/girl (0.1%), and male (0.09%). Individuals perceived as female had below average percentages of stops that resulted in sole resisting arrest charges (0.06%).

Figure 38. Percent of Stops Resulting in Sole Resisting Arrest by Perceived Gender



Individuals perceived to have a mental health disability had the highest percentage of stops that resulted in a sole resisting arrest charge among perceived or known disability groups (0.46%, 5.7 times the state average). Individuals perceived as deaf also had the second highest percentage of stops result in a sole resisting arrest charge (0.2%, 2.5 times the statewide average). When no disability was perceived, the percentage of stops with resisting arrest as the sole charge was slightly below the statewide average (0.08%). Individuals with perceived disabilities of speech impaired, blind, developmental, hyperactivity, and multiple disabilities all had less than five total stops with resisting arrest as the sole charge. Collectively, perceived disabilities listed as “Other” had a higher than average percentage of stops resisting arrest as the sole charge.

Figure 39. Percent of Stops Resulting in Sole Resisting Arrest Charges by Perceived Disability

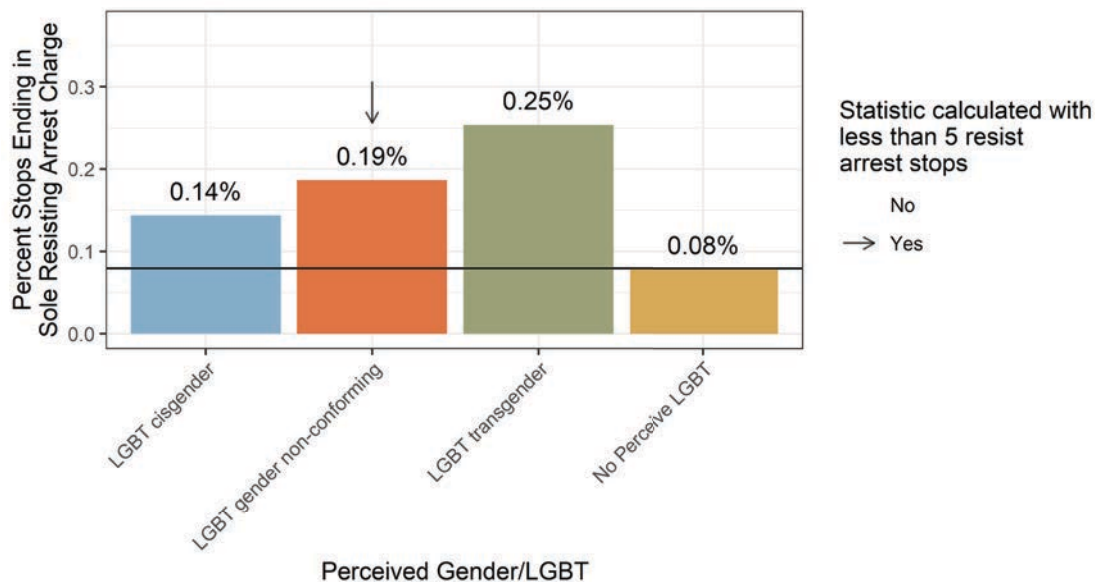


Officers record their perception of a stopped person’s gender and whether they perceive the person to be LGBT under two different fields. However, governing regulations specify that when officers indicate that they perceive an individual to be transgender, the officer must also indicate they perceive the person to be LGBT.²¹⁸ Accordingly, a substantial portion (17.3%) of individuals perceived to be LGBT were also perceived to be transgender. As displayed in Figure 38, transgender individuals experienced a percentage of stops that resulted in a sole resisting charge. Accordingly, Figure 40 examines sole resisting arrests across the intersections of the LGBT and gender identity characteristics.²¹⁹ Among these intersectional RIPA identity categories, individuals perceived as LGBT and transgender had the highest percentage of stops resulting in sole resisting arrest charges (0.25%, 3 times the statewide average). Individuals perceived as both LGBT and gender non-conforming had a higher than average percentage of stops resulting in sole resisting arrest charges (0.19%, less than 5 total sole resisting arrest only stops). Individuals perceived as LGBT and cisgender also had a higher than average percentage of stops resulting in sole resisting arrest charges (0.14%). Individuals perceived as non-LGBT represent the majority of the stops in the dataset, and were slightly below the statewide average of the percentage of stops resulting in sole resisting arrest charges (0.08%).

218 Cal. Code Regs., tit. 11, § 999.226, subd. (a)(6) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].

219 Within the 2022 RIPA stops, four individuals were perceived as either of the two transgender gender categories but not perceived as LGBT. Given that the entries for these four stops did not align with the requirements set forth in the regulations, they were removed from this particular analysis. (Cal. Code Regs., tit. 11, § 999.226, subd. (a)(6) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].)

Figure 40. Percent of Stops Resulting in Sole Resisting Arrest Charges by Perceived Gender and LGBT



b) Recommendations

Several district attorneys’ offices in California have created policies to restrict the use of standalone resisting arrest charges. In 2020, for example, Los Angeles created a policy requiring deputy district attorneys to dismiss standalone resisting arrest charges or charges where resisting arrest is charged in conjunction with trespass, disturbing the peace, driving without a valid license or a suspended license, simple drug possession, minor in possession of alcohol, drinking in public, under the influence of a controlled substance, public intoxication, or loitering.²²⁰ This particular policy reflects some of the findings in the RIPA data — e.g., trespass is one of the most frequently alleged reasons for stop when the result of stop is resisting arrest.

The ultimate goal of this policy is to protect public safety by focusing resources on combating serious crimes and diverting some misdemeanor cases from the criminal legal system to treatment providers.²²¹ The policy notes the prosecution of low-level offenses should be guided in part by data-driven reforms.²²² Through its own analysis, the Los Angeles County District Attorney’s office found that over 47 percent of those incarcerated for misdemeanors have a mental health disability, 60 percent have substance use disorder, and 20 percent of all arrests involve individuals who are unhoused.²²³ The policy also explains that misdemeanor convictions can have serious consequences by creating “difficulties with employment, housing, education, government benefits, and immigration for non-citizens and citizens alike.”²²⁴ Such convictions also are accompanied with heavy fines that force some people to choose between necessities such as rent and paying these fines.²²⁵ The policy concludes that “[d]espite the immense social costs, studies show that prosecution of the offenses driving the bulk of misdemeanor cases has minimal, or even negative, long-term impacts on public safety.”²²⁶

220 L.A. District Attorney’s Off., *Special Directive: Misdemeanor Case Management* (Dec. 2020) pp. 1-4 <<https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-07.pdf>> [as of Nov. 15, 2023].

221 *Id.* at p. 2.

222 *Id.* at p. 1.

223 *Ibid.*

224 *Ibid.*

225 *Ibid.*

226 *Ibid.*

An unhoused person “refused to take down his tent, so the police officers decided to arrest him for resisting them. As the situation grew increasingly tense, an officer used a Taser on the man, who wore only boxer shorts, even though he was not acting violently and was not likely to be concealing a weapon. The incident, captured on police video, was described in a report by the Los Angeles Police Department’s [I]nspector [G]eneral that raises concerns about whether some Los Angeles police officers react too aggressively to people they perceive as uncooperative or disrespectful.”²²⁷

In Santa Clara County, there is also a 2020 policy that restricts district attorneys from filing resisting arrest cases and requires deputies to review body-worn camera footage prior to filing any charges.²²⁸ The policy discourages deputies from filing standalone resisting arrest cases unless extraordinary circumstances exist.²²⁹ District attorneys are also required to provide feedback to officers regarding the positive and negative effects of resisting arrest charges. The agency’s stated purpose for this policy change is to reduce the use of excessive force, build community trust, and reduce disparities in enforcement.²³⁰ The Santa Clara District Attorney’s office noted in the policy the importance of having robust independent review of these charges, reducing excessive use of force incidents, and increasing trust between law enforcement and “all racial [and ethnic] groups in our community.”²³¹

Based on the RIPA data and a review of the impacts of evolving district attorneys’ policies, the Board makes several recommendations to agencies, municipalities, district attorneys, and the Legislature:

- (1) Adopt internal policies that prohibit district attorneys from filing and law enforcement agencies from submitting to the district attorney’s office for review misdemeanor criminal filings on standalone resisting arrest charges²³² if it is the sole charge listed at the time of arrest and is not accompanied by other citable offenses,²³³ unless extraordinary circumstances exist such as an identifiable, continuing threat to another individual or there exists another circumstance of similar gravity;²³⁴
- (2) Explore internal policies that limit district attorneys from filing standalone misdemeanor resisting arrest charges or charges where resisting arrest is charged in conjunction with trespass, disturbing the peace, driving without a valid license or a suspended license, simple drug possession, minor in possession of alcohol, drinking in public, under the influence of a controlled substance, public intoxication, or loitering unless extraordinary circumstances exist such as an identifiable, continuing threat to another individual or there exists another circumstance of similar gravity;²³⁵
- (3) Develop policies to require officers to notify supervisors prior to making an arrest for resisting arrest and have supervisors review any case where resisting arrest is alleged in a report;²³⁶

227 Chang, *LAPD Inspector General Raises Concern over Officers’ Actions with People Accused of Resisting Arrest*, LA Times (Aug. 27, 2018) p. 1 <<https://www.latimes.com/local/lanow/la-me-lapd-resisting-arrest-20180827-story.html>> [as of Nov. 15, 2023].

228 Santa Clara District Attorney’s Off., *Bend the Arc Reforms: Community Initiatives* (2020) p. 7 <https://countyda.sccgov.org/sites/g/files/exjcpb1121/files/Bend%20The%20Arc%20Reforms%20Handout_%20Final.pdf> [as of Nov. 15, 2023].

229 *Ibid.*

230 *Ibid.*

231 *Ibid.*

232 Pen. Code, § 148, subd. (a).

233 L.A. District Attorney’s Off., *Special Directive: Misdemeanor Case Management*, *supra* note 220, at pp. 2, 4.

234 *Id.* at p. 2.

235 *Id.* at pp. 2–4.

236 Consent Decree, *U.S. v. The City of Ferguson* (E.D. Mo. 2016) 4:16-cv-000180-CP, p. 23 <https://www.justice.gov/d9/ferguson_consentdecree_4-19-16.pdf> [as of Nov. 15, 2023]; Consent Decree, *U.S. v. Police Department of Baltimore*

- (4) Develop policies requiring district attorneys to review body-worn camera footage in any case that involves a resisting arrest allegation prior to filing charges;²³⁷
- (5) Adopt internal policies that eliminate or severely limit arrests and charges filed for resisting arrest during consensual encounters unless extraordinary circumstances exist such as an identifiable, continuing threat to another individual or there exists another circumstance of similar gravity;
- (6) Adopt internal policies that prohibit arrest and filing of charges against individuals stopped for community caretaking²³⁸ unless extraordinary circumstances exist such as an identifiable, continuing threat to another individual or there exists another circumstance of similar gravity; and
- (7) Adopt internal policies that prohibit arrest and filing of charges against individuals if the alleged resisting stems from a disability. Given the disparities demonstrated by the data, the Board hopes these recommendations can serve as guidance to communities wishing to address these inequities.

ii. Field Interview (FI) Cards

Another result of stop that may be connected to pretext stops is when a field interview card is completed by a law enforcement officer. A field interview card is a document law enforcement officers can elect to fill out during a contact with an individual. These cards can contain information regarding who the person is with, what they are wearing, any social media accounts, or nicknames of the person. As shown below, the RIPA data show disparities regarding when officers complete field interview cards. More specifically, the reasons given for those stops often do not implicate a need to complete a field interview card in the first place. If an officer conducts a pretextual stop — for which the RIPA data show there are disparities, suggesting bias may play a role — any initial bias for the stop could influence the decision to complete a field interview card and the information the officer records on the card and enters into the database. This may result in the compounding of bias affecting the database.

Many of these field interview cards are entered into criminal databases, such as CalGang, which are used by law enforcement to share the data collected in these interviews with other agencies.²³⁹ The practice of conducting field interviews and collecting field interview cards varies agency by agency, so not every FI card from a police contact is submitted into a database. CalGang is a database created by the California DOJ²⁴⁰ over two decades ago to track police contacts with alleged gang members. However, in a 2015 report, the State Auditor found that the data was not always accurate and the database violated the privacy rights of individuals, making the system ineffective for fighting gang-related crimes.²⁴¹ For example, the audit found over 42 individuals who were entered into CalGang who were younger than one year old, and the database indicated 28 of those individuals admitted to being gang members.²⁴²

City, et al. (D. Md. 2017) 1:17-cv-00099-JKB, p. 22 <https://www.mdd.uscourts.gov/sites/mdd/files/ConsentDecree_1.pdf> [as of Nov. 15, 2023].

237 Santa Clara District Attorney's Off., *Bend the Arc Reforms: Community Initiatives*, *supra* note 228, at p. 7.

238 "Community Caretaking" relates to an officer's non-crime related duties that are not performed for the purpose of investigating a crime. (See *supra* note 29.) A welfare or wellness check or the officer's community caretaking function cannot serve as a basis for initiating a detention or search. (See Cal. Code Regs., tit. 11, § 999.226, subd. (a)(13) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].)

239 Office of the Attorney General, *Annual Report on CalGang* (2022) p. 10 <oag.ca.gov/system/files/media/ag-annual-report-calgang-2022.pdf> [as of Nov. 15, 2023].

240 See Cal. DOJ, *Technology Acquisition Project Case Study California Department of Justice CAL/CANG System* (1999) p. 2.

241 Cal. State Auditor, *The CalGang Criminal Intelligence System: As the Result of its Weak Oversight Structure It Contains Questionable Information That May Violate Individuals' Privacy Rights*, Report 2015-130 (Aug. 2016) p. 23 <<https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>> [as of Nov. 15, 2023].

242 *Id.* at p. 39.

In 2017, in response to this report, the state Legislature passed AB 90, which required the California DOJ to routinely audit the database and issue regulations to help improve accuracy in the database.²⁴³ The new law also required agencies to provide notice to an individual when they are entered into the database.²⁴⁴ Since its implementation, there have been six reports issued by the DOJ on CalGang.

“Brian Allen was driving home from work in July 2017 when he spotted someone from his days at Crenshaw High School. He stopped, they talked and he agreed to give the friend — an aspiring rapper with a criminal record — a ride. A passing LAPD cruiser did a U-turn and pulled over Allen’s Nissan. Officers questioned both men and let them go. But more than a year later, police notified Allen that he’d been added to CalGang, a controversial database of thousands of gang members and those in their orbits. Police alleged that he associates with gangs because, Allen suspects, he has been seen in gang areas — the South L.A. neighborhood where he lives — and with an alleged gang member — the old friend.” “I was stunned,” the 31-year-old dance instructor said. “You automatically get cast as [a gang associate] often just because of how you look and where you are.”²⁴⁵

Even under the new regulations, questions about the accuracy of the information in the database persist, and there are ongoing concerns about how youth are criminalized by this practice. For example, children as young as 13 years old can still be entered into this database.²⁴⁶ In 2020, the California DOJ restricted all users of CalGang from using data entered by the LAPD — the largest agency making entries into CalGang — compromising almost 25 percent of all entries into the system.²⁴⁷ These concerns arose after an internal audit revealed significant misuse of the tracking system, including entering false information or information without reasonable suspicion the person was involved in criminal gang-related activity.²⁴⁸

Specifically, it was alleged that more than a dozen officers entered false reports into the system labeling innocent drivers or pedestrians as gang members.²⁴⁹ These issues were brought to light when a mother made a complaint after she was notified her son’s name had been erroneously added to the CalGang database.²⁵⁰ The complaint eventually led to a larger investigation into the officers and LAPD’s practices.²⁵¹ The internal investigation found that officers from the LAPD Metro Division had falsified numerous records labeling individuals as gang members.²⁵²

One of the deputies accused of falsifying reports claimed that the contacts documented on field interview cards were a result of pressure from commanders in LAPD to increase gang contacts and an

243 Assem. Bill No. 90 (2017-2018 Reg. Sess.).

244 *Ibid.*

245 Chabria, *A Routine Police Stop Landed Him on California’s Gang Database. Is It Racial Profiling?*, L.A. Times (May 9, 2019) <<https://www.latimes.com/politics/la-pol-ca-california-gang-database-calgang-criminal-justice-reform-20190509-story.html>> [as of Nov. 15, 2023].

246 Office of the Attorney General, *Attorney General Becerra Restricts Access to LAPD-Generated CalGang Records, Issues Cautionary Bulletin to All Law Enforcement, and Encourages Legislature to Reexamine CalGang Program* (July 2020) <<https://oag.ca.gov/news/press-releases/attorney-general-becerra-restricts-access-lapd-generated-calgang-records-issues>> [as of Nov. 15, 2023].

247 *Ibid.*

248 *Ibid.*

249 Leonard, *LAPD Metro Officer Claims Quotas Drove False Gang Reports*, NBC L.A. (Aug. 2020) <<https://www.nbclosangeles.com/investigations/lapd-metro-officer-claims-quotas-drove-false-gang-reports/2420186/>> [as of Nov. 15, 2023].

250 Murphy, *Los Angeles Officers Suspended after Boy Is Wrongly Labeled a Gang Member*, N.Y. Times (Jan. 8, 2020) <<https://www.nytimes.com/2020/01/08/us/lapd-gang-database.html>> [as of Nov. 15, 2023].

251 *Ibid.*

252 *Ibid.*

unwritten policy encouraging officers to meet quotas.²⁵³ Several of the officers faced criminal charges for making these false reports; the judge later dismissed the charges, stating, “They were acting under the current state of affairs. And, the dereliction, if there is one, does not lie with them It lies higher up in the command structure, perhaps to the highest levels.”²⁵⁴ As a result of the internal investigations, LAPD permanently withdrew from the CalGang database.²⁵⁵ However, RIPA data does indicate LAPD is using field interview cards during contacts. This is concerning because LAPD may avoid legal requirements, such as notice, by not using the CalGang system.²⁵⁶

More generally, notice is an ongoing issue with the statewide database. Advocates have argued that the LAPD scandal is troubling, but it is the CalGang system itself that must be eliminated.²⁵⁷ For example, one of the more recent reforms is the requirement to notify if an individual was placed in CalGang. Presently, an individual has the right to receive notice of their entry into CalGang unless it would compromise an ongoing investigation.²⁵⁸ A person under the age of 18 and their guardian or attorney must be notified of their entry into CalGang. Similarly, the letter should notify the person that their information was entered into the database, the reason for the person’s inclusion in the database, and inform them of their right to request removal from the database.²⁵⁹ However, data indicate there are very few requests for removal despite large numbers of entries into the database, raising concerns.²⁶⁰ In 2022, there were a total of 1,001 records added to CalGang, and only 16 requests for removal, or 0.01 percent of new entries. Of those requests, only one removal was granted.²⁶¹ A State Auditor report “found evidence that many minors whose name and information were added to the shared gang database were either not notified at all, or not given adequate instructions on how to contest their designation”²⁶² This finding, raises broader questions as to whether individuals who are entered into the database feel comfortable challenging their designations or whether they have been informed about their legal right to apply for removal.²⁶³

“Even when operating as intended... the database too often places incorrect and life-altering labels on young men of color based on little more than their clothing, their tattoos, and the neighborhoods they live in.” See FN 257, Rector, LA Times.

Studies have also shown that labeling a person as a gang member can alter a person’s life, and the safeguards put in place to challenge those designations are failing.²⁶⁴ These labels can affect everything

253 Leonard, *LAPD Metro Officer Claims Quotas Drove False Gang Reports*, *supra* note 249.

254 Leonard, *Judge Finds Three LAPD Officers ‘Factually Innocent’ of Filing False Gang Reports*, *supra* note 204.

255 Office of the Attorney General, *Attorney General Becerra Restricts Access to LAPD-Generated CalGang Records, Issues Cautionary Bulletin to All Law Enforcement, and Encourages Legislature to Reexamine CalGang Program*, *supra* note 246.

256 L.A. Police Dept., *LAPD Field Interview (FI) Cards NR21240jl* (Sept. 2021) <<https://www.lapdonline.org/newsroom/lapd-field-interview-fi-cards-nr21240jl/>> [as of Nov. 15, 2023].

257 Rector, *Police Reform Advocates Demand LAPD Stop Using CalGang Database*, L.A. Times (May 2020) <<https://www.latimes.com/california/story/2020-05-05/police-reform-advocates-demand-lapd-stop-using-calgang-database>> [as of Nov. 15, 2023].

258 Agencies did not provide notice of entry into CalGang in only two instances in 2022. (Office of the Attorney General, *Annual Report on CalGang*, *supra* note 239, at p. 4.)

259 Pen. Code, § 186.34.

260 Office of the Attorney General, *Annual Report on CalGang*, *supra* note 239, at p. 4.

261 *Ibid.*

262 Urban Peace Institute, *Analysis of the Attorney General’s Annual Report on CalGang for 2018* (Sept. 2019) p. 11 <<https://static1.squarespace.com/static/55b673c0e4b0cf84699bdfbf/t/5d7f9846de5a2c25a55a36e5/1568643144338/CalGang+Annual+Report+2018.pdf>> [as of Nov. 15, 2023]; Howle, *The CalGang Criminal Intelligence System: As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals’ Privacy Rights (The CalGang Criminal Intelligence System)*, California State Auditor, pp. 48–52 <<https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>, 2016)> [as of Nov. 15, 2023].

263 Urban Peace Institute, *Analysis of the Attorney General’s Annual Report on CalGang for 2018*, *supra* note 262, at p. 11; Howle, *The CalGang Criminal Intelligence System*, *supra* note 262, at pp. 48–52.

264 Rector, *Police Reform Advocates Demand LAPD Stop Using CalGang Database*, *supra* note 257.

from a person’s access to housing, jobs, their ability to remain in the United States, employment opportunities, and how they might be treated by the criminal legal system.²⁶⁵ Children and young adults who are labeled as gang members or even subject to increased police interactions are particularly vulnerable.²⁶⁶ These stops can cause trauma and anxiety for the child.²⁶⁷ When occurring in public, these stops can also increase the stigma associated with these intrusive stops.²⁶⁸

Further, the consequences of a youth being labeled as a gang member can have serious repercussions. If youth are “known to police” because their names are in a database, even if due to a consensual encounter, they may later be treated by law enforcement as having a criminal history even if they do not.²⁶⁹ The use of field interview cards and their entry into criminal databases have tremendous impacts on youth in heavily policed communities since “as a practical matter, it may be difficult for a minor, or a young-adult, living in a gang-heavy community to avoid being labeled by police as a gang member when the list of behaviors includes items such as ‘is in a photograph with known gang members,’ ‘name is on a gang document, hit list or gang-related graffiti’ or ‘corresponds with known gang members or writes and/or receives correspondence.’”²⁷⁰

“Demetra Johnson, with PUSH L.A., said her son was put into the database when he was 17 years old despite never having come into contact with police except as a police cadet, and it took her two months of collecting letters from his teachers and counselors, and taking him to a police station to prove he didn’t have any gang related tattoos, to get the police to remove his name. ‘During those 60 days when he was on there, I was just terrified,’ she said.”²⁷¹

Because of these ongoing concerns about the accuracy of the database and the impact these labels have on community members, the Board explores the RIPA data to examine how or when these cards are being used and if there are any disparate impacts on communities. In previous years, the Board began investigating the use of field interview cards with a specific focus on individuals perceived as transgender and youth. This year, the Board builds on this work by examining more broadly the impact of these policing practices and how they may be connected to pretextual policing.

a) RIPA Data Analysis

Reason for Stop

In 2022, officers reported filling out a field interview card as a result of stop for 129,971 stops. Among stops during which officers completed field interview cards, the most common primary reason for stop

265 *Ibid.*

266 Henning, *Policing as Trauma: The Harms of Hyper-Surveillance and Over-Policing Youth of Color (Policing as Trauma)* (2022) 37 *Crim. Just.* 42; Jackson et al., *Police Stops Among At-Risk Youth: Repercussions for Mental Health (Police Stops Among At-Risk Youth)* (2019) 65 *J. of Adolescent Health* 627–632.

267 Henning, *Policing as Trauma*, *supra* note 266; Jackson et al., *Police Stops Among At-Risk Youth*, *supra* note 266, at pp. 627–632.

268 Henning, *Policing as Trauma*, *supra* note 266; Jackson et al., *Police Stops Among At-Risk Youth*, *supra* note 266, at pp. 637–632.

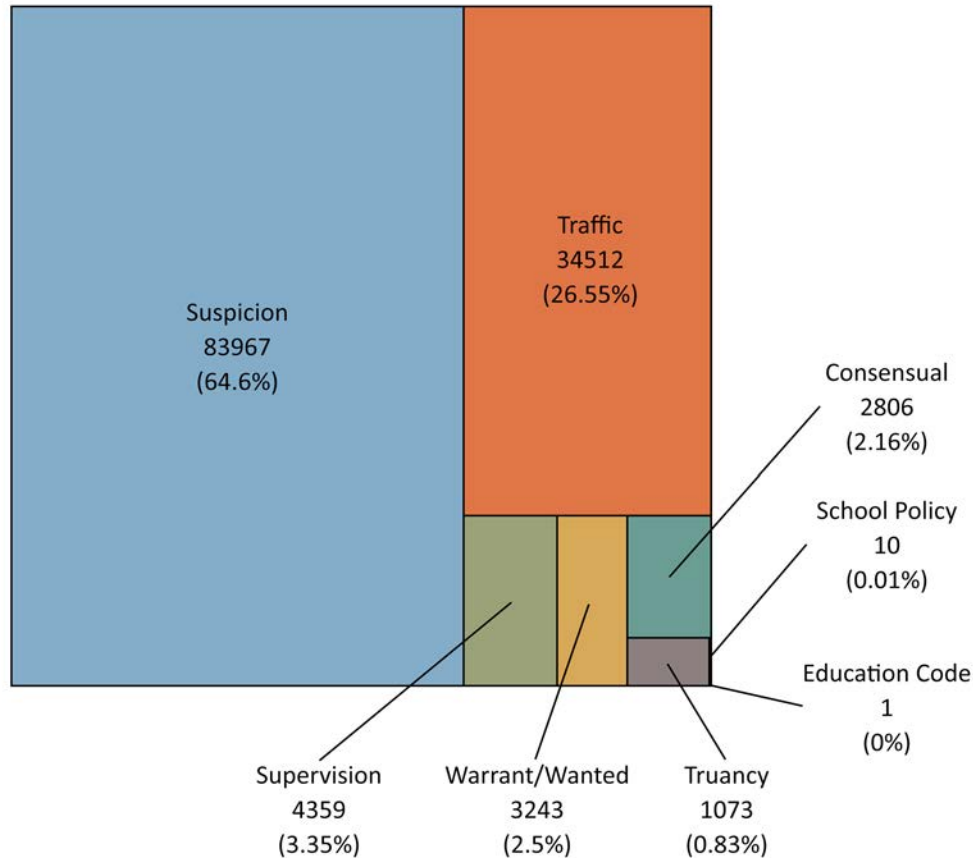
269 See Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at p. 122 (citing ACLU *Comment Letter to California Department of Justice Regulations Coordinator Regulations for the Fair and Accurate Governance of the CalGang Database Title 11, Division 1, Chapter 7.5) Regulations for the Fair and Accurate Governance of Shared Gang Databases, Title 11, Division 1, Chapter 7.6* (Jun. 25, 2019) p. 2 <https://www.aclusocal.org/sites/default/files/20190625_civil_rights_calgang_reg_cmts.pdf> [as of Nov. 29, 2022] (noting that placement in CalGang may influence how law enforcement officer engage with individuals and may also impact legal outcomes, such as decisions to grant bail or adjustments to an individual’s immigration status)).

270 *Assem. Com. Pub. Safety, Analysis of Assem. Bill No. 90 (2017-2018 Reg. Sess.) As Amended* (Apr. 17, 2017) p. 6.

271 Henning, *Policing as Trauma*, *supra* note 266; Jackson et al., *Police Stops Among At-Risk Youth*, *supra* note 266, at pp. 627–632.

was reasonable suspicion of criminal activity (83,967, or 64.5% of field interview card stops). The next most common primary reasons officers conducted stops for which they completed field interview cards were traffic violations (34,512, 26.6%), knowledge of supervision status (4,359, 3.4%), knowledge of warrant/wanted person (3,243, 2.5%), and consensual encounters resulting in searches (2,806, 2.2%). Other reasons for stop, totaling less than one percent of stops resulting in the completion of a field interview card were truancy (1,072), school policy (10), and “Education Code” (1).

Figure 41. Field Interview Cards by Reason for Stop – Counts and Percentage of Total



When an officer stops an individual with a primary reason of either reasonable suspicion of criminal activity or a traffic violation, the officer also reports the specific suspected offense.²⁷² Among the primary offenses within stops for reasonable suspicion, the offenses with the largest number of field interview cards were local ordinance violations (9,463),²⁷³ community caretaking (5,079),²⁷⁴ trespassing

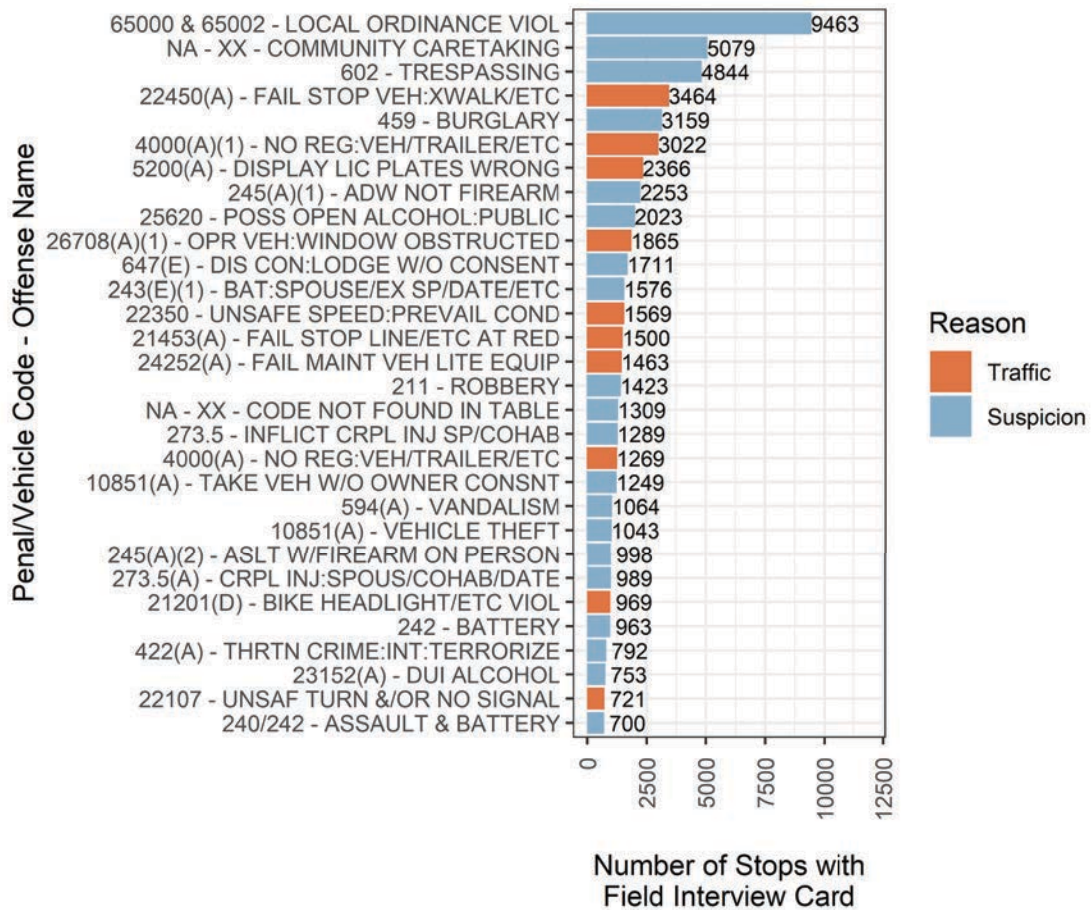
272 The RIPA regulations specify that “... the officer shall identify the primary code section and subdivision of the suspected violation of law that formed the basis for the stop, *if known to the officer.*” (Cal. Code Regs., tit. 11, § 999.226, subd. (a)(14)(A)(2) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023] (emphasis added).) Therefore, officers have the option to leave the offense code field blank, under some circumstances. Accordingly, 14.6 percent of stops for reasonable suspicion of criminal activity do not have an associated offense code.

273 Local Ordinance Violation Offense Codes 65002 and 65000 were combined into 65000 for the purposes of this figure.

274 “Community Caretaking” relates to an officer’s non-crime related duties that are not performed for the purpose of investigating a crime. (See *supra* note 29.) A welfare or wellness check or the officer’s community caretaking function cannot serve as a basis for initiating a detention or search. (See Cal. Code Regs., tit. 11, § 999.226, subd. (a)(13) <<https://oag.ca.gov/system/files/media/RIPA%202022%20Rulemaking%20Final%20Text%20of%20Regulations.pdf>> [as of Nov. 15, 2023].)

(4,844), and burglary (3,451).²⁷⁵ Among stops for traffic violations, officers filled out field interview cards most commonly for failure to stop vehicle (3,464), vehicle registration (3,022), and improper display of license plates (2,366).

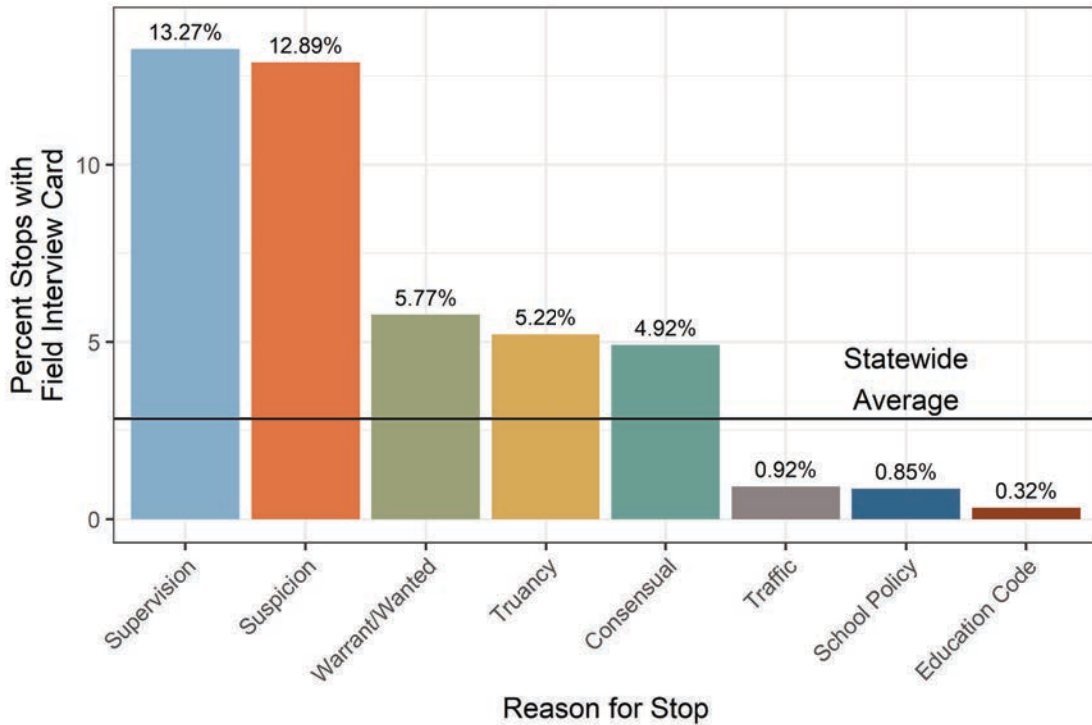
Figure 42. Top 30 Penal and Vehicle Codes by Total Use of Field Interview Cards



Stops initiated due to known supervision status (field interview cards completed during 13.3% of stops) and reasonable suspicion of criminal activity (field interview cards completed during 12.9% of stops) had the largest percentages of stops with an officer completing a field interview card. Other reasons for stops with field interview cards completed that were higher than the state average (2.8%) were known warrant/wanted person (5.8%), truancy (5.2%), and consensual encounters resulting in a search (4.9%). The remaining reasons for stops fell below the state average for the percent of stops resulting in having a field interview card completed.

²⁷⁵ Local ordinance violations are specified using California DOJ CJIS Offense Codes 65000 and 65002. Community caretaking is specified using California DOJ CJIS Offense Code 99990.

Figure 43. Percentage of Stops with Field Interview Cards by Reason for Stop



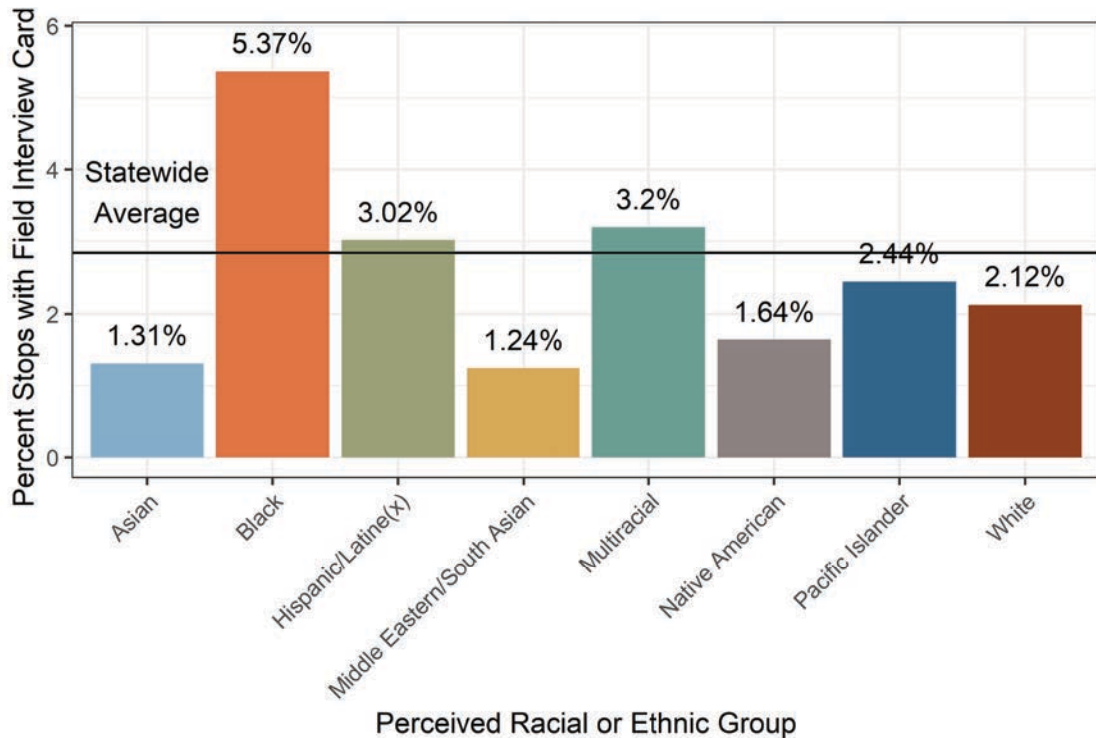
Field Interview Cards by Identity Group

Among stops during which an officer completed a field interview card, the largest portion according to perceived gender were male (100,550 field interview cards, 77.4%) followed by female (28,487, 21.9%). Less than 1 percent of field interview cards were for individuals perceived as either transgender or gender nonconforming.

Among stops that included an officer filling out a field interview card, the largest portion by racial or ethnic group were of individuals perceived as Hispanic/Latine(x) (59,292, 45.6%). The next largest groups were individuals perceived as White (31,611, 24.2%) and Black (30,673, 23.6%). All other racial or ethnic groups each accounted for less than 3 percent of field interview card stops.

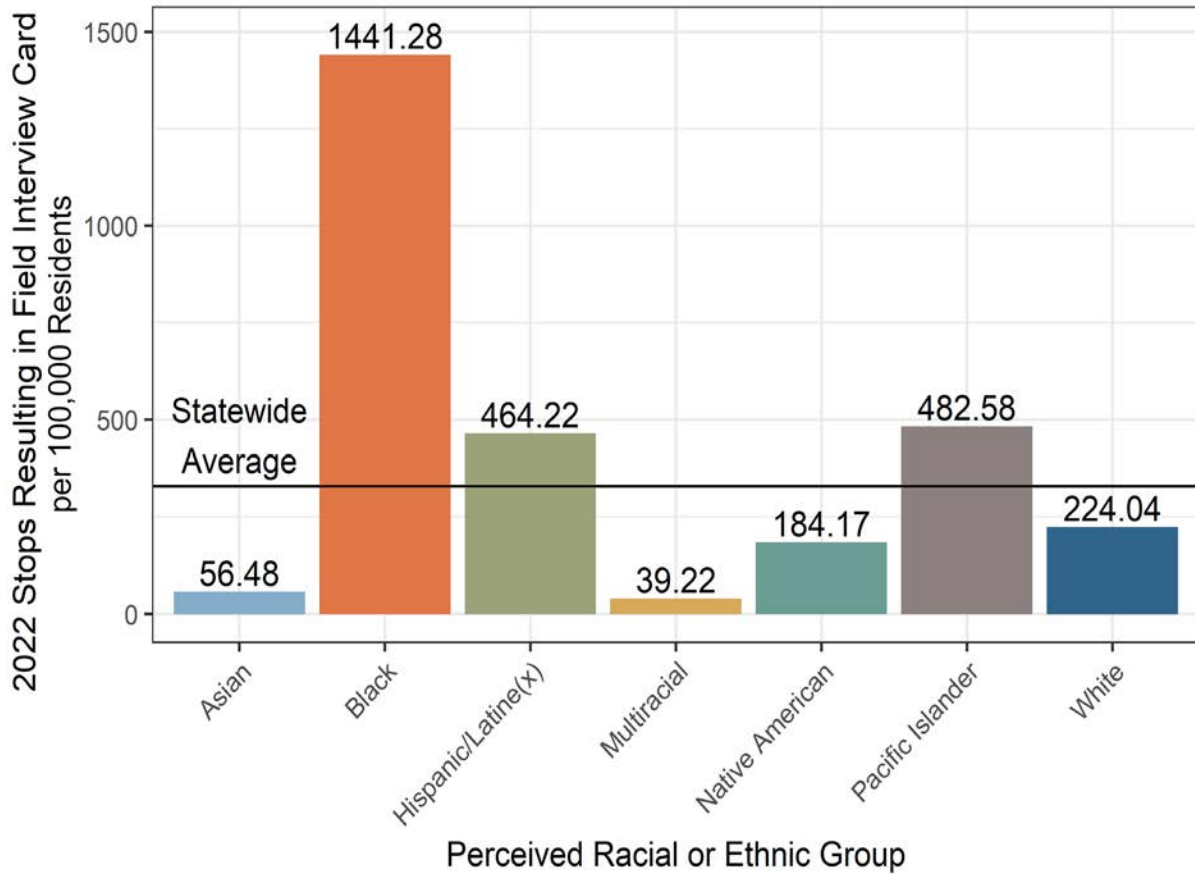
Across the state in 2022, there were 129,971 field interview cards filled out by officers (2.8% of stops – horizontal line on Figure 43). Among racial or ethnic groups, field interview cards were filled out for a larger percentage of stops when individuals were perceived as Black (5.4% of stops), Multiracial (3.2%), or Hispanic/Latine(x) (3.0%). For all other perceived racial or ethnic groups, field interview cards were filled out during a lower percentage of stops than the statewide average.

Figure 44. Percentage of Stops with Field Interview Cards by Racial or Ethnic Group



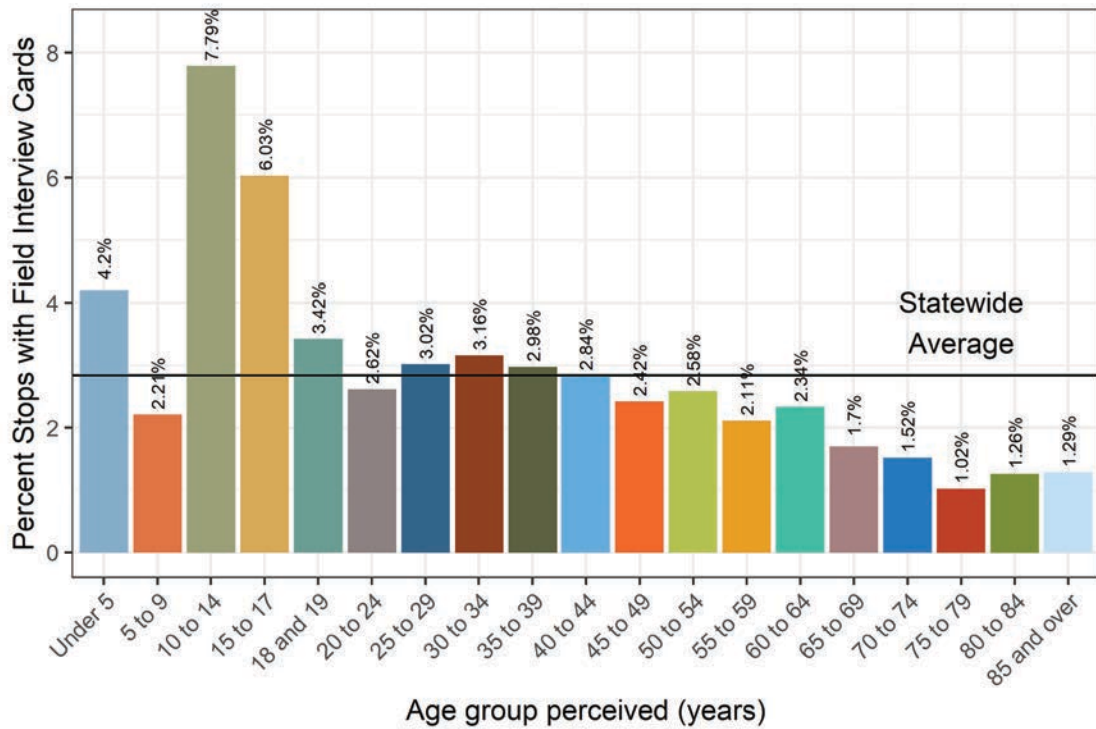
Across the state in 2022, officers filled out 129,971 field interview cards compared to an estimated 39,455,353 California residents in the 5-Year American Community Survey. This means officers filled out an interview card during 329 stops for every 100,000 residents. Among racial or ethnic groups, individuals perceived as Black had the highest per capita occurrence of field interview cards (1,441 field interview cards per 100,000 residents, or 4.4 times the statewide average). Individuals perceived as Pacific Islander (482 per 100,000 residents) and Hispanic/Latine(x) (464 per 100,000 residents) were also above the statewide average per capita rate. Racial or ethnic groups with lower incidence of interview cards per capita field include individuals perceived as White (224 per 100,000 residents), Native American (184 per 100,000 residents), Asian (56 per 100,000 residents), and Multiracial (39 per 100,000 residents).

Figure 45. Number of Field Interview Cards per 100,000 Residents – Racial or Ethnic Groups



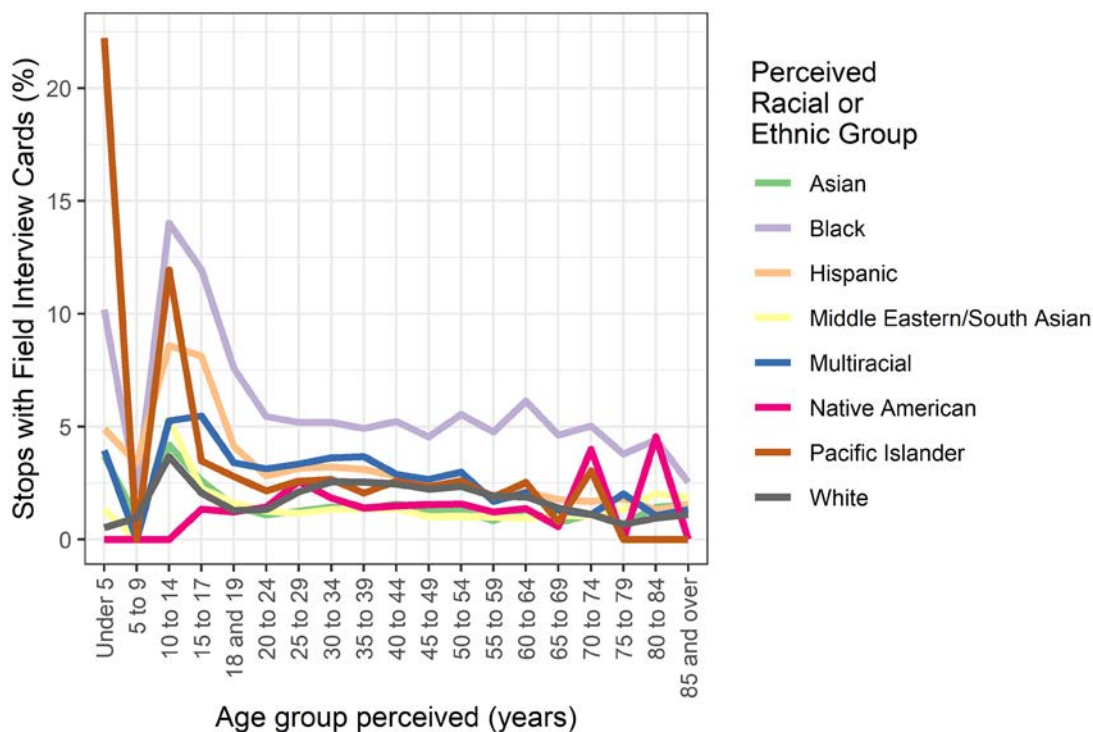
Among perceived age groups, the highest percentage of stops during which field interview cards were filled out were among 10 to 14 year olds (7.8% of stops where a field interview card was filled out) and 15 to 17 year olds (6% of stops where a field interview card was filled out), which were both more than two times the statewide average percentage of stops with field interview cards (2.8%). The percentage of stops during which field interview cards were completed generally declined with age, with the lowest percentages occurring among the oldest age groups.

Figure 46. Percentage of Stops with Field Interview Cards by Age Group



Individuals perceived as being both Black and between the ages of 10 to 14 years old had the highest percentage of stops during which officers completed a field interview card for any intersection of racial or ethnic identity and perceived age (14% of stops 10 to 14 year olds perceived to be Black involved a field interview card). Across all age groups between the ages of 10 and 80, individuals perceived as Black had the highest percentage of stops in which a field interview card was completed among racial or ethnic groups. Among all racial or ethnic groups, with the exception of Native Americans, the highest percentage of stops in which a field interview card was completed occurred among 10 to 14 year olds.

Figure 47. Percentage of Stops with Field Interview Cards by Racial or Ethnic Group and Age Group



b) Recommendations

In previous years, the Board made several recommendations regarding the use of field interview cards with a specific focus on youth. Since youth are provided with additional protections in many areas of the law — such as custodial interrogations — the Board recommended that policymakers extend these protections to field interview cards to ensure statements are given voluntarily, given that youth are more susceptible to being influenced by an officer.²⁷⁶ Field interview cards may have potentially negative consequences to youth, particularly if any statements made by youth could be used against them criminally. After reviewing the data, this year the Board makes additional recommendations regarding the use of field interview cards.

The Board recommends that the Legislature, municipalities, and agencies develop policies or enact laws that do the following:

- (1) Prohibit the collection of field interview cards and entries into CalGang or any agency database in absence of an arrest.
- (2) Prohibit the collection of field interview cards and entries of youth into CalGang or any agency database designed to track criminal information after youth are questioned or a field interview is conducted without the presence of an attorney.²⁷⁷

²⁷⁶ Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at pp. 120–123.

²⁷⁷ See *id.* at p. 123.

- (3) In the alternative to recommendations (1) and (2) above, agencies should recognize and include in their policies that these encounters may not be fully consensual, and officers should be required to inform the individuals subject to the field interview that they do not have to respond to questions and are free to leave.²⁷⁸ Additionally, officers should be required to:
 - a. Inform individuals that providing a physical form of identification is voluntary;²⁷⁹
 - b. Not use a person’s failure to stop, answer questions, decision to end the encounter, or attempt or decision to walk away to establish reasonable suspicion for initial stop or detention, search, citation, or arrest of the person if an officer is engaged in, or attempting to engage in, a field interview.²⁸⁰
- (4) Consider prohibiting law enforcement agencies from creating criminal databases that are not tied to information about an arrest or conviction.
- (5) The Legislature and law enforcement agencies should ban the collection of and entries into any agency databases designed to track criminal information if the entry is collected from a stop for community caretaking or when a person might be experiencing a mental health crisis. Law enforcement supervisors shall review any case where a field interview card is filled out after a community caretaking or crisis intervention contact. This recommendation does not apply to collecting information that might assist law enforcement in its approach to interacting with the individual in crisis or in engaging in their legal requirements under disability civil rights laws.
- (6) Make the removal process from CalGang and other agency databases designed to track or store criminal information more transparent. Require agencies to conduct regular audits, including determining if notice is properly provided to a person entered into a database and evaluating the processes for removal from the databases to ensure compliance with the laws.
- (7) Create funding incentives for agencies to adopt policies prohibiting the input of non-criminal information into agency databases for tracking purposes and audit those practices.

The Board hopes agencies and the Legislature consider changing these laws, both to improve the accuracy of information obtained during contacts with community members and, more importantly, to protect vulnerable youth from questioning and improper entry into criminal databases.

b. Assignment Type: Specialized Teams and Hot Spot Policing

In addition to some of the issues raised regarding specific types of enforcement actions or results of stops, it is also important to examine certain types of specialized teams, such as gang enforcement units. This year, the Board begins to examine the relationship between officer assignment type and disparities in enforcement. The Board also discusses the impact of “hot spot” policing and predictive policing where specialized units are often deployed, and reviews data on use of force rates.

²⁷⁸ “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.” Moreover, research suggests that officers’ discretion leads to disparate stops and searches of Black and Hispanic/Latine(x) individuals. Therefore, there are likely better solutions, such as severely limiting when a field interview would be appropriate or eliminating the practice entirely. (See Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at p. 115 (citing Sommers, *Are Consent Searches Truly Voluntary?* (May 14, 2019) Scholars Strategy Network <<https://scholars.org/contribution/are-consent-searches-truly-voluntary>> [as of Nov. 15, 2023]); see also Settlement Agreement, *Minnesota Department of Human Rights v. City of Minneapolis*, *supra* note 182, at p. 50.

²⁷⁹ Settlement Agreement, *Minnesota Department of Human Rights v. City of Minneapolis*, *supra* note 182, at p. 50.

²⁸⁰ *Ibid.*

Breonna Taylor was killed sleeping in her own bed when a specialized team, using a hot spot model of policing, went to serve a no-knock search warrant.²⁸¹ Similarly, the unit that beat Tyre Nichols to death was a specialized team focused on gang and drug-related crimes, operating under a hot spot model of policing.²⁸²

Over the past several years, there has been a growing national conversation about the impact of specialized policing teams and hot spot policing.²⁸³ Specialized teams are developed in police departments to target specific types of alleged criminal activity and are often created to address spikes in activities that are criminalized by the state, such as drug crimes.²⁸⁴ Similarly, hot spot policing concentrates these units in specific areas in communities that are considered high crime.²⁸⁵ The public’s support of these units appears to ebb and flow based on crime rates, but it is unclear how effective they may be at combating crime.²⁸⁶

i. RIPA Data Analysis

Overall, 95.4 percent of 2022 RIPA reported stops (4,366,428 stops) were performed by officers of assignment type “Patrol, traffic enforcement, field operations.” The next most common stop types are “Other,”²⁸⁷ with 1.98 percent of RIPA reported stops (90,462 stops), and “Gang Enforcement” at 1.32 percent of RIPA reported stops (60,297 stops).²⁸⁸

Table 3. Percentage and Counts of Stops by Officer Assignment Type

Assignment Type	Percent	Count
Patrol	95.07%	4,366,428
Other	1.97%	90,462
Gang Enforcement	1.31%	60,297
Narcotics/vice	0.35%	15,977
Investigative/detective	0.32%	14,839
Task Force	0.23%	10,460
K-12 Public School	0.2%	9,130
Special Events	0.07%	3,028
Roadblock or DUI	0.06%	2,867
Compliance Check	0.05%	2,237

281 In a 2023 report, the United Nations Human Rights Council issued recommendations to address human rights violations associated with policing in the United States. The recommendations included ending the use of no knock warrants and use of militarized equipment often used by these specialized teams, for example SWAT. (U.N. Human Rights Council, *Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement*, *supra* note 5, at p. 29; see Lopez, *Policing the Wrong Way*, *supra* note 202.

282 Lopez, *Policing the Wrong Way*, *supra* note 202.

283 Arango and Gabler, *Amid Criticism, Elite Crime Teams Dwindled. Then Cities Brought Them Back*, N.Y. Times (Feb. 2023) <<https://www.nytimes.com/2023/02/06/us/police-teams-memphis-scorpion-unit.html>> [as of Nov. 15, 2023].

284 *Ibid.*

285 *Ibid.*

286 *Ibid.*

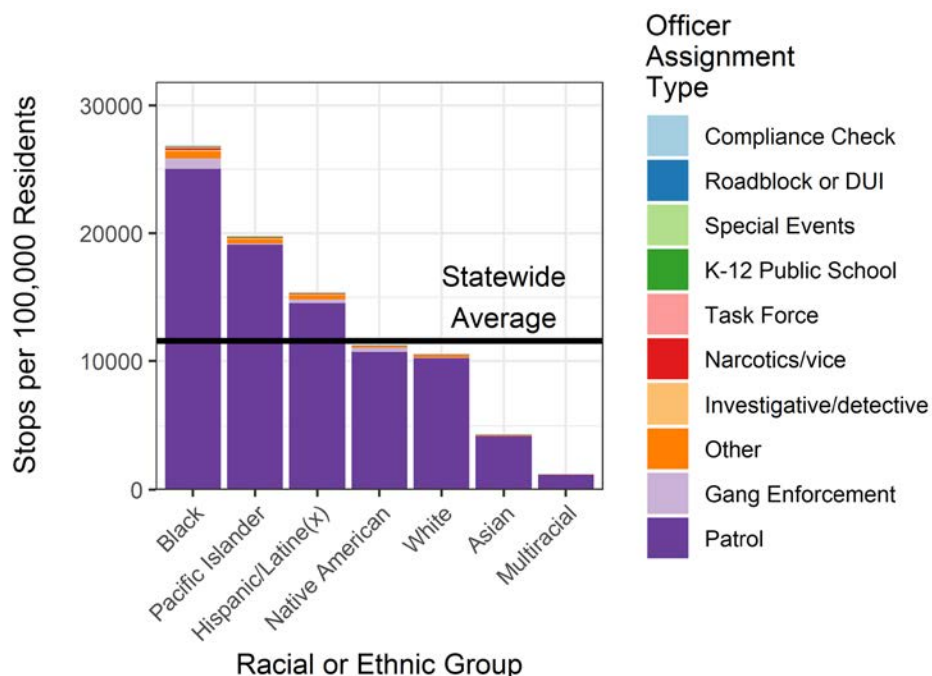
287 For a description of the “Other” category, please see *supra* note 30.

288 The most commonly provided word in the description of the officer assignment type “Other” is the word “commercial,” contained within 24,110 of the 90,462 stops by officers of assignment type “Other,” while a series of words describing patrol activities (e.g., patrol, enforcement) were among the next most common terms.

a. Per Resident Stops by Racial or Ethnic Group and Officer Assignment Type

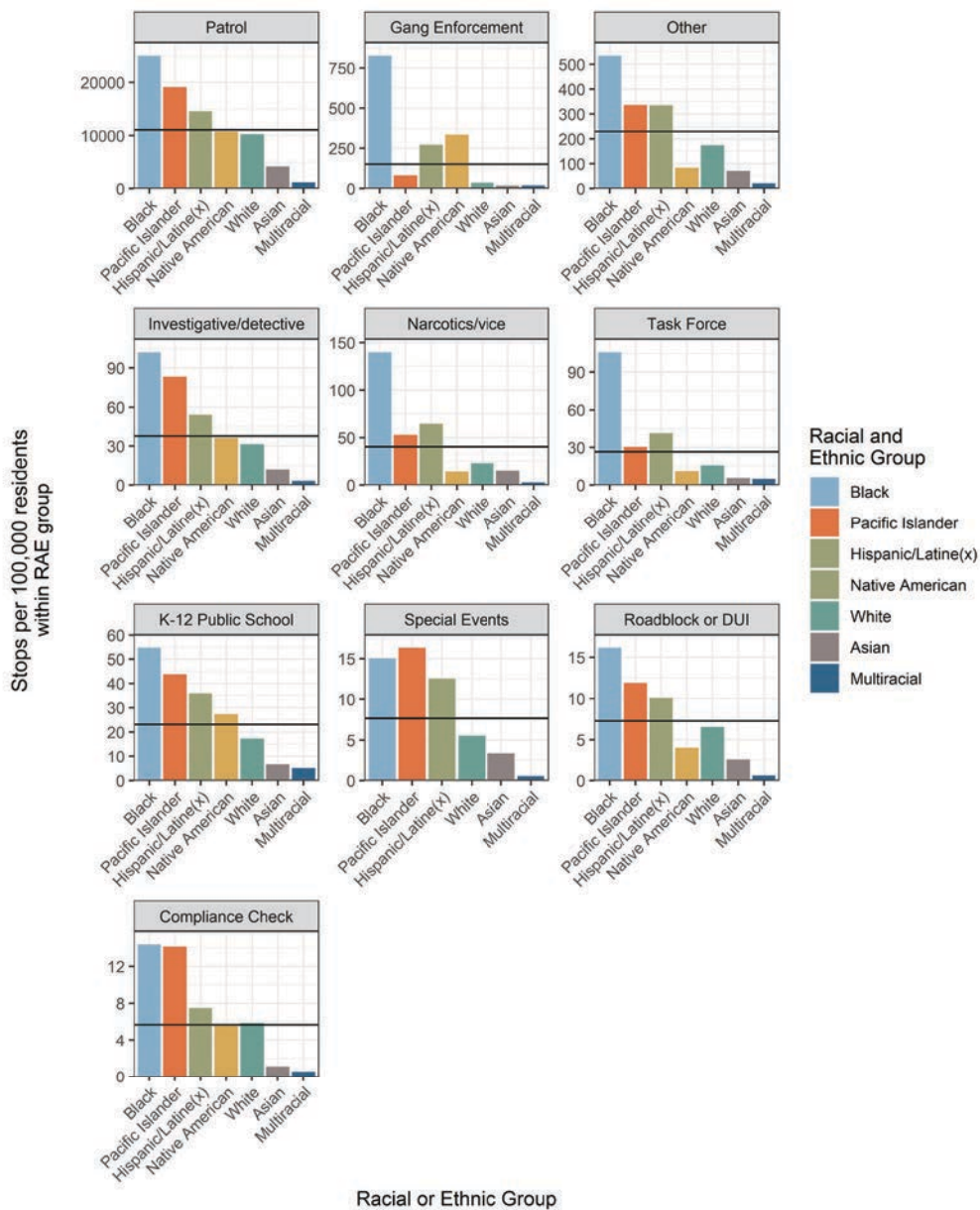
With 4,575,725 RIPA reported stops in California in 2022 and 39,455,353 California residents reported in the 2021 5-Year American Community Survey, there were an estimated 11,597 RIPA reported stops per 100,000 residents statewide. Per 100,000 residents, there were higher than average numbers of stops of individuals perceived to be Black (26,850 stops per 100,000 residents, 2.3 times the statewide stop rate), Pacific Islander (19,774 stops per 100,000 residents, 1.7 times the statewide stop rate), and Hispanic/Latine(x) (15,382 stops per 100,000 residents, 1.3 times the statewide stop rate). All other perceived racial and ethnic groups were stopped less frequently than the statewide average.

Figure 48. Stop Frequency of Perceived Racial or Ethnic Groups per 100,000 Residents - Panels by Officer Assignment



The identity of the perceived racial and ethnic groups with the highest per resident stop rate was consistent across officer assignment types. For nine of the 10 officer assignment types, the top per resident stop rate was for individuals perceived as Black. Additionally, for nine of the 10 officer assignment types, the top three per resident stop rates were for Black, Pacific Islander, and Hispanic/Latine(x) residents. While the same three groups experienced higher stop rates across most officer assignment types, the size of the racial and ethnic stop rate disparities varied. The largest relative disparities between racial and ethnic groups in the number of stops per resident occurred for officer assignment type “Gang Enforcement.” Disparity among groups relative to the average can be calculated as the average difference between all pairs of racial and ethnic groups. These quantities can be averaged and then divided by the mean stops per 100,000 residents within that assignment type. The units for this metric can be reported as a proportion of the mean per capita stop rate. For officer assignment “Gang Enforcement,” racial or ethnic groups are on average two times the value of the mean per capita stop rate away from each other.

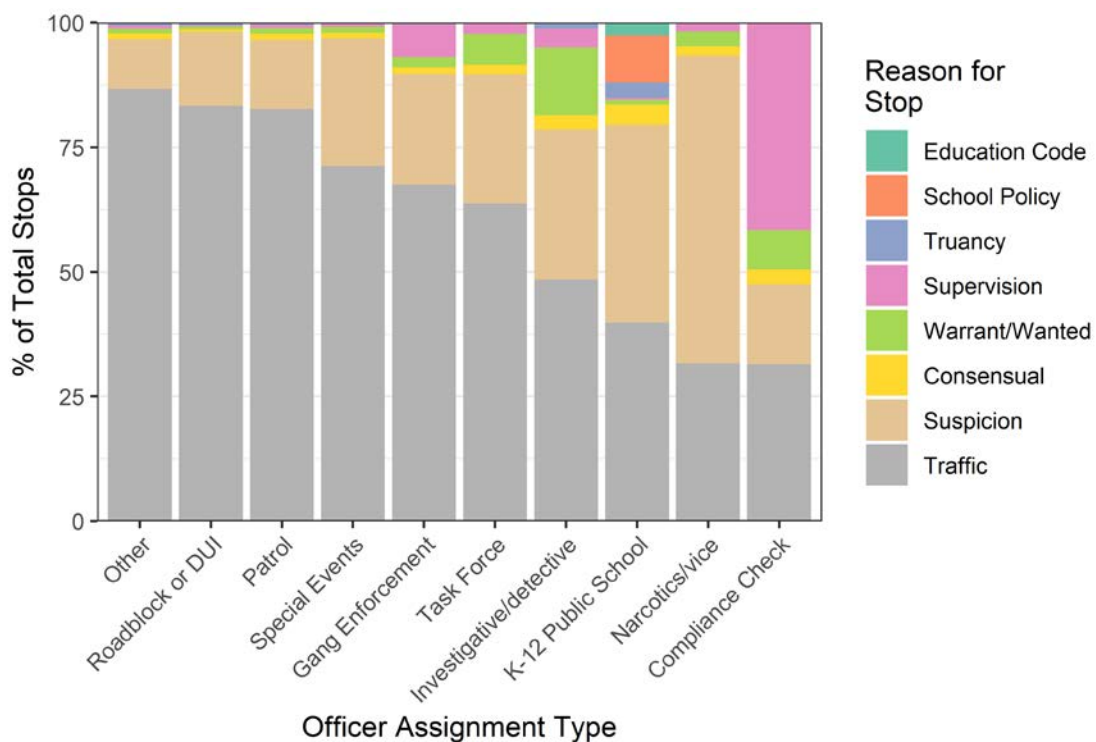
Figure 49. Stop Frequency of Perceived Racial and Ethnic Groups per 100,000 Residents –Panels by Officer Assignment



b) Reason for Stop by Officer Assignment Type

Across 2022 RIPA reported stops, 82.1 percent occurred with a primary reason for stop of traffic violation. The percentage of stops that had a traffic violation as the reason for stop differed among officer assignment types, ordered by percent traffic violation in the figure above. Assignment types with higher than average percentages of traffic violations as the reason for stop were “Other” (86.7% stops for traffic violations), roadblock or DUI (83.3% stops for traffic violations), and patrol, traffic enforcement, field operations (82.7% stops for traffic violations). All other officer assignment types had lower than average percentages of traffic violations as the reason for stop and included special events (71.2% stops for traffic violations), gang enforcement (67.5% stops for traffic violations), task force (63.7% stops for traffic violations), investigative/detective (48.5% stops for traffic violations), K-12 public school (38.8% stops for traffic violations), narcotics/vice (31.6% stops for traffic violations), and compliance check (31.5% stops for traffic violations).

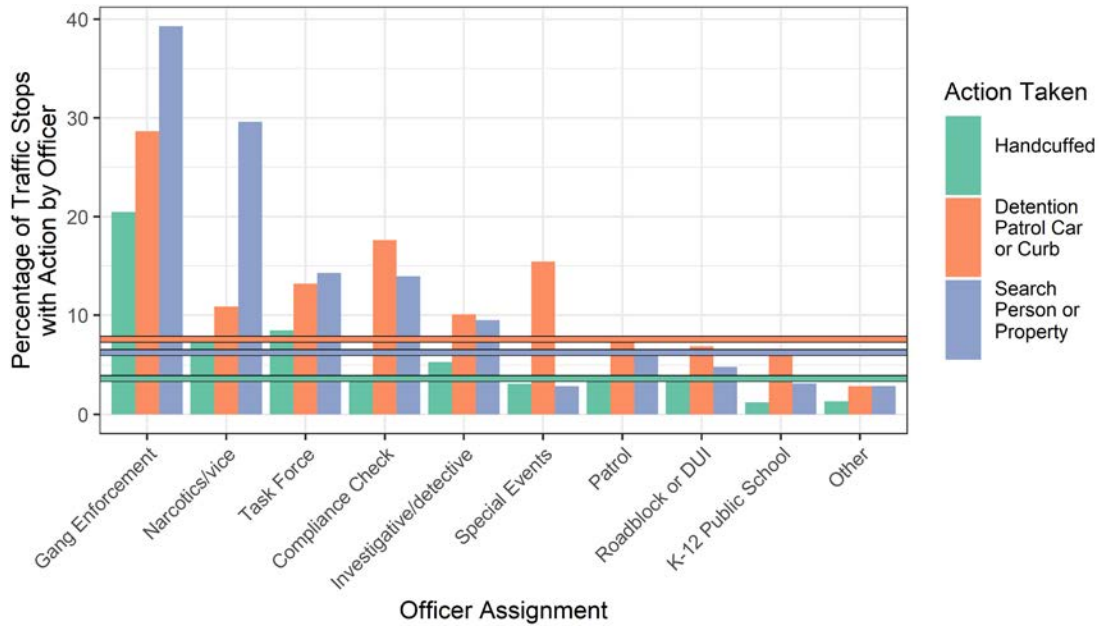
Figure 50. Composition of Reason for Stop among Officer Assignment Types



c) Actions During Stop by Officer Assignment Type

The percentage of traffic violation stops containing various actions by officers (handcuffing, detention in patrol car or curb, search, or use of force) varied among officer assignment types. Across all RIPA traffic violation stops, 3.6 percent involved an officer handcuffing an individual (green line), 7.6 percent of traffic violation stops involved an officer detaining an individual either in the patrol car or on the curbside (orange line), and 6.3 percent of traffic violation stops involved a search of person or property (blue line). Comparing across officer assignment types, the highest percentages of all actions during stops, with the exception of use of force, were for officers who worked on a specialized team and had the assignment type of “Gang Enforcement,” in which officers handcuffed an individual 20.4 percent of all stops for traffic violations, performed a detention (curbside or patrol car) during 28.6 percent of traffic stops, and performed a search during 39.3 percent of traffic stops.

Figure 51. Actions by Officers During Traffic Stops by Different Officer Assignment Types



ii. History and Impact of Specialized Teams

Historically, specialized policing teams have faced allegations of excessive force and corruption. One of the most known incidents involved a gang enforcement unit in LAPD called CRASH (Community Resources Against Street Hoodlums).²⁸⁹ The unit was created to aggressively fight gang-related crimes and data showed a decrease in reported crimes in the area where they patrolled. However, “this ‘success’ of CRASH came at a great price.”²⁹⁰ The unit embraced an “any means necessary” approach that included a war-like mentality against community members.²⁹¹ For example, it was discovered that officers had framed individuals to get convictions and covered up excessive force.²⁹² In addition to framing individuals, the unit also used pretextual stops as a means to harass Black and Hispanic/Latine(x) people, “often in expensive or late model cars, or in parts of the city where they might be considered out of place, being stopped for no apparent reason or for one that appears on the surface to be a pretext.”²⁹³ An independent investigative commission further found:

Routine stops of young African-American and Latino males, seemingly without “probable cause” or “reasonable suspicion,” may be part and parcel of the LAPD’s aggressive style of policing. The practice, however, breeds resentment and hostility among those who are its targets. Moreover, the practice has created a feeling among many in Los Angeles’ minority communities that certain parts of the City are closed to them or that being detained by the police is the price of traveling in those areas.²⁹⁴

Ultimately, the CRASH team was disbanded entirely, but other specialized teams cropped up in its place, including crime-suppression teams that were found to have falsified field interview cards in

289 L.A. County Board of Police Commissioners, *Report of the Rampart Independent Review Panel*, *supra* note 204, at p. 1.

290 *Ibid.*

291 *Id.* at pp. 5, 34; Erwin Chemerinsky, *The Rampart Scandal and the Criminal Justice System in Los Angeles County* (2000) 57 *Guild Practitioner* 121-133, Duke Univ. Law School <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2161&context=faculty_scholarship> [as of Nov. 15, 2023].

292 See generally L.A. County Board of Police Commissioners, *Report of the Rampart Independent Review Panel*, *supra* note 204.

293 L.A. Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on Los Angeles Police Department*, *supra* note 204, at p. 76.

294 *Id.* at p. 77.

2020, discussed in more detail above.²⁹⁵ The LAPD Metro Division, also discussed in the field interview card section above, was created to be an elite crime-suppression team.²⁹⁶ However, in practice the team has been faced with allegations of corruption and biased stops in communities.²⁹⁷ In 2019, a Los Angeles Times study showed the Metro Division stopped Black drivers at five times the rate of the city’s population.²⁹⁸ Another investigation showed the Metro Division searched Black drivers at a rate of 4 to 1 and Hispanic/Latine(x) drivers at a rate of 3 to 1, compared to White drivers, despite finding more contraband on White drivers.²⁹⁹ Finally, in addition to the data, the Metro Division was accused of falsifying field interview cards framing Black and Brown drivers as gang members without supporting evidence.³⁰⁰

Other agencies throughout the country have also faced similar issues with specialized teams because of this “any means necessary approach.”³⁰¹

In 2018, in Baltimore, for example, the Gun Trace Task Force was found to have targeted Black individuals and used unjustified stops, false arrests, and planted evidence to “get perceived ‘bad guys’ off the streets.”³⁰² It was further argued that the police department incentivized those strategies to maximize arrest numbers to pursue gun charges without a concern for the means.³⁰³ In New York City, the anti-crime units plainclothes teams were disbanded after the department found officers in that unit were involved in some of the most notorious police shootings; consequently, New York Police Department chose to move away from this crime-fighting strategy and instead use intelligence-gathering technology.³⁰⁴ And an investigation into the Louisville Metro Police Department by the U.S. DOJ recommended the police department reconsider the role of any specialized street enforcement units that conducted targeted or pretextual traffic and pedestrian stops.³⁰⁵

“If we have racial bias in policing, what that means is that the data that’s going into these algorithms is already inherently biased and will have biased outcomes, so it doesn’t make any sense to try and use technology when the likelihood that it’s going to negatively impact communities of color is apparent.” – Justin Cummings, Mayor of Santa Cruz, see FN 305

In addition to concerns about use of force, one factor that may be driving some of these disparities is what is known as hot spot policing — when agencies use data to determine areas to concentrate police forces and often specialized teams. Much of the crime-based data is from heavily-policed neighborhoods, which reinforces the idea that over-policed areas merit further police surveillance, thus creating a negative feedback loop.³⁰⁶

One study found higher racial disparities in traffic stops where there were “hot spots” compared to other areas of cities that were not deemed hot spots.³⁰⁷ Another study found similar results that software disproportionately predicts crime will occur in

295 Leonard, *Judge Finds Three LAPD Officers ‘Factually Innocent’ of Filing False Gang Reports*, *supra* note 204.
296 PUSH LA, *Statement on Findings of Widespread Corruption Within LAPD’s Metro Division* (2020) <<https://pushla.org/statement-on-metro-corruption/>> [as of Nov. 15, 2023].
297 *Ibid.*
298 *Ibid.*
299 *Ibid.*
300 *Ibid.*
301 Leonard, *supra* note 204.
302 See Amicus Brief in Support of Appellee filed in *Baltimore City Police Department, et al. v. Ivan Potts*, *supra* note 204, at p. 5.
303 *Id.* at p. 2.
304 Watkins, *N.Y.P.D. Disbands Plainclothes Units Involved in Many Shootings*, *supra* note 204.
305 U.S. DOJ Civil Rights Division, *Investigation of the Louisville Metro Police Department and Louisville Metro Government*, *supra* note 206, at p. 82.
306 Guariglia, *Police Use of Artificial Intelligence: 2021 in Review*, *supra* note 204.
307 Barnes, *Police-Community Relations: A Study of Racial Disparity and the Effects of Hot Spots Policing Leadership Strategies* (2018) North Carolina A&T State U., p. 1 <doi:10751787> [as of Nov. 15, 2023].

neighborhoods “inhabited by working-class people, people of color, and Black people in particular.”³⁰⁸ Another study compared actual crime data for several districts and found the technology made serious errors. In locations where fewer crimes were reported, the tool found 20 percent fewer hot spots,³⁰⁹ while those neighborhoods with high numbers of reported crimes found 20 percent more hot spots than there actually were.³¹⁰ Similarly, the Office of Inspector General in Los Angeles also found inconsistencies in the data collected and that a majority of people identified from a predictive policing program had few if any actual contacts with police.³¹¹ Another report noted that some of this technology used field interview cards to feed information into the database, thus increasing surveillance of already over-policed communities.³¹²

Understanding how hot spot policing can negatively affect communities may be key for law enforcement leaders to address disparities in their own departments.

iii. Recommendations

The Board recommends that the Legislature, municipalities, and agencies develop policies or enact laws to:

- (1) Create policies that provide for measurable oversight of specialized teams and require law enforcement agencies to develop policies that define clear objectives and outcomes for specialized teams. These policies should address enforcement of any violation of the law or deviation from the programmatic mission; and
- (2) Provide funding programs that focus on community-based drug and violence intervention programs.

c. Pretextual Stops and Drug Enforcement

This year, the Board has started to examine drug enforcement and its relation to pretextual stops. Pretextual stops are often associated with narcotics enforcement and the war on drugs, a topic the Board briefly discussed in last year’s report. RIPA data show that individuals who are Black or Hispanic/Latine(x) are more likely to be cited or arrested for drug offenses despite research showing that drug use rates are virtually the same across race and ethnicity.³¹³ These disparities may also be linked to the structural inequities exhibited in the war on drugs, which encouraged pretextual stops as a means to seize narcotics by focusing on certain racial or ethnic groups and communities. This devastated communities as mass incarceration and overdoses skyrocketed across the nation.³¹⁴ Our country is currently suffering from a health crisis caused by drug use, overdose, and lack of adequate treatment. The war on drugs failed and only exacerbated the crisis by criminalizing drug use instead of prioritizing access to adequate treatment and harm reduction.³¹⁵ It is imperative to learn from the past and use new strategies focusing on health care-based approaches to address this public health crisis, rather than criminal enforcement and incarceration.

308 Guariglia, *Police Use of Artificial Intelligence: 2021 in Review*, *supra* note 204.

309 Heaven, *Predictive Policing Is Still Racist — Whatever Data It Uses*, MT Technology Review (Feb. 5, 2021) <<https://www.technologyreview.com/2021/02/05/1017560/predictive-policing-racist-algorithmic-bias-data-crime-predpol/>> [as of Nov. 15, 2023].

310 *Ibid.*

311 Inspector General, Police Commission, *Review of Selected Los Angeles Police Department Data-Driven Policing Strategies* (Mar. 2019) <https://www.lapdpolicecom.lacity.org/031219/BPC_19-0072.pdf> [as of Nov. 15, 2023].

312 Bhuiyan, *LAPD Ended Predictive Policing Programs Amid Public Outcry. A New Effort Shares Many of Their Flaws*, The Guardian (2021) <<https://www.theguardian.com/us-news/2021/nov/07/lapd-predictive-policing-surveillance-reform>> [as of Nov. 15, 2023].

313 Cruz, *Racial Inequities in Treatments of Addictive Disorders* (Oct. 2021) Yale School of Medicine <<https://medicine.yale.edu/news-article/racial-inequities-in-treatments-of-addictive-disorders/>> [as of Nov. 15, 2023].

314 See *ibid.*

315 See Cooper, *War on Drugs Policing and Police Brutality* (2015) Nat. Libr. of Med. <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4800748/>> [as of Nov. 15, 2023].

i. RIPA Data Analysis

a) Introduction, Reason for Stop, and Results of Stop

This year, the Board began looking at stops in which the person is charged with possession of a small amount of drugs and/or drug paraphernalia for personal use or consumption (herein referred to as “simple possession”). The Board began by identifying three Penal Code sections for simple drug possession to review.³¹⁶ The Board then examined both the primary reasons for stops with these drug possession offense codes (reasonable suspicion or traffic violation), and the results of stops that also involved those three Penal Code sections (in-field cite and release, custodial arrest without warrant, citation, or warning).³¹⁷ This resulted in different subsets of RIPA stops that either contained a primary reason for stop of drug possession (15,650 stops, 0.3% of all stops) or stops that had a result involving simple drug possession (72,003 stops, 1.6% of all stops). A portion of these two groups of stops overlap, having both a primary reason for stop and result of stop related to drug possession (10,007 stops, 0.2% of all stops).

The plot graphic below (see Figure 52) displays counts of more detailed reasons for stop and the primary results of stop of these drug possession-related RIPA stops.³¹⁸ It is read by comparing the width of lines (“flows”) moving between categories. This is not the entire RIPA dataset, but only stops that contain either a drug possession offense code under primary reason for stop or a drug possession offense code under the result of stop.

The majority of stops that result in simple drug possession charges do not include drug possession Penal Codes as the primary reason for stop (86.1%, or 61,996 of 72,003 of stops that result in drug possession charges begin with other primary reasons for stop). The most common non-drug possession reasons for stop among drug result stops (represented on the figure by the lines flowing into “No Drug Reason for Stop”) are other Penal Codes for reasonable suspicion (32,773), traffic violations (24,502), consensual encounters resulting in a search (7,752), supervision (3,667), and warrant/wanted (2,776).

Among the 15,650 stops where officers listed one of the three simple drug possession Penal Codes as the primary reason for stop, 10,007 (63.9%) had one or more of the three simple drug possession Penal Codes listed within the result of stop. Among stops that resulted in simple drug possession charges, the primary (most severe) stop outcomes, in order of how common they were, are custodial arrest (33,419, 46.4% of drug result stops), in-field cite and release (30,416, 42.2% of drug result stops), warning (5,453, 7.6% of drug result stops), and citation for infraction (2,715, 3.8% of drug result stops).³¹⁹

Most stops that result in simple drug possession charges begin with other reasons for stop (86.1% of drug possession result stops were initiated for another reason). The most common reason for stop that results in a drug possession charge was a vehicle registration violation (9.1% of drug possession result of stops, or 6,577 stops).³²⁰ Among the top 10 reasons for stop ranked by the total number of stops resulting in drug possession charges were five vehicle equipment violations, three offense codes associated with drug possession, and two unrelated reasonable suspicion offenses (failure to obey juvenile court order and burglary: second degree). The equipment violations that result in the most

316 See Health & Saf. Code, §§ 11364 (Controlled Substance Paraphernalia), 11350(A) (Possession of Narcotic Controlled Substance), 11377(A) (Possession Controlled Substance).

317 *Ibid.*

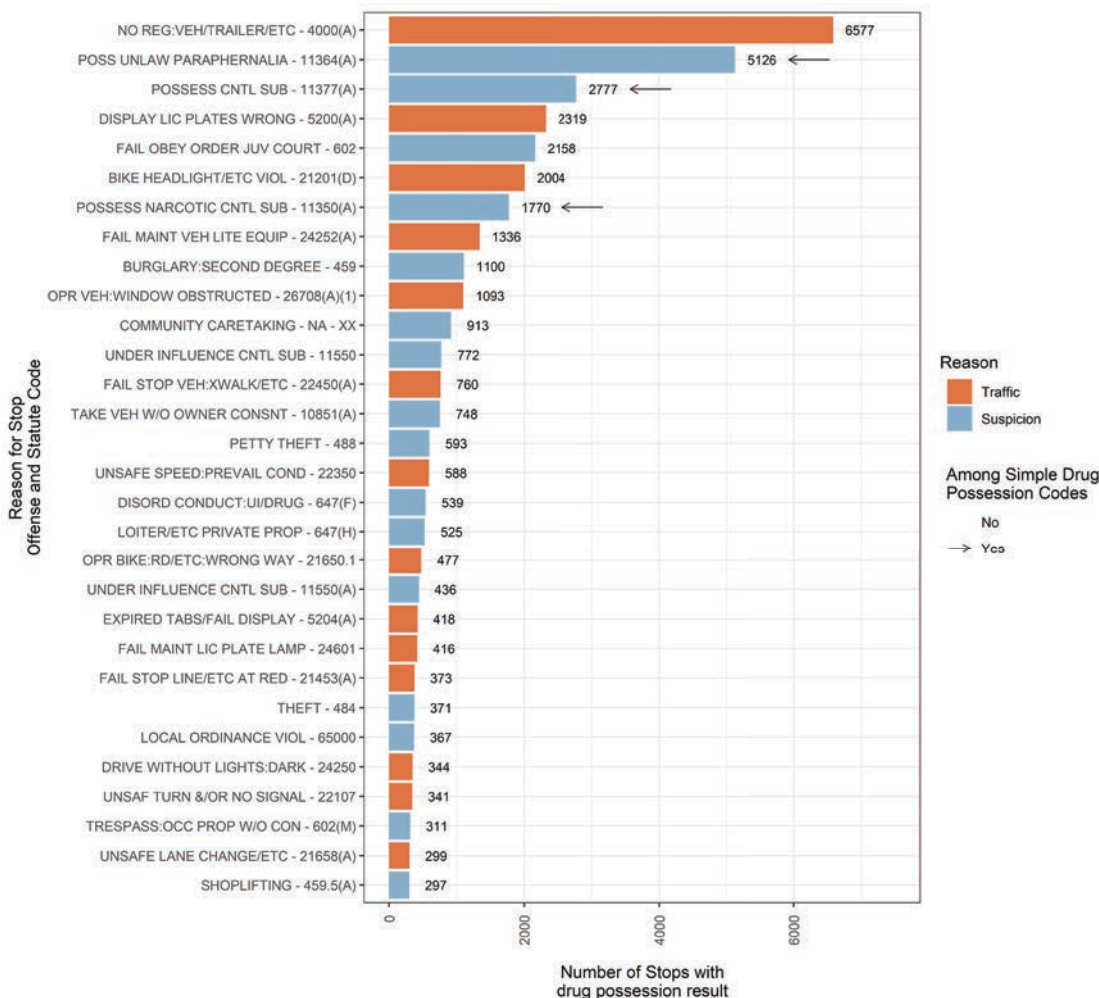
318 Multiple results may occur from a single stop. Accordingly, for purposes of this section, the “primary” result of stop is considered to be the most severe result for a given stop. The order of severity, from highest to lowest, is as follows: “Custodial Arrest,” “In-field Cite and Release,” “Citation for Infraction,” “Warning,” “Other,” and “None.” All other results are aggregated into “Other.”

319 All Health and Safety Code provisions used to identify drug results are either misdemeanor or felony charges, suggesting officers may be using result of stop “citation” when the result of stop may actually be “In-field Cite and Release.”

320 Veh. Code § 4000, subd. (a).

drug possession charges were vehicle registration (6,577), display of license plates wrong (2,319), bike headlight violation (2,004), failure to maintain vehicle lights (1,336), and window obstructed (1,093).³²¹

Figure 52. Top 30 Reasons for Stop by Total Number of Drug Results



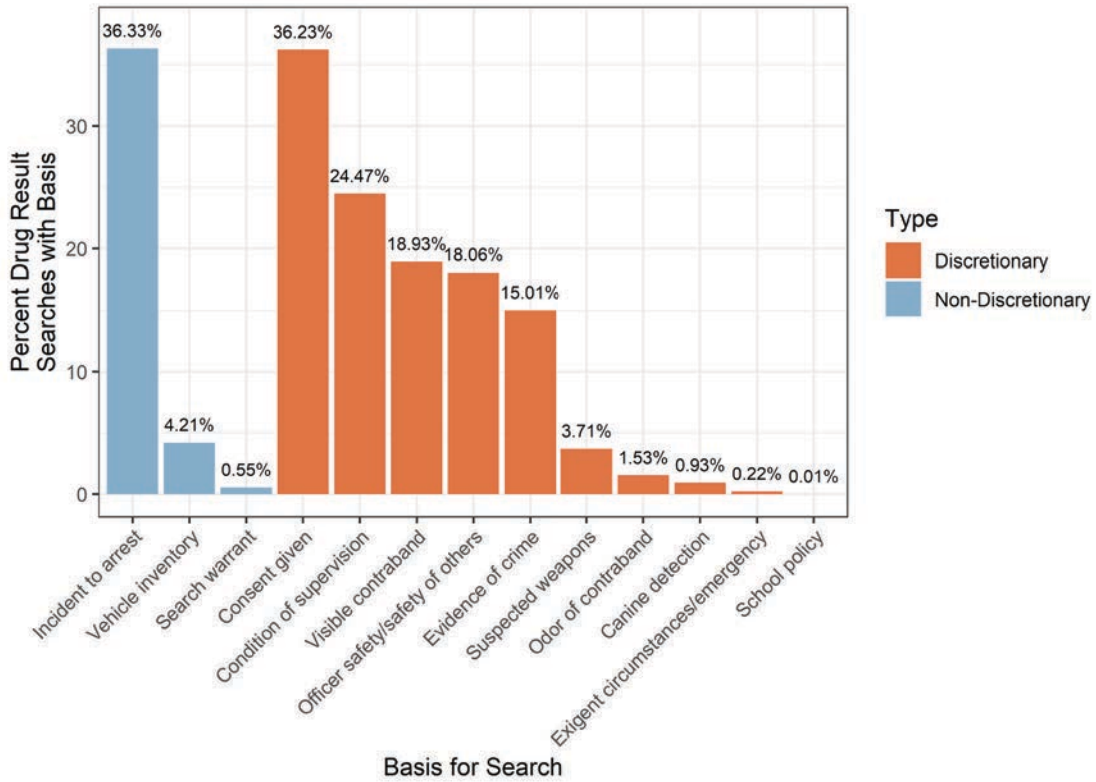
b) Bases for Search – Stops that Result in Drug Possession

Four out of five (80%) stops that result in drug possession charges involve a search of person or property by an officer. The most common basis for search among these stops where a search occurred is “incident to arrest” (36.3% of searches include this basis). The next most common bases include “consent given” (36.2%), “condition of supervision” (24.5%), “visible contraband” (18.9%), “officer safety/safety of others” (18.1%), and “evidence of crime” (15%).³²²

321 Veh. Code § 4000, subs. (a) and (a)(1), Veh. Code § 5200, subd. (a), Veh. Code § 21201, subd. (d), and Veh. Code § 26708, subd. (a) (1), respectively.

322 Officers must list all applicable search bases. This means some searches include multiple bases. Accordingly, percentages of search bases do not add up to 100 percent.

Figure 53. Bases for Search Used in Stops with Drug Result and a Search



c) Reason for Stop Narratives – Traffic Violation Stops that Resulted in Drug Possession Charges

Out of the 72,003 total stops that had a result of stop related to simple drug possession, 24,700 (34.3%) of these stops that had a primary reason for stop of a traffic violation. In Table 4 below are 20 randomly selected reason for stop narratives from these traffic violation stops that had simple drug possession stop results. This subset of random stops provides a glimpse at the explanations provided for initiating stops for traffic violations that resulted in action related to simple drug possession.

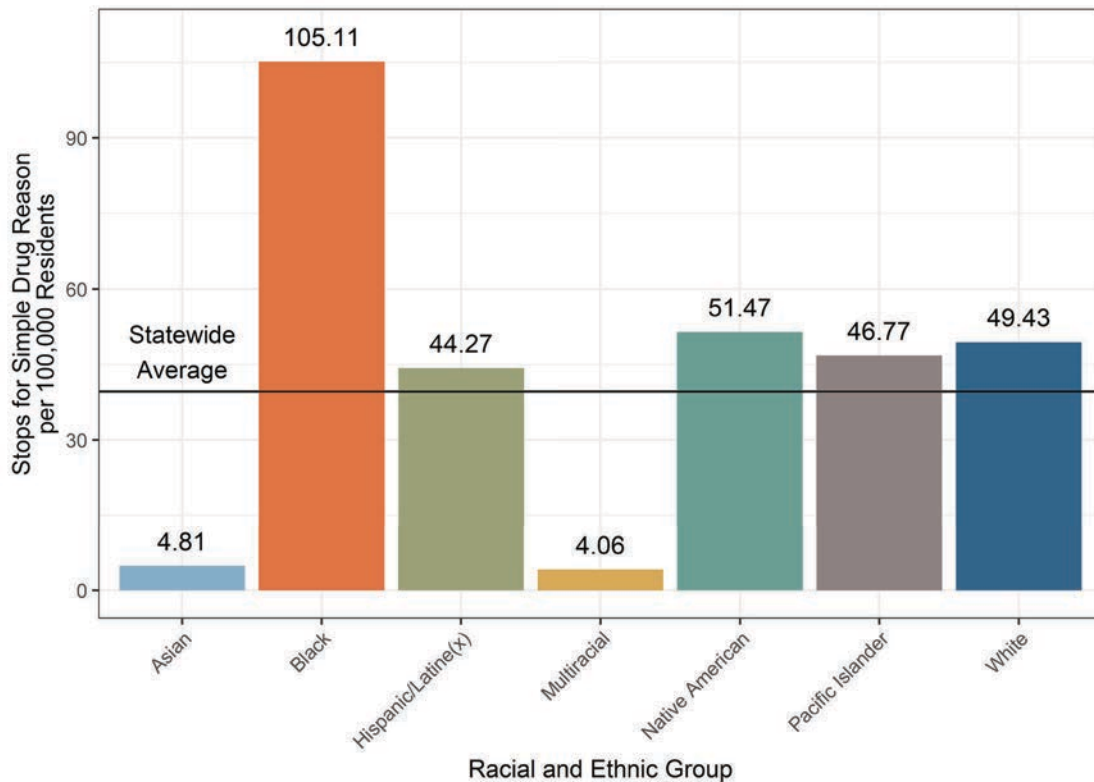
Table 4.

Reason for Stop Narratives – Drug Result Stops
“RIDING BICYCLE ON SIDEWALK VIOLATION OF 15.76.080 LACC”
“Lighting equipment violation and excess speed. Driver was on probation with search terms. Passenger had misd. Warrants. Driver had drug paraphernalia and suspected drugs on his person. Field released with citation.”
“T-stop for multiple VC violations led to driver being arrested.”
“bike stop.”
“traffic vio”
“Observed subject violate a municipal code.”
“The individual was driving his vehicle without license plates on either the back or the front of the vehicle. We asked him if her had narcotics in the vehicle, and he stated yes. We detained him pending a narcotics investigation and searched him.”
“STOPPED FOR CVC 5200.”
“EXP REG”
“I stopped a vehicle for not having the rear license plate illuminated during darkness.”
“cvc viol”
“expired registration”
“NO FRONT PLATE”
“Expired registration on vehicle.”
“SUBJECT WAS DRIVING VEHICLE WITH A BROKEN TAIL LIGHT IN AREA OF OLD HWY 53 AND HIGHLANDS WAY. TRAFFIC STOP WAS CONDUCTED.”
“NO HEADLAMPS IN DARKNESS”
“Stopped for no license plate light”
“UNSAFE TURN”
“THIRD BREAK LIGHT OUT ON VEHICLE”
“4000A1 CVC”

d) Per Resident Stops with Drug Possession Reason for Stop

Statewide in 2022, 15,650 stops were initiated for drug possession reasons. With 39,455,353 residents listed in the 2021 5-Year American Community Survey, this results in an average of 39.7 stops per 100,000 residents with a reason for stop of drug possession (line on graph below). Individuals perceived as Black were stopped for drug possession reasons at the highest rate per resident among racial or ethnic groups (105.1 stops with reason for stop reported as drug possession, 2.6 times the statewide average). Individuals perceived to be Asian or Multiracial were stopped for drug possession at rates far below the state average (Asian individuals had 4.8 stops per 100,000 residents and Multiracial individuals had 4 stops per 100,000 residents). All other perceived racial or ethnic groups were stopped at a rate slightly above the statewide average (in stops per 100,000 residents: Native American (51.5), White (49.4), Pacific Islander (46.8), and Hispanic/Latine(x) (44.3)).

Figure 54. Per Capita Stops Initiated with a Drug Possession Reason for Stop in 2022



b. Alternatives to Drug Enforcement

These disparities in who is stopped for drug-related offenses raise larger policy and societal concerns that go beyond this Report. The American Pharmacists Association found that “the criminalization of drug use has disproportionately exacerbated these drug-related harms and imposed short- and long-term burdens on already marginalized and vulnerable populations.”³²³ The Association stated:

Communities become less healthy and stagnate in punitive criminalization systems, further reducing opportunities for growth. Decriminalization of drug use and possession is an urgently needed and effective approach to drug use that shifts resources from punishment to public health, thereby reducing the negative impacts of drug use and keeping communities safe and healthy.³²⁴

“Now more than ever, the international community must replace punishment with support and promote policies that respect, protect, and fulfill the rights of all communities.” – United Nations Human Rights Experts, see FN 326

The American Journal of Preventative Medicine also found “decriminalization may be a promising strategy to reduce exposure to the carceral system, an established risk factor for overdose and other drug-related sequelae and a driver of racial disparities in the U.S.”³²⁵ Notably, United Nations human rights experts also called for the end of this punitive approach to drug use and to instead “promote drug policies that are firmly anchored in human rights.”³²⁶ The UN HRC Expert report found that a punitive approach

323 Bratberg et al., *Support, Don’t Punish: Drug Decriminalization is Harm Reduction* (2022) 63 J. of the Am. Pharmacists Assn. 224, 224.

324 *Ibid.*

325 Rouhani et al., *Racial Disparities in Drug Arrest Before and After De Facto Decriminalization in Baltimore* (Apr. 2023) 65 Am. J. of Preventative Medicine 560, 560 <<https://www.ohchr.org/en/documents/country-reports/ahrc54crp7-international-independent-expert-mechanism-advance-racial>> [as of Nov. 15, 2023].

326 U.N. Human Rights Council, *Expert Mechanism to Advance Racial Justice and Equality in the Context of Law*

“undermines the health and social wellbeing and wastes public resources while failing to eradicate the demand for illegal drugs and the illegal drug market.”³²⁷

Instead of focusing on punitive models to address a health crisis, some states and district attorneys have chosen to decriminalize simple possession of drugs. In addition to limiting other charges, as discussed above, the Los Angeles County District Attorney has also stopped enforcing charges related to simple possession.³²⁸ Specifically, the District Attorney’s office policy prohibits charges being filed for drug paraphernalia³²⁹ and possession.³³⁰ These changes were made in part to divert individuals to social services that can address substance use, reduce recidivism, and improve the public health and safety of the community.³³¹ Similarly, the UN HRC Expert report urged leaders to use a restorative justice approach that is community based and inclusive of preventative measures.³³²

The Washtenaw County District Attorney in Michigan similarly will not file possession of contraband charges but took a narrower approach by only prohibiting filing under certain circumstances.³³³ The District Attorney’s office will not file these charges if: (1) the search that uncovered the contraband stemmed from an infraction-related stop; and (2) the search was based on the consent of the stopped person and there was no other legal justification for the search, such as probable cause.

In the future, the Board hopes to monitor some of these approaches to evaluate whether they can be models for agencies, municipalities, and states that wish to address inequities related to drug charges in the criminal legal system and divert individuals from the legal system to public health providers.

5. Conclusion

The Board will continue to explore the impacts of certain types of policing strategies, such as the use of pretextual stops, and the effect they have on the community. The Board hopes that by identifying trends in the data that show disparities or demonstrate racial profiling, the data will be used by communities, agencies, and municipalities to develop policies to reduce, and ultimately prevent disparate treatment. In future years, the Board will continue to examine the root causes of pretextual stops and explore different types of enforcement mechanisms.

Enforcement, supra note 5, at p. 29; see Santa Clara District Attorney’s Off., *Bend the Arc Reforms: Community Initiatives, supra* note 228, at pp. 5-6 (outlining community initiatives to reform criminal justice practices to address racial discrimination and promote equity).

327 U.N. Human Rights Council, *End ‘War on Drugs’ and Promote Policies Rooted in Human Rights: UN Experts* (June 2022) <<https://www.ohchr.org/en/statements/2022/06/end-war-drugs-and-promote-policies-rooted-human-rights-un-experts>> [as of Nov. 15, 2023].

328 See L.A. District Attorney’s Off., *Special Directive: Misdemeanor Case Management, supra* note 220 (implementing a new policy in which prosecution of low-level offenses will be governed by a data-driven “Misdemeanor Reform policy directive”).

329 *Ibid.*; see also Health & Saf. Code, §§ 11350, 11377, 11357.

330 L.A. District Attorney’s Off., *Special Directive: Misdemeanor Case Management, supra* note 220, at p. 2; see also Health & Saf. Code, § 11364.

331 L.A. District Attorney’s Off., *Special Directive: Misdemeanor Case Management, supra* note 220, at pp. 1–2.

332 See U.N. Human Rights Council, *Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement, supra* note 5, at p. 29; U.N. Human Rights Council, *End ‘War on Drugs’ and Promote Policies Rooted in Human Rights: UN Experts, supra* note 327.

333 See Washtenaw County Off. of the Prosecuting Atty., *Policy Directive 2021-09: Policy Regarding Pretext Stops* <<https://www.washtenaw.org/DocumentCenter/View/19235/Pretext-Stops-Policy>> [as of Nov. 15, 2023].

B. Police Contacts with Youth with Disabilities and Youth Experiencing Mental Health Crises

1. Introduction

Youth with disabilities and youth in mental health crisis experience a disproportionate number of police interactions.³³⁴ The quality and outcomes of those interactions differ from police interactions with youth without disabilities and can have lasting adverse impacts on the development and well-being of the youth. Given these vulnerabilities, this section summarizes research and data regarding those differences and impacts. This section also introduces suggestions and guidelines for best practices from federal agencies and advocates. In future reports, the Board hopes to develop specific recommendations for best practices that address the concerns revealed by the data.

2. Confirmed Phenomena and RIPA Data Analysis

While limited data exist on police interactions with youth with disabilities or youth experiencing mental health crisis, the existing data suggests that youth experiencing mental health crisis are particularly vulnerable to police violence.³³⁵ Based on this data, researchers and advocates warn that these groups are inherently at higher risk during police stops for intrusive police contact,³³⁶ use of force,³³⁷ or death.³³⁸ Recognizing this population's particular vulnerability to police violence, the American Psychiatric Association (APA) called for national standards to protect children and adolescents against violence from law enforcement when law enforcement responds to youth behavioral health emergencies.³³⁹

The RIPA data also suggest that youth with disabilities may experience disparate impacts of policing. The following data analyses on reasons for stop, community caretaking stops and consensual searches, and actions taken during stops highlight some of these adverse disparate impacts.

For example, in 2022, officers reported reasonable suspicion of criminal activity as the primary reason for stop for 14.2 percent of stops. Individuals perceived or known to have a disability had the highest

334 McCauley, *The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability Status, Race/Ethnicity, and Gender (The Cumulative Probability of Arrest)* (Dec. 1, 2017) 107 *Am. J. of Public Health* 1977, 1978–1979 <<https://doi.org/10.2105/AJPH.2017.304095>> [as of Nov. 15, 2023].

335 See Am. Psych. Assn., *Position Statement on Police Interactions with Children and Adolescents in Mental Health Crisis* (July 2022) <<https://www.psychiatry.org/getattachment/085c5817-87e3-4fd9-8885-ed1d83ec7266/Position-Police-Interactions-with-Children-Adolescents-in-Crisis.pdf>> [as of Nov. 15, 2023] (noting that undue police violence against children and adolescents is of national concern and noting specific concerns with law enforcement involvement in response to mental health emergencies involving youth); see also Am. Psych. Assn., *APA Condemns Pepper-Spraying, Handcuffing of 9-Year-Old Girl by Rochester Police* (Feb. 2021) <<https://www.psychiatry.org/newsroom/news-releases/apa-condemns-pepper-spraying-handcuffing-of-9-year-old-girl-by-rochester-police>> [as of Nov. 15, 2023] (news release condemning police response to child experience mental health emergency); Am. Psych. Assn., *Approaches to Youth in Mental Health Crisis* (June 2021) <<https://www.psychiatry.org/getattachment/66900ed7-dec6-4b73-a810-372596a04081/Resource-Document-2021-Approaches-to-Youth-in-Mental-Health-Crisis.pdf>> [as of Nov. 15, 2023].

336 Geller et al., *Policing Disability: Law Enforcement Contact Among Urban Teens* (Mar. 2022) <<https://ffcw.princeton.edu/publications/policing-disability-law-enforcement-contact-among-urban-teens>> [as of Nov. 15, 2023].

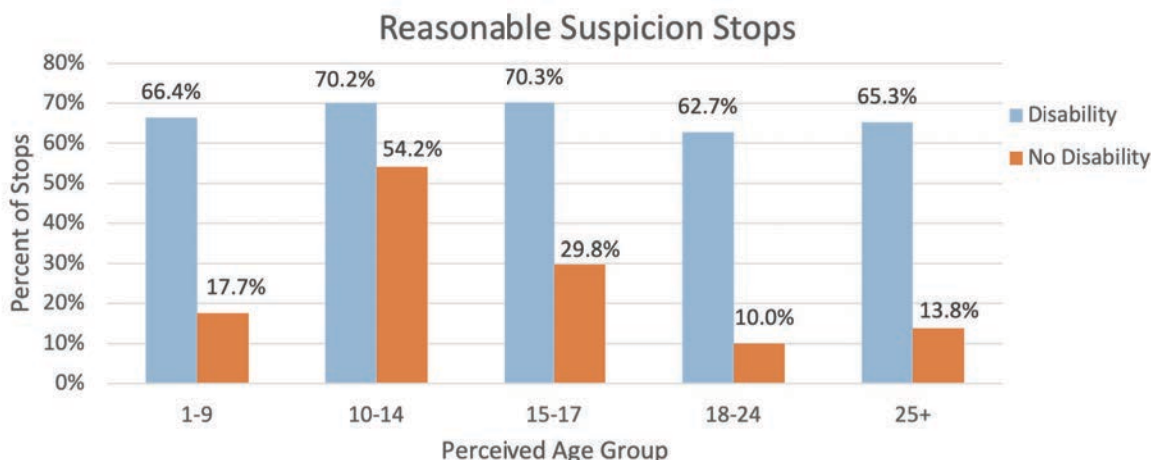
337 The APA further recognizes the use of force against children is incredibly harmful and can cause “a cascade of psychological sequelae” including “development or worsening of mental illness and can end in traumatization, serious injury, lower educational attainment and future employment, or death.” (Am. Psych. Assn., *Position Statement on Police Interactions with Children and Adolescents in Mental Health Crisis*, *supra* note 335.)

338 As just one tragic example, in 2014, in Half Moon Bay, California, 18-year-old Yanira Serrano-Garcia was shot and killed by a San Mateo sheriff's deputy after Yanira's brother called seeking medical help because Yanira was refusing to take medication prescribed for schizophrenia and was arguing with her parents. The family told the dispatcher that Yanira had taken her medication and calmed down. But when the deputy arrived, Yanira burst off the porch and chased him with a kitchen knife. Sadly, the deputy shot Yanira in her torso, killing her. (Emslie and Bale, *Almost Half of Those Killed by SFPD are Mentally Ill*, KQED (Sept. 30, 2014) <<https://www.kqed.org/news/147854/half-of-those-killed-by-san-francisco-police-are-mentally-ill>> [as of Nov. 15, 2023].)

339 Am. Psych. Assn., *Position Statement on Police Interactions with Children and Adolescents in Mental Health Crisis*, *supra* note 335.

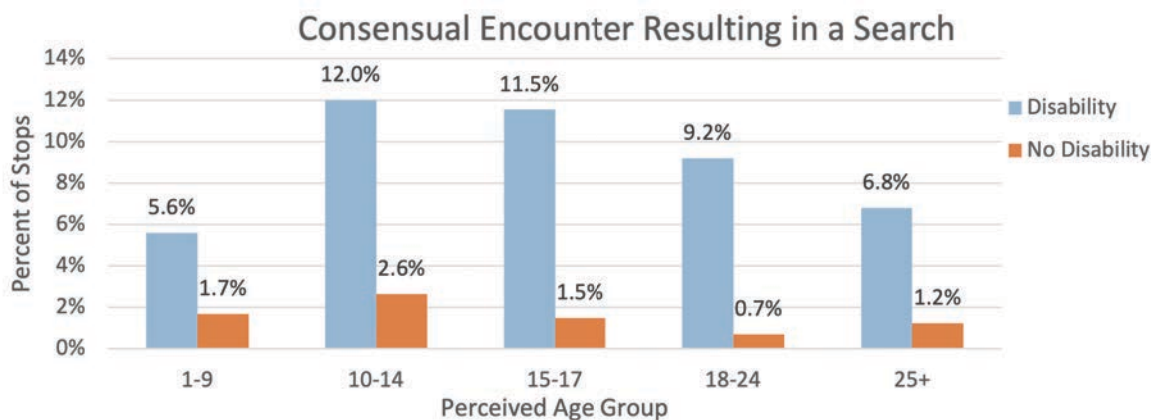
percentage of stops reported as reasonable suspicion across all age groups compared to individuals perceived to not have a disability.

Figure 55. Reasonable Suspicion Stops by Age Group and Disability



Officers reported that 1.2 percent of stops made in 2022 were consensual encounters that resulted in a search. Youth between the ages of 10 and 14 with a perceived disability had the highest percentage of stops reported as a consensual encounter resulting in a search (12.0%) compared to youth not perceived to have a disability, followed by youth with a perceived disability between the ages of 15 and 17 (11.5%).

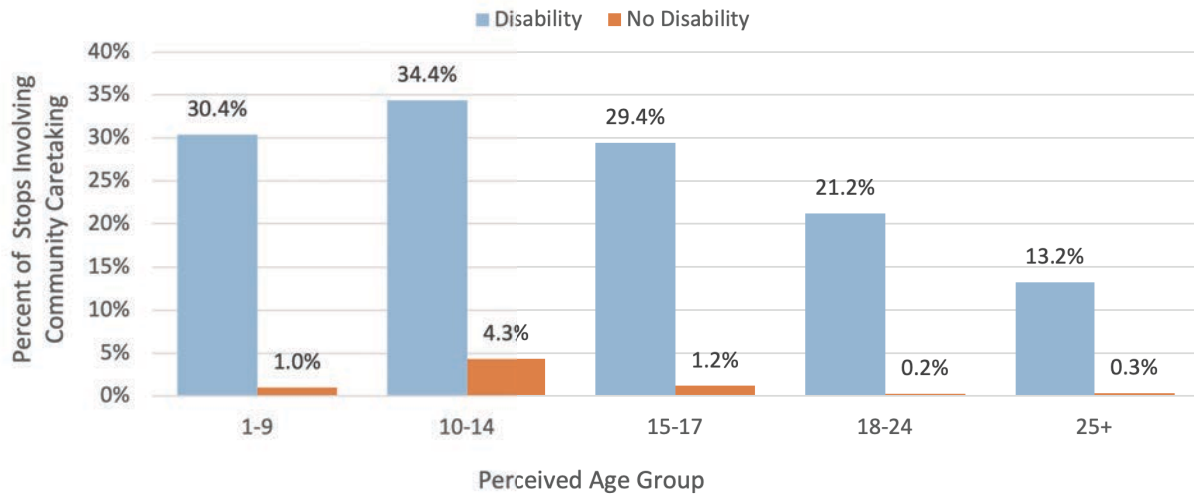
Figure 56. Rate of Consensual Encounter Resulting in a Search by Age Group and Disability



A higher proportion of stops of youth perceived or known to have disabilities were initiated for community caretaking in comparison to youth not perceived to have a disability.³⁴⁰

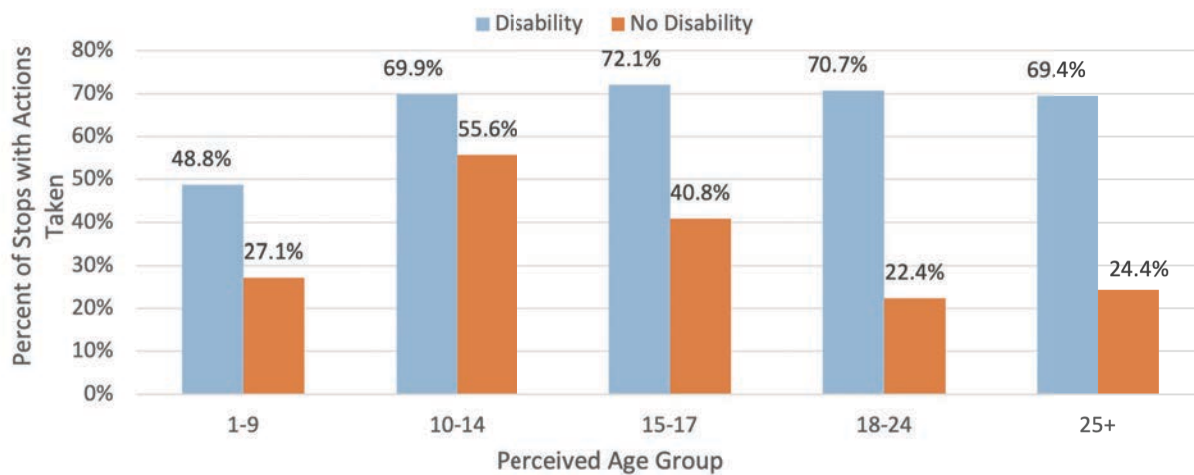
340 As clarified in the amended RIPA regulations, effective January 1, 2024, community caretaking falls within an officer’s non-crime-related duties, which are not performed for the purpose of investigating a crime and cannot be used to initiate a detention or a search. (See Cal. Code Regs., tit. 11, § 999.226, subd. (a)(13) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].) An example of a non-crime-related duty that falls under community caretaking is a wellness check. (See Cal. Code Regs., tit. 11, § 999.226, subd. (a)(13) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].)

Figure 57. Community Caretaking Stops by Perceived Disability Type and Age Group



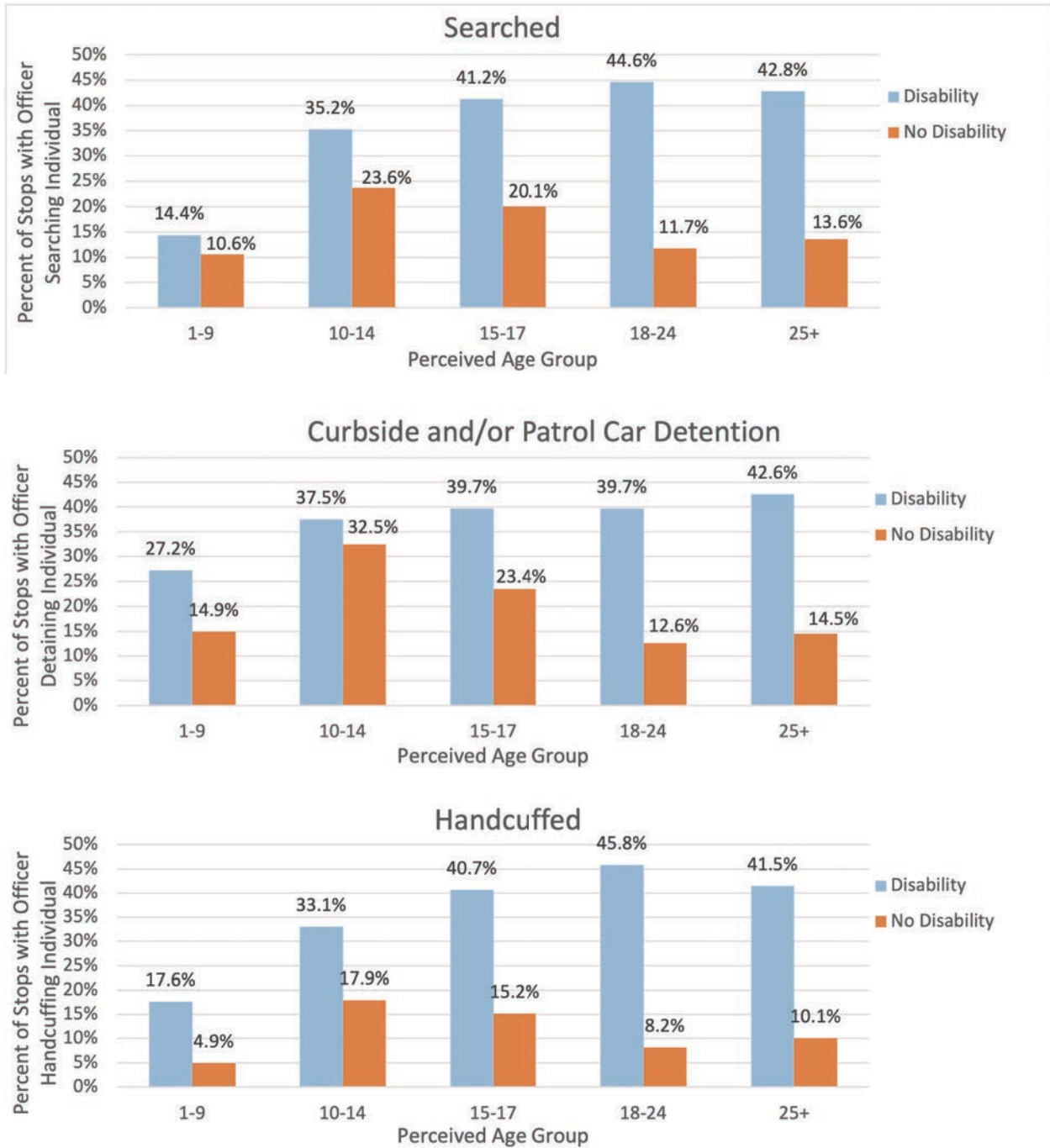
Stopped individuals perceived or known to have a disability were more likely to have actions taken towards them by officers during stops. Specifically, stopped individuals perceived to be 15 to 17 years old with a perceived or known disability had the highest action rate (72.1%).³⁴¹ Stopped youth with perceived or known disabilities were also more likely to be searched, detained curbside or in a patrol vehicle, and handcuffed than their counterparts without perceived disabilities.

Figure 58. Actions Taken During Stop by Age and Perceived Disability



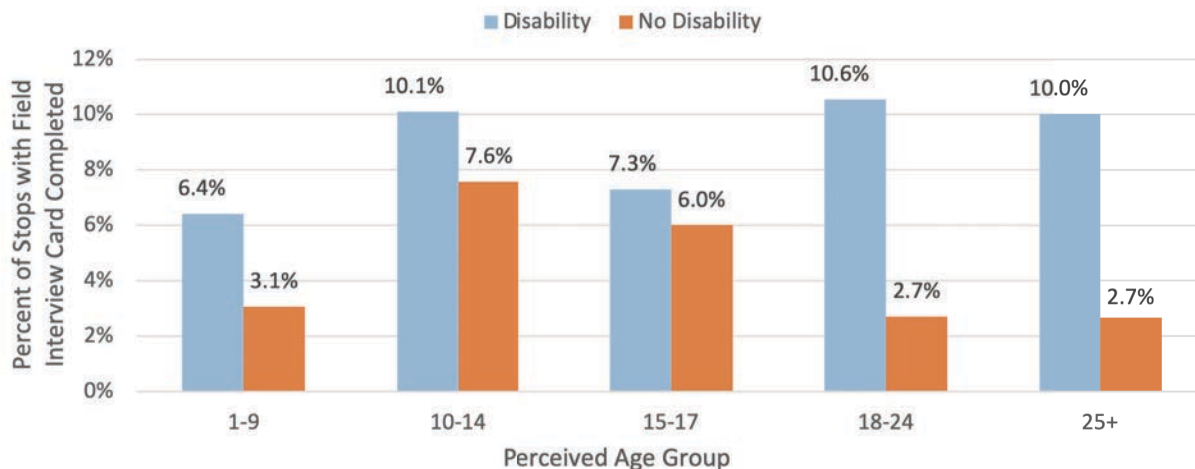
³⁴¹ Action rate refers to the specific action taken by police officers during a stop including, but not limited to, searches, detentions, and handcuffing. (See Cal. Code Regs., tit. 11 § 999.226, subd. (a)(17)(A) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].)

Figure 59. Search, Detainment, and Handcuff Rates by Age and Perceived Disability



Moreover, stopped youth with perceived or known disabilities were more likely to have a field interview card completed as a result of a stop than their counterparts without perceived disabilities.

Figure 60. Field Interview Card Completed as a Result of Stop by Age and Perceived Disability



Even with this reported data, police may be underestimating and/or misperceiving the number of youth encountered with a disability.³⁴² In the 2023 RIPA report, officers perceived *only* 1.2 percent (38,281) of individuals stopped to have one or more disabilities.³⁴³ However, 1 in 4 people in California has a disability,³⁴⁴ which indicates that police perceptions regarding disability may not be reliable. Further, data show that police officers are disproportionately interacting with youth with disabilities even if police officers’ perceptions do not reflect the rate of their encounters with that population. For example, a study from the A.J. Drexel Autism Institute found that 1 in 5 teenagers with autism was stopped and questioned by police before age 21, and 5 percent were arrested.³⁴⁵ “According to research at the Children’s Hospital of Philadelphia, people with disabilities, including those on the autism spectrum, are five times more likely to be incarcerated than people in the general population, and ‘civilian injuries and fatalities during police interactions are disproportionately common among this population.’”³⁴⁶ Data from the U.S. Department of Education, Office for Civil Rights, and the Center for Public Integrity shows students with disabilities are overrepresented in school arrests and referrals to law enforcement in comparison to their population size. For example, the most recent data from the Office for Civil Rights shows students served under the Individuals with Disabilities Education Act (IDEA) make up 26.1 percent of referrals to law enforcement and 25.8 percent of school-related arrests, despite the fact that students with disabilities served by IDEA are only 13.2 percent of the enrolled population.³⁴⁷

342 See Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at pp. 138–139 (noting that the Center for Civil Rights Remedies (CCRR) performed a preliminary comparison of the RIPA data of K-12 students for fall 2018 through 2020 and found that there were discrepancies between the number of students with disabilities schools referred to law enforcement and RIPA data from those school districts). CCRR hypothesized that officers may be stopping students because of behaviors caused by disabilities without perceiving that those students have disabilities. (See *ibid.*)

343 *Id.* at p. 37.

344 Centers for Disease Control and Prevention, *Disability & Health U.S. State Profile Data for California (Adults 18+ years of age)* (2023) <<https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/california.html>> [as of Nov. 15, 2023].

345 See, e.g., Hollow, *When the Police Stop a Teenager With Special Needs*, N.Y. Times (Feb. 27, 2022) <<https://www.nytimes.com/2020/02/27/well/family/autism-special-needs-police.html?smid=url-share>> [as of Nov. 15, 2023]; Rava et al., *The Prevalence and Correlates of Involvement in the Criminal Justice System Among Youth on the Autism Spectrum* (Feb. 2017) 47 *J. Autism Dev. Disord.* 340 <<https://doi.org/10.1007/s10803-016-2958-3>> [as of Nov. 15, 2023].

346 Hollow, *When the Police Stop a Teenager With Special Needs*, *supra* note 345; see Children’s Hospital of Philadelphia, *CHOP Researchers Present New Findings at 2019 International Society for Autism Research Annual Meeting* (May 1, 2019) (“Approximately one in five adolescents with ASD will be stopped and questioned by a police officer before the age of 21.”) <<https://www.research.chop.edu/cornerstone-blog/in-the-news-early-investigator-award-microbiome-and-depression-insar-2019-families-internet-searches>> [as of Nov. 15, 2023].

347 U.S. Dept. of Ed. Office for Civil Rights, *Referrals to Law Enforcement and School-Related Arrests in U.S. Public Schools* (Jan. 2020) <https://ocrdata.ed.gov/assets/downloads/Referrals_and_Arrests_Part5.pdf> [as of Nov. 15, 2023].

The intersectional impact of racism and ableism is also relevant in understanding the data on referrals and arrests in schools.³⁴⁸ At least one national study found that Black boys with disabilities “were five times more likely than all students to be subjected to school arrests.”³⁴⁹ In California, public schools refer students with disabilities to law enforcement at a higher rate than all other students except Black students.³⁵⁰ One study found that in 53 California school districts, the rate of referral for Black youth with disabilities exceeded the referral rate for White youth by 5 percent.³⁵¹ And according to the statistics collected by the U.S. Department of Education, if the school has an assigned law enforcement officer, the rate of referral for students with disabilities quadruples.³⁵²

The rates of referrals and arrests for students with disabilities in California are also disproportionate when compared to the size of their population. A recent study by the ACLU of Southern California found that 26 percent of school arrests are of students with disabilities despite only 11 percent of California’s students having disabilities.³⁵³ In some school districts, like Redondo Beach Unified School District, Soledad Unified School District, and Sierra Sands Unified School District, 100 percent of referrals to law enforcement were of students with disabilities, even though students with disabilities comprised less than 15 percent of the student population in these districts.³⁵⁴

The proclivity to involve law enforcement in the education and discipline of students with disabilities affects students beyond the initial police encounter by funneling students with disabilities into punitive programs. For example, students with disabilities comprise 30 percent of CleanSWEEP referrals — a San Bernardino County program that fines children up to \$1,000 for minor misbehaviors such as “littering, daytime loitering, possession of spray paint container, graffiti, and keeping lost property” — despite being only 12 percent of the student population.³⁵⁵

3. Adverse Impact of Police Interactions on Youth with Disabilities

Police stops can trigger adverse effects beyond the initial arrest or interaction with the juvenile justice system, such as higher rates of arrest, juvenile detention,³⁵⁶ increased likelihood of dropping out of high school,³⁵⁷ decreased rates of college attendance,³⁵⁸ and long-term mental health consequences.³⁵⁹ In

348 Whitaker et al., *No Police in Schools: A Vision for Safe Supportive Schools in CA* (Aug. 2021) ACLU, p. 9 <https://www.aclusocal.org/sites/default/files/field_documents/no_police_in_schools_-_report_-_aclu_-_082421.pdf> [as of Nov. 15, 2023].

349 *Ibid.* (citing Whitaker et al., *Cops and No Counselors: How the Lack of School Mental Health Staff Is Harming Students (Cops and No Counselors)* (2019) ACLU, p. 30 <<https://www.aclunc.org/sites/default/files/030419-acluschooldisciplinereport.pdf>> [as of Nov. 15, 2023]).

350 *Id.* at p. 14 (citing U.S. Dept. of Ed. Civil Rights Data Collection statistics).

351 *Id.* at p. 9.

352 *Id.* at p. 14 (citing U.S. Dept. of Ed. Civil Rights Data Collection statistics).

353 *Ibid.*

354 *Id.* at p. 16.

355 *Id.* at p. 35.

356 See Del Toro et al., *The Criminogenic And Psychological Effects of Police Stops on Adolescent Black And Latino Boys*, Proceedings of the National Academy of Sciences (Apr. 23, 2019) pp. 8266–8267 <<https://www.pnas.org/doi/epdf/10.1073/pnas.1808976116>> [as of Nov. 15, 2023]. The National Alliance on Mental Illness (NAMI) estimates 70 percent of youth in juvenile detention facilities have a mental illness diagnosis. (National Alliance on Mental Illness, *Mental Health by the Numbers* (2023) <https://nami.org/mhstats?gclid=Cj0KCQiA7bucBhCeARIsAIOWr-mryPgVr3hp8Lz9-i-ajtm5GJWQeY_Q8IM0faz9DI722oo2Q2TFAAajFGEALw_wcB> [as of Nov. 15, 2023].)

357 See Del Toro et al., *The Policing Paradox: Police Stops Predict Youth’s School Disengagement Via Elevated Psychological Distress* (2022) *Am. Psychol. Assn.*, pp. 8–9 <<https://www.apa.org/pubs/journals/releases/dev-dev0001361.pdf>> [as of Nov. 15, 2023].

358 See *id.* at p. 9 <<https://www.apa.org/pubs/journals/releases/dev-dev0001361.pdf>> [as of Nov. 15, 2023]; see also Kirk and Sampson, *Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood* (2013) 86 *Sociology of Ed.* 36–62 <https://dash.harvard.edu/bitstream/handle/1/11324027/Kirk_Sampson_SOE.pdf?sequence=1> [as of Nov. 15, 2023].

359 See, e.g., Jackson et al., *Police Stops Among At-Risk Youth*, *supra* note 266, at pp. 627–632; The New Jersey Council on Developmental Disabilities, *Students with Disabilities Caught in the School-to-Prison Pipeline* (Feb. 2022), *People and Families Magazine* <<https://njcommonground.org/students-with-disabilities-caught-in-the-school-to-prison-pipeline/>> [as of Nov. 15, 2023]; Development Services Group, Inc., *Youths with Intellectual and Developmental*

the Los Angeles County juvenile justice system, 87 percent of youth have a mental disability.³⁶⁰

Police interactions with youth with disabilities, especially those that occur at school, can also drastically alter youth perceptions of institutional actors, leading to increased mistrust and decreased beliefs in institutional legitimacy.³⁶¹ Police tactics, such as physical restraint and public admonishment, often stigmatize vulnerable youth, leading to long-term negative mental health effects — PTSD, anxiety, depression, and paranoia³⁶² — and the criminalization of youth with disabilities.³⁶³ These interactions transform crises into events that wrongly single out students with mental health disabilities as inherently deviant or dangerous, resulting in unnecessary or inappropriate involvement in the justice system even if these children have no criminal behavior or history.³⁶⁴ Every police encounter compounds these negative effects; school-based arrests and discipline are especially problematic.³⁶⁵ Law enforcement’s involvement in school discipline can lead to future minor infractions becoming technical probation violations that could expose a child to further involvement with the juvenile detention system.³⁶⁶ According to one study, “[d]isciplinary action that removes a student from the school building or the classroom increases the chance that a student will repeat a grade, drop out, or end up in the criminal justice system.”³⁶⁷

Negative repercussions also stem from law enforcement involvement in mental health emergencies involving youth. A majority of families rely on police when their child is in crisis, but only a slight majority finds these interactions helpful.³⁶⁸ Some families reported that law enforcement involvement was helpful primarily because the officer transported their child to the emergency department — a necessary step towards connecting a child with mental health services.³⁶⁹ Nevertheless, only 47 percent of youth experiencing mental health crises receive inpatient treatment as a result of their

Disabilities in the Juvenile Justice System. (May 2017) Office of Juvenile Justice and Delinquency Prevention, p. 7 <<https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/intellectual-developmental-disabilities.pdf>> [as of Nov. 15, 2023].

360 Krevoy, *LA County Puts Thousands of Kids on ‘Voluntary’ Probation for Merely Struggling with School* (May 31, 2017) Juvenile Justice Information Exchange <<https://jjie.org/2017/05/31/la-county-puts-thousands-of-kids-on-voluntary-probation-for-merely-struggling-with-school/>> [as of Nov. 15, 2023].

361 See Richards and Cohen, *The School that Calls the Police on Students Every Other Day*, *The Chicago Tribune* and ProPublica (Dec. 17, 2022) <<https://www.propublica.org/article/students-police-arrests-illinois-garrison-school>> [Nov. 15, 2023]; Liegghio et al., “I Don’t Want People to Think I’m a Criminal”: *Calling for More Compassionate Policing in Child and Youth Mental Health (“I Don’t Want People to Think I’m a Criminal”)* (Sep. 2020) 5 J. of Community Safety & Well-Being <<https://doi.org/10.35502/jcswb.151>> [as of Nov. 15, 2023]; Jackson et al., *Police Stops Among At-Risk Youth*, *supra* note 266, at pp. 631–632.

362 See generally Jackson et al., *Police Stops Among At-Risk Youth*, *supra* note 266, at pp. 631–632; Geller, *Youth-Police Contact: Burdens and Inequities in an Adverse Childhood Experience, 2014-2017* (July 2021) 111 *Am. J. of Public Health* 1302 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8493138/>> [as of Nov. 15, 2023].

363 Jackson et al., *Police Stops Among At-Risk Youth*, *supra* note 266, at p. 631.

364 Krevoy, *LA County Puts Thousands of Kids on ‘Voluntary’ Probation for Merely Struggling with School*, *supra* note 360 (“It [being ordered to participate in “voluntary probation” for receiving poor grades] made me feel like I had been labeled a monster child, a future criminal. I felt like the school, the PO, was just waiting for me to mess up. I felt like I was being set up for failure.”).

365 Jackson et al., *Police Stops Among At-Risk Youth*, *supra* note 266, at p. 631.

366 See, e.g., Jafarian and Ananthakrishnan, *Just Kids: When Misbehaving Is A Crime*, Vera (Aug. 2017); Krevoy, *LA County Puts Thousands of Kids on ‘Voluntary’ Probation for Merely Struggling With School*, *supra* note 360; The New Jersey Council on Developmental Disabilities, *Students with Disabilities Caught in the School-to-Prison Pipeline*, *supra* note 359.

367 See The New Jersey Council on Developmental Disabilities, *Students with Disabilities Caught in the School-to-Prison Pipeline*, *supra* note 359; see also Jafarian and Ananthakrishnan, *Just Kids: When Misbehaving Is A Crime*, *supra* note 366; Krevoy, *LA County Puts Thousands of Kids on ‘Voluntary’ Probation for Merely Struggling With School*, *supra* note 360.

368 Geddes, *Listening and Learning from Families: Crisis Services and the Experiences of Families Caring for Children and Youth with Behavioral Needs (Listening and Learning from Families)* (Dec. 2021) Maryland Coalition of Families, pp. 6–7 <<https://theinstitute.umaryland.edu/media/ssw/institute/Listening-and-Learning-from-Families-2021-FINAL.pdf>> [as of Nov. 15, 2023].

369 *Id.* at p. 8.

emergency department visit.³⁷⁰ Even for those families whose children were transported to emergency departments, many who were surveyed viewed the interaction with police as traumatizing and negative because of how police officers responded to their children.³⁷¹ For instance, it was not unusual for police officers to unnecessarily place a child in handcuffs before transporting them, traumatizing the child.³⁷² For those families, interactions with police and other emergency personnel were viewed as traumatizing and negative.³⁷³

Recently, the UN HRC issued a report of its study of the American criminal justice system. The UN HRC Expert noted the detrimental police involvement during mental health crises and the resulting harms. Particularly, the experts “repeatedly heard of mental health crises having worsened following interactions with law enforcement, in many cases leading to death.”³⁷⁴ In many cases, the mere presence of armed and uniformed officers exacerbated a person’s feelings of distress, escalating the mental health-related situations.³⁷⁵

Consistent with the UN HRC Expert’s observations, advocates have asserted that overreliance on police as primary first responders for mental health emergencies may violate the Americans with Disabilities Act (ADA) when officers provide harmful and ineffective responses. Recent investigations by the U.S. DOJ Civil Rights Division support that position.³⁷⁶ In June 2023, following an investigation of the City of Minneapolis and the Minneapolis Police department, the U.S. DOJ found that police render harmful and ineffective responses when they respond to behavioral health-related calls that do not require a police response, which the Minneapolis Police Department did the majority of the time.³⁷⁷ Doing so “deprive[d] people with behavioral health disabilities an equal opportunity to benefit from the City’s emergency response services.”³⁷⁸ Similarly, in March 2023, the U.S. DOJ concluded, after a two-year investigation into Louisville, Kentucky, and its police department, that the Louisville police violated the ADA by failing to deescalate people in behavioral health crises, leading to harmful and ineffective responses that “stand[] in stark contrast to its response to people who are experiencing physical health crises. Those individuals receive a prompt and often life-saving medical response by appropriately trained EMT professionals.”³⁷⁹

To address the concerns about harmful emergency responses to people experiencing behavioral health emergencies, the U.S. DOJ, in collaboration with the U.S. Department of Health and Human Services, issued a Guidance in May 2023 outlining best practices for responding to crises experienced by people with disabilities, including people with behavioral health disabilities.³⁸⁰ The Guidance emphasized that “[e]qual opportunity requires that people with behavioral health disabilities receive a health response

370 *Id.* p. 9.

371 *Id.* at pp. 7–8.

372 *Id.* at p. 8.

373 See *id.* at pp. 7–8; see also Liegghio et al., “I Don’t Want People to Think I’m a Criminal,” *supra* note 361.

374 U.N. Human Rights Council, *Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement*, *supra* note 5, at p. 11.

375 *Ibid.*

376 See, e.g., U.S. DOJ, *Investigation of the City of Minneapolis and the Minneapolis Police Department*, *supra* note 182, at p. 64; U.S. DOJ, *Investigation of the Louisville Metro Police Department and Louisville Metro Government*, *supra* note 206, at p. 60.

377 U.S. DOJ, *Investigation of the City of Minneapolis and the Minneapolis Police Department*, *supra* note 182, at pp. 57–58.

378 *Id.* at p. 57.

379 U.S. DOJ, *supra* note 206, at p. 60. In 2019, the California DOJ found that a school district’s law enforcement policies, which failed to provide adequate and appropriate responses for students with disabilities, discriminated against those students on the basis of their disability in violation of the ADA. (See Complaint for Injunctive Relief, *The People of the State of California, Ex. Rel. Xavier Becerra, Attorney General of the State of California v. Stockton Unified School District* (Super. Ct. Sac. County, 2019, 34-2019-00248766) pp. 7–8 <<https://oag.ca.gov/system/files/attachments/press-docs/BUSD%20File-Stamped%20Complaint.pdf>> [as of Nov. 15, 2023].)

380 U.S. DOJ and U.S. Department of Health & Human Services, *Guidance for Emergency Responses to People with Behavioral Health or Other Disabilities* (May 2023) p. 1 <https://www.justice.gov/d9/2023-05/Sec.%2014%28a%29%20-%20DOJ%20and%20HHS%20Guidance%20on%20Emergency%20Responses%20to%20Individuals%20with%20Behavioral%20Health%20or%20Other%20Disabilities_FINAL.pdf> [as of Nov. 15, 2023].

in circumstances where others would receive a health response — for example, if call centers would dispatch an ambulance or a medic rather than law enforcement to respond to a person experiencing a heart attack or diabetic crisis, equal opportunity would entail dispatching a health response in similar circumstances involving a person with a behavioral health disability.”³⁸¹ In a recent lawsuit the ACLU filed against the District of Columbia on behalf of a nonprofit that provides primary physical and behavioral healthcare services in the area, the ACLU alleged that the city’s practice of dispatching its police to respond to behavioral health crises violates the ADA, citing the U.S. DOJ’s May 2023 Guidance.³⁸²

4. Best Practices for Prioritizing a Care-First Model to Reduce Harm from Negative Interactions with Police

Given that negative interactions with police can reverberate beyond the initial encounter, researchers and advocates recommend approaches to encounters with youth with disabilities and youth experiencing mental health crisis that prioritize a care-first model, reducing unnecessary criminal justice intervention or law enforcement response entirely in favor of sustained community response.³⁸³ In its 2022 Report, the Board discussed some of the programs advocates are promoting as promising examples of a community-based approach to addressing behavioral health emergencies.³⁸⁴ For example, the Substance Abuse and Mental Health Services Administration (SAMHSA) advocates for the establishment of community-based behavioral health crisis care systems throughout the country that eliminate the involvement of law enforcement in responses to behavioral health emergencies except where special circumstances require their assistance.³⁸⁵ To be effective, these crisis care systems must have three core components: (1) regional crisis call centers that dispatch the appropriate care teams and route individuals to the appropriate facilities, (2) regional crisis mobile response teams, and (3) receiving centers and stabilization facilities.³⁸⁶

The regional crisis call centers would function analogously to 911 in that they would take all behavioral health calls within a community and provide real-time access to a live person every day, 24 hours per day, for individuals in crisis.³⁸⁷ Callers would be able to reach the centers in their region using the 988 national lifeline, which is currently staffed by an existing network of more than 200 local crisis call centers around the country.³⁸⁸ The 988 lifeline is a joint effort by the U.S. Department of Health and Human Services, SAMHSA, and the U.S. Department of Veteran Affairs to provide a safer alternative than a police response for behavioral health emergencies. The goal in creating the lifeline “is to ultimately reduce [deadly] confrontations with law enforcement and connect people in crisis to help right away.”³⁸⁹ The availability of a crisis call center allows youth with disabilities or in mental health crisis to obtain confidential help without fear of stigmatization or the risk of harm from a traditional police response.³⁹⁰ To ensure that individuals would be able to access the appropriate resources, the

381 *Id.* at p. 3.

382 Complaint, *Bread for the City v. District of Columbia* (D. D.C. Jul. 6, 2023) No. 1:23-cv-01945 <<https://www.aclu.org/wp-content/uploads/2023/07/20230706-D.C.-Crisis-Response-Compl-Filestamped.pdf>> [as of Nov. 15, 2023].

383 Substance Abuse and Mental Health Services Administration, *National Guidelines for Behavioral Health Crisis Care – A Best Practice Toolkit (National Guidelines for Behavioral Health Crisis Care)* (2020) pp. 12–13 <<https://www.samhsa.gov/sites/default/files/national-guidelines-for-behavioral-health-crisis-care-02242020.pdf>> [as of Nov. 15, 2023].

384 Racial and Identity Profiling Advisory Board, *2022 Report*, *supra* note 8, at p. 188; see also Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at pp. 159–169.

385 Substance Abuse and Mental Health Services Administration, *National Guidelines for Behavioral Health Crisis Care*, *supra* note 383, at pp. 12–13, 18.

386 *Id.* at p. 13; see also Racial and Identity Profiling Advisory Board, *2022 Report*, *supra* note 8, at p. 186.

387 At the time SAMHSA published its guidelines, the 988 national helpline had not been established. (See Substance Abuse and Mental Health Services Administration, *National Guidelines for Behavioral Health Crisis Care*, *supra* note 383, at p. 14.)

388 Chatterjee, *New Law Creates 988 Hotline for Mental Health Emergencies*, NPR (Oct. 19, 2020) <<https://www.npr.org/sections/health-shots/2020/10/19/925447354/new-law-creates-988-hotline-for-mental-health-emergencies>> [as of Nov. 15, 2023].

389 *Ibid.*

390 Substance Abuse and Mental Health Services Administration, *National Guidelines for Behavioral Health Crisis Care*,

staff at the regional crisis call centers are trained to deliver telephonic intervention services, triage calls to assess for additional needs, and coordinate connecting individuals to additional support, whether that means dispatching mobile services teams to provide direct and immediate care at the scene or transporting individuals to facilities for more intensive care.³⁹¹

The second core component of these community-based behavioral health crisis care systems are mobile crisis teams that are dispatched to the location of the person in crisis to support de-escalation, provide an assessment, and/or arrange for more intensive care if needed.³⁹² Most community-based mobile crisis programs use teams that include a clinician and a peer support specialist,³⁹³ with back-up support from psychiatrists.³⁹⁴ The overarching goal of mobile crisis teams is to “resolve the situation so a higher level of care is not necessary.”³⁹⁵ As part of an integrated crisis care system, mobile crisis teams link individuals to medical and behavioral health services that can help resolve the situation and prevent future crises. These services range from resolving the incident at the scene to less restrictive care in stabilization facilities to inpatient hospitalization when appropriate and necessary.³⁹⁶

One study found that for non-dangerous situations, mobile crisis units staffed by trained medical professionals are more effective (75% of users find these interventions favorable) than police intervention (58% find helpful) and emergency medical treatment (53% find helpful).³⁹⁷ The mobile crisis units also often effectively neutralize crises while avoiding the public stigmatization and institutionalization of vulnerable youth, both of which can result in long-term destabilization.³⁹⁸ Only 12 percent of mobile crisis visits result in hospitalization, and many “families explicitly said they believed that mobile crisis had averted a hospitalization.”³⁹⁹ An essential element in successful responses to mental health crisis include prevention of future incidents through appropriate and consistent aftercare.⁴⁰⁰ Mobile crisis teams are effective at preventing future incidents because they are capable of providing “continuity of care” beyond the initial crisis.⁴⁰¹ That could include assisting with scheduling future appointments and providing transportation to those appointments.⁴⁰²

The third key feature of an effective mental health crisis care system are receiving and stabilization facilities that are distinct from emergency rooms in hospitals.⁴⁰³ These facilities would be required not to turn anyone away, and function as the mental health equivalent of a hospital emergency room for

supra note 383, at pp. 71–72; see Bunts, *Youth Mobile Response Services: An Investment To Decriminalize Mental Health (Youth Mobile Response Services)* (Apr. 12, 2021) Center for Law and Social Policy, pp. 7, 17–18 <https://www.clasp.org/wp-content/uploads/2022/04/Youth20Mobile20Response20Services_0.pdf> [as of Nov. 15, 2023]; see also National Alliance on Mental Health, *988: Reimagining Crisis Response* <<https://nami.org/Advocacy/Crisis-Intervention/988-Reimagining-Crisis-Response>> [as of Nov. 15, 2023].

391 Substance Abuse and Mental Health Services Administration, *National Guidelines for Behavioral Health Crisis Care*, *supra* note 383, at p. 14; see Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at pp. 161–162.

392 Substance Abuse and Mental Health Services Administration, *National Guidelines for Child and Youth Behavioral Health Crisis Care* (2022) p. 19 <https://store.samhsa.gov/sites/default/files/SAMHSA_Digital_Download/pep-22-01-02-001.pdf> [as of Nov. 15, 2023].

393 Some research studies suggest that peer support can be effective in helping address mental health issues. (See Davies, *Exploring the Value of Peer Support for Mental Health*, *Psychiatry Advisor* (Jul. 18, 2019) <<https://www.psychiatryadvisor.com/home/topics/general-psychiatry/exploring-the-value-of-peer-support-for-mental-health>> [as of Nov. 15, 2023]; see also Shalaby and Agyapong, *Peer Support in Mental Health: Literature Review* (2020) 7 *JMIR Mental Health* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7312261/>> [as of Nov. 15, 2023].)

394 Substance Abuse and Mental Health Services Administration, *National Guidelines for Behavioral Health Crisis Care*, *supra* note 383, at p. 18.

395 *Id.* at p. 20.

396 *Id.* at p. 21.

397 Geddes, *Listening and Learning from Families*, *supra* note 368, at pp. 10–11.

398 See Bunts, *Youth Mobile Response Services*, *supra* note 390, at pp. 4, 18.

399 Geddes, *Listening and Learning from Families*, *supra* note 368, at p. 11.

400 Substance Abuse and Mental Health Services Administration, *National Guidelines for Behavioral Health Crisis Care*, *supra* note 383, at p. 21.

401 *Id.* at pp. 18, 45.

402 See *id.* at pp. 21, 14.

403 *Id.* at p. 18.

people of various ages with various clinical conditions or concerns.⁴⁰⁴ Individuals who were transported to an emergency room instead of an alternative mental health stabilization setting reported that they experienced increased distress and worsening symptoms as a result of the visit.⁴⁰⁵ Some concluded that their experiences were made worse by a number of factors, including being treated by staff with limited experience with psychiatric crisis care.⁴⁰⁶ They would have preferred going to a place where they could speak with peers and trained professionals who understood what they were experiencing and treated them respect and dignity, something they did not experience in the emergency room.⁴⁰⁷ These stabilization facilities, in contrast to emergency departments, would be “staffed with a multidisciplinary team capable of meeting the needs of individuals experiencing all levels of crisis” and provide varying levels of interventions.⁴⁰⁸ Where more intensive interventions are required, these facilities would be able to arrange for and transport those individuals to the appropriate mental health settings.⁴⁰⁹

A community-based behavioral health crisis care system with these three components could help minimize, if not eliminate, the involvement of law enforcement as responders to behavioral health emergencies for youth.⁴¹⁰

Researchers and advocates, such as the American Civil Liberties Union of Southern California, also recommend removing permanent police officers from schools.⁴¹¹ Instead of officers, they recommend increasing mental health supports in the places where children spend the most time, particularly schools.⁴¹² Ninety percent of students attend schools where the number of support staff does not meet professional guidelines.⁴¹³ An increase in support staff, specialized counseling for students after police encounters — such as counselor-led mental health screenings, post-encounter counseling, and preparatory awareness programs⁴¹⁴ — and the discontinuation of programs that treat children as criminal actors may strengthen the bonds children feel to institutional actors and reduce negative outcomes that stem from institutional mistrust.⁴¹⁵ Further, increasing access to non-traditional preventative and early intervention (PEI) programs within schools would provide additional support for youth with disabilities, especially those who may be reluctant to seek help from a school counselor.⁴¹⁶ One example is peer support groups, which have shown promising results in helping students experiencing depression or anxiety.⁴¹⁷

404 *Id.* at p. 22.

405 *Id.* at p. 23.

406 *Ibid.*

407 *Ibid.*

408 *Id.* at p. 22.

409 *Ibid.*

410 See *id.* at pp. 18–19, 22, 27.

411 Whitaker et al., *No Police in Schools: A Vision for Safe and Supportive Schools in California*, *supra* note 348, at p. 40; U.N. Human Rights Council, *Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement* *supra* note 5, at p. 29; Neath and Rau, *Redesigning Public Safety: K-12 Schools* (May 2023) Center for Policing Equity, p. 7 <<https://www.policingequity.org/school-safety/71-white-paper-school-safety/file>> [as of Nov. 15, 2023]; see Kupchik, *Research on the Impact of School Policing* (2022) ACLU Pennsylvania, pp. 1–3 <https://www.endzerotolerance.org/_files/ugd/10497b_6fc0a663f78e4303978dba0716c3cbfa.pdf> [as of Nov. 15, 2023].

412 Whitaker et al., *No Police in Schools*, *supra* note 348, at pp. 40–41.

413 Resing et al., *Redesigning Public Safety: Mental Health Emergency Response* (Feb. 2023) Center for Policy Equity, p. 16 <https://policingequity.org/mental-health?utm_source=press&utm_medium=release&utm_campaign=mh-white-paper> [as of Nov. 15, 2023].

414 Jackson et al., *Police Stops Among At-Risk Youth*, *supra* note 266, at p. 632.

415 Whitaker et al., *No Police in Schools*, *supra* note 348, at p. 36. For further discussion, please see pages 124–140 of the Racial and Identity Profiling Advisory Board’s 2023 Report, *supra* note 55.

416 Bowers et al., *Stigma in School-Based Mental Health: Perceptions of Young People and Service Providers* (2013) 18 Child Adolescent Mental Health 129, 168 <<https://acamh.onlinelibrary.wiley.com/doi/epdf/10.1111/j.1475-3588.2012.00673.x>> [as of Nov. 15, 2023].

417 Walker, *Peer Programs Helping Schools Tackle Student Depression, Anxiety*, Nat. Ed. Assn. (NEA) Today (Nov. 14, 2019) <<https://www.nea.org/nea-today/all-news-articles/peer-programs-helping-schools-tackle-student-depression-anxiety>> [as of Nov. 15, 2023]; see also Am. School Counselor Assn., *The School Counselor and Peer Support Programs* (2021) <<https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-Peer-Support-Programs>> [as of Nov. 15, 2023] (stating that “[t]he informed implementation of peer support programs enhances the effectiveness of school counseling programs and provides increased

When law enforcement presence is necessary, researchers and advocates support the primary use of de-escalation and stabilization techniques in interactions with youth with disabilities.⁴¹⁸ However, police officers have limited or no training in de-escalation techniques with people who have an intellectual or developmental disability.⁴¹⁹ Psychiatric professionals are concerned that if police misunderstand or misinterpret behavior of youth with an intellectual or developmental disability, police may escalate force, which can in the worst instances lead to excessive force or deaths.⁴²⁰ Trainings on these techniques should also include foundational information on developmentally appropriate behaviors of adolescents (e.g., emerging skills in self-control and decision-making) and how these factors influence youth’s interactions with and responses to police.⁴²¹ These efforts should also be tethered to an understanding that police officers tend to overestimate the age of youth. For example, a study by the American Psychological Association found that Black boys as young as 10 years old are not viewed in the same light of childhood innocence as their White peers, but are instead more likely to be mistaken as older, be perceived as guilty, and face police violence if accused of a crime.⁴²² It is also recommended that police discontinue the use of physical restraints when youth, especially young children, do not present an actual, immediate threat of safety to themselves or those around them.⁴²³

5. Restructuring law enforcement response to behavioral health emergencies

As acknowledged, best practice is having community-based crisis responses to behavioral health emergencies that do not involve law enforcement. Still, even in communities where the primary responses to behavioral health incidents do not routinely involve law enforcement, police officers may become involved in certain circumstances.⁴²⁴ In those cases, it is necessary to ensure that adequate protocols exist to address and minimize any risk of trauma or harm to youth.

Collaborations between mental health professionals and police that reframe police as advocates for vulnerable youth — connecting them with appropriate mental health resources in lieu of charges — can

outreach and expansion of services”). Another study noted that successful outcomes for Group Cognitive Behavioral Therapy “were related to the presence of peers, who were an important source of feedback and support to observe, learn, and practice new skills to manage depressive symptoms and improve social-relational skills.” (Nardi et al., *Effectiveness of Group CBT in Treating Adolescents with Depression Symptoms: A Critical Review* (Jan. 2016) *Internat. J. Adolescent Medicine and Health* <<https://pubmed.ncbi.nlm.nih.gov/26812765/>> [as of Nov. 15, 2023].)

418 Riccardi et al., *Recognizing and Responding to Traumatized Youth: Preliminary Results and Implications for Police Trainings* (Jul. 12, 2022) *Police Practice and Research*, pp. 176–177 <<https://doi.org/10.1080/15614263.2021.1951728>> [as of Nov. 15, 2023].

419 Substance Abuse and Mental Health Services Administration, *National Guidelines for Child and Youth Behavioral Health Crisis Care*, *supra* note 392, at p. 42.

420 Am. Psych. Assn., *Position Statement on Police Interactions with Children and Adolescents in Mental Health Crisis*, *supra* note 335 (“Children and adolescents are less able to anticipate consequences and to self-regulate their emotions as compared to adults. As the level of resistance increases, officers use higher levels of force to gain compliance.”).

421 Internat. Assn. of Chiefs of Police, *The Effects of Adolescent Development on Policing: Why Is Adolescent Development Important to Law Enforcement?* (2018) <<https://www.theiacp.org/sites/default/files/2018-08/IACPBriefEffectsofAdolescentDevelopmentonPolicing.pdf>> [as of Nov. 15, 2023].

422 See Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children* (Feb. 14, 2014) *J. of Personality and Social Psychol.*, pp. 526–545 <<https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf>> [as of Nov. 15, 2023]; see also Jackson et al., *Police Stops Among At-Risk Youth*, *supra* note 266, at p. 628.

423 See generally Kramer, *NYC Schools Handcuff and Haul Away Kids in Emotional Crisis* (May 4, 2022) *THE CITY and ProPublica* <<https://www.propublica.org/article/nyc-schools-students-police-emotional-crisis-nypd>> [as of Nov. 15, 2023]; Geddes, *Listening and Learning from Families*, *supra* note 368, at pp. 15–16; Advocates for Children of New York, *Police Response to Students in Emotional Crisis* (June 2021), pp. 10–14 <https://www.advocatesforchildren.org/sites/default/files/library/police_response_students_in_crisis.pdf?pt=1> [as of Nov. 15, 2023]; Liegghio et al., “*I Don’t Want People to Think I’m a Criminal*,” *supra* note 361.

424 Law enforcement may be necessary because the circumstances require their presence. For instance, a police officer may be needed to manage behavior that places others at risk of harm. (Substance Abuse and Mental Health Services Administration, *National Guidelines for Behavioral Health Crisis Care*, *supra* note 383, at pp. 18, 33.) Alternatively, a police officer may have been mistakenly dispatched because inaccurate information was relayed to or by dispatch.

lead to a reduction in youth arrests and an increase in the voluntary use of mental health services.⁴²⁵ For example, Police Mental Health Collaboration (PMHC) programs, which are partnerships between law enforcement and mental health providers, are designed to allow law enforcement to safely respond to behavioral health emergencies.⁴²⁶ These programs have shown promising results in diverting individuals from the criminal system or a hospital emergency room to appropriate mental health care settings.⁴²⁷ Key features of effective PMHC programs include training law enforcement officers on recognizing signs and symptoms of mental illness, increasing officer awareness of mental health resources within their community and their ability to collaborate with those resources, and training officers in de-escalation techniques.⁴²⁸

As discussed in the Board’s 2022 and 2023 Reports,⁴²⁹ one of the more promising models of a PMHC program is the CIT model, which involves trained officers and call dispatchers collaborating with mental health providers to stabilize a situation at the scene or, where necessary, transport an individual to a mental health treatment center that has a “no refusal policy.”⁴³⁰ Nevertheless, building successful youth-focused CIT programs requires more than just training law enforcement officers; it requires forging strong relationships between families, schools, mental health providers, and law enforcement.⁴³¹ For youth experiencing mental health crisis, advocates like the National Alliance on Mental Illness acknowledge youth-specific CIT as an improvement over a pure police response because it involves training that helps law enforcement officers build partnerships with communities and develop trust with young people.⁴³² In turn, officers can link youth in crisis to effective services and support available in their community.⁴³³ Although many cities across the county have developed adult CIT programs, few youth-specific CIT programs exist. And the ones that exist have been criticized for failing to connect

425 Janopaul-Naylor et al., *Promising Approaches to Police-Mental Health Partnerships to Improve Service Utilizations for At-Risk Youth* (2019) 5 *Translational Issues in Psychol. Science* 206, 213 <<http://dx.doi.org/10.1037/tps0000196>> [as of Nov. 15, 2023].

426 The U.S. DOJ PMHC Toolkit includes the following types of PMHC programs: The Crisis Intervention Teams model (CIT), which involves trained officers and trained call dispatchers collaborating with mental health providers to transport individuals to mental health treatment centers with a “no refusal policy” instead of county jail; the Mobile Crisis Team model, which involves a group of mental health professionals who respond to calls for service at the request of law enforcement officers; a Co-Responder Team model, which partners a specially trained officer with a mental health crisis worker to respond to mental health calls; a Proactive Team model, which involves behavioral health professionals and officers providing outreach and follow-up to repeat callers and high utilizers of emergency services; and a “Tailored Approach,” where the agency selects various response options from the PMHC toolkit to build a comprehensive and robust program that responds to a community’s specific needs. (Bureau of Justice Assistance, *Police-Mental Health Collaboration (PMHC) Toolkit* <<https://bja.ojp.gov/program/pmhc>> [as of Nov. 15, 2023].)

427 See, e.g., Rogers et al., *Effectiveness of Police Crisis Intervention Programs* (2019) 47 *J. of Am. Academy of Psych. and the Law* 418 <<https://jaapl.org/content/jaapl/early/2019/09/24/JAAPL.003863-19.full.pdf>> [as of Nov. 15, 2023]; Watson and Fulambarker, *The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners* (Dec. 2012) 8 *Best Practices in Mental Health* 2 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3769782/#R9>> [as of Nov. 15, 2023] (stating that research studies indicate that the CIT Model is effective in diverting people with mental health emergencies from jails to treatment settings); Internat. Assn. of Chiefs of Police, *Assessing the Impact of Co-Responder Team Programs: A Review of Research*, CP/UC Center for Police Research and Policy, pp. 6–8 <<https://www.theiacp.org/sites/default/files/IDD/Review%20of%20Co-Responder%20Team%20Evaluations.pdf>> [as of Nov. 15, 2023] (stating that research indicates that Co-Responder teams were effective in connecting individuals to mental health treatment resources and may result in fewer arrests than regular police intervention).

428 See, e.g., Bureau of Justice Assistance, *Police-Mental Health Collaboration (PMHC) Toolkit*, *supra* note 426.

429 Racial and Identity Profiling Advisory Board, *2022 Report*, *supra* note 8, at pp. 185–190; Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at p. 163.

430 Bureau of Justice Assistance, *Police-Mental Health Collaboration (PMHC) Toolkit*, *supra* note 426.

431 National Alliance on Mental Illness, *Step 1: Building Community Partnerships*, pp. 9–11, 23 <[https://www.nami.org/getattachment/Get-Involved/Crisis-Intervention-Team-\(CIT\)-Programs/CIT-Programs-for-Youth/Step-1-from-Responding-to-Youth-with-Mental-Health-Needs_NAMI-4.pdf](https://www.nami.org/getattachment/Get-Involved/Crisis-Intervention-Team-(CIT)-Programs/CIT-Programs-for-Youth/Step-1-from-Responding-to-Youth-with-Mental-Health-Needs_NAMI-4.pdf)> [as of Nov. 15, 2023].

432 National Alliance on Mental Illness, *Responding to Youth with Mental Health Needs: A CIT for Youth Implementation Manual* (2011) pp. 7, 9–11 <https://www.nami.org/getattachment/Law-Enforcement-and-Mental-Health/What-Is-CIT/CIT-for-Youth/Responding-to-Youth-with-Mental-Health-Needs_NAMI.pdf> [as of Nov. 15, 2023].

433 *Id.* at pp. 7, 9–12.

youth to long-term care and treatment following the initial crisis intervention.⁴³⁴ Still, PMHC programs like the CIT model are an improvement over a pure police response because they can reduce the risk of the negative outcomes that can occur with traditional police responses to behavioral health emergencies involving vulnerable youth. Researchers and advocates have also made the following recommendations for improving collaborative response programs:

- (1) Train police officers to understand how disabilities may affect compliance with orders and impact other behaviors, and likewise how implicit bias and structural racism affect the reactions and actions of officers and the systems in which they work in ways that create inequities.⁴³⁵
- (2) Train police officers to understand that youth experiencing mental health crises are not inherently dangerous.⁴³⁶ The Parent Professional Advocacy League explains that “encouraging self-awareness and addressing stigmatizing attitudes among officers directed towards mental illness is vital to relational policing. Officers should possess an accurate understanding of violence risk cues and strive to ascertain intentions to avoid misinterpretation of behavior.”⁴³⁷
- (3) Include people with mental illness in police mental health collaboration program trainings to dispel the stereotypes that people experiencing mental illness are dangerous, to build compassion for their lived experience, and to reduce bias.⁴³⁸
- (4) Train police officers on using conversation instead of force, asking questions aimed at obtaining a full understanding of the situation, and employing patience instead of immediate demands when interacting with youth with disabilities.⁴³⁹ Relatedly, police officers should gather information from family members or friends about the individual’s background and the specifics about their present behavior, including whether the behavior is the result of a disability, which will help officers employ more effective strategies to moderate the person’s distress and behavior.⁴⁴⁰
- (5) Encourage municipalities and law enforcement agencies to implement protocols that (1) use licensed health care and mental health workers rather than law enforcement as first responders when emergency services are requested for children and adolescents in mental health crisis;⁴⁴¹ (2) limit use of force against children during mental health calls;⁴⁴² (3) train law enforcement personnel who respond to and/or interact with youth in mental health crisis on effective developmentally appropriate communication that emphasizes de-escalation techniques and non-punitive trauma-informed interventions;⁴⁴³ and (4) allocate resources to historically

434 See generally Karp, *Lawmaker Pushes to Scrutinize State Program for Children in Mental Health Crisis*, Chicago Sun Times (Apr. 6, 2023) <<https://chicago.suntimes.com/education/2023/4/6/23673083/mental-health-crisis-suicide-children-support-system-illinois-sass>> [as of Nov. 15, 2023].

435 McCauley, *The Cumulative Probability of Arrest*, *supra* note 334, at p. 1981.

436 See Bunts, *Youth Mobile Response Services*, *supra* note 390, at p. 5.

437 Parent Professional Advocacy League, *Police Pocket Guide: Responding to Youths with Mental Health Needs* (June 24, 2008) <<https://chicago.suntimes.com/education/2023/4/6/23673083/mental-health-crisis-suicide-children-support-system-illinois-sass>> [as of Nov. 15, 2023].

438 Lavoie et al., *Developing Community Co-designed Scenario-Based Training for Police Mental Health Crisis Response: a Relational Policing Approach to De-escalation* (Feb. 2022) 37 J. Criminal Police Psychol. 587, 591 <<https://doi.org/10.1007%2Fs11896-022-09500-2>> [as of Nov. 15, 2023].

439 See Internat. Assn. of Chiefs of Police, *The Effects of Adolescent Development on Policing: Why Is Adolescent Development Important to Law Enforcement?*, *supra* note 421, at pp. 3–4.

440 Internat. Assn. of Chiefs of Police, *Responding to Persons Experiencing a Mental Health Crisis*, Law Enforcement Policy Center (Aug 2018) p. 6 <<https://www.theiacp.org/sites/default/files/2021-07/Mental%20Health%20Crisis%20Response%20FULL%20-%2006292020.pdf>> [as of Nov. 15, 2023].

441 Substance Abuse and Mental Health Services Administration, *National Guidelines for Behavioral Health Crisis Care*, *supra* note 383, at p. 5.

442 The 2023 RIPA Report also noted the San Francisco Police Department’s use of force policy includes a last resort policy for interactions with children. (Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at p. 118; see also Am. Psych. Assn., *Approaches to Youth in Mental Health Crisis*, *supra* note 335.)

443 Am. Psych. Assn., *Approaches to Youth in Mental Health Crisis*, *supra* note 335; Internat. Assn. of Chiefs of Police, *The Effects of Adolescent Development on Policing: Why Is Adolescent Development Important to Law Enforcement?*,

underfunded and underserved communities to break the cycle of poverty and criminalization of racial minority children and adolescents.⁴⁴⁴

- (6) Encourage law enforcement agencies to adopt policies that prohibit the use of force, except when necessary to prevent injury or harm to the individual or officer, against children and persons with physical and mental disabilities because the use of force “can undermine public trust and should be used as a last resort when all other reasonable means have been exhausted.”⁴⁴⁵ Relatedly, recommend that police use less confrontational tactics and de-escalation during mental health calls.⁴⁴⁶ And finally, encourage municipalities and law enforcement agencies to modify policies, procedures, and practices to avoid discrimination on the basis of disability responding to calls involving people with mental health and physical disabilities.⁴⁴⁷
- (7) Train dispatch and call centers to practice active engagement with callers to ensure they gather accurate information about the behavior of the person in crisis and the circumstances that triggered the call so that the least invasive intervention and the most appropriate crisis response can be employed.⁴⁴⁸

As noted, these are recommendations from advocates for developing best practices for implementing collaborative response programs. The Board hopes to evaluate these recommendations along with additional data, research studies, and evolving crisis intervention models to determine which recommendations it will make to law enforcement agencies.

8. Vision for Future Reports

This year, the Board reviewed data showing disparities between law enforcement interactions with youth perceived to have a disability and youth perceived as not having a disability. The data suggest that these disproportionate interactions may place this vulnerable population at an increased risk of harm. In future reports, the Board hopes to make specific recommendations to the Legislature and to law enforcement agencies to address the disproportionate interactions between law enforcement and youth perceived to have a disability and reduce the risks of harm that flow from those interactions.

supra note 421, at p. 4.

444 Am. Psych. Assn., *Position Statement on Police Interactions with Children and Adolescents in Mental Health Crisis*, *supra* note 335.

445 Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at p. 118; see also, e.g., San Francisco Police Department, *General Order 5.01 Use of Force Policy and Proper Control of a Person* (2022) pp. 2, 12 <<https://sf.gov/sites/default/files/2022-09/DGO%205.01%20Use%20of%20Force%20-%20Clean%20Version.pdf>> [as of Nov. 15, 2023] (stating that “[t]he use of force against vulnerable populations—including children, elderly persons, pregnant women, people with physical and mental disabilities and people with limited English proficiency—can undermine public trust and should be used as a last resort, when all other reasonable means have been exhausted” and prohibiting the use of electronic control weapons or Tasers on elderly or children unless the use of deadly force is appropriate); The Associated Press, *Tiny Wrists in Cuffs: How Police Use Force Against Children*, NPR (Oct. 20, 2021) <<https://www.npr.org/2021/10/20/1047618263/tiny-wrists-in-cuffs-how-police-use-force-against-children>> [as of Nov. 15, 2022]; Am. Psych. Assn., *APA Condemns Pepper-Spraying, Handcuffing of 9-Year-Old Girl by Rochester Police*, *supra* note 335 (condemning police response to child experiencing mental health emergency).

446 See Internat. Assn. of Chiefs of Police, *The Effects of Adolescent Development on Policing: Why Is Adolescent Development Important to Law Enforcement?*, *supra* note 421, at p. 4.

447 See, e.g., U.S. DOJ, *Investigation of the City of Minneapolis and the Minneapolis Police Department* (June 2023) pp. 65–66 <<https://www.justice.gov/opa/press-release/file/1587661/download>> [as of Nov. 15, 2023].

448 See Substance Abuse and Mental Health Services Administration, *National Guidelines for Behavioral Health Crisis Care*, *supra* note 383, at p. 14.

A. Addressing Profiling of Students

1. Introduction

The RIPA Board is charged with looking beyond individual officers and anecdotal accounts, analyzing the data regarding law enforcement stop, search, and seizure tactics, and making detailed findings on the past and current status of racial and identity profiling.⁴⁴⁹ The RIPA data show that the racial disparities in policing are much larger for youth than they are for older age groups.⁴⁵⁰ Most youth spend a significant amount of time in school, and in recent decades, the presence of law enforcement in schools has increased greatly, thereby increasing youth exposure to law enforcement.⁴⁵¹ However, this exposure has not been equal across racial and ethnic groups, nor have the consequences been equal. Following the 1965 Watts Rebellion and the uprisings and student strike that took place at Jefferson High School in 1969, police departments in urban, majority-Black communities installed officers in schools as disciplinary figures and in teaching capacities, in a reactionary unification of police departments and school districts that “would come to define public education of Black youth in Southern California.”⁴⁵²

School-based police remain most heavily concentrated in low-income high schools with majority populations of students of color.⁴⁵³ In last year’s Report, the Board examined the impact of school-based policing on Black and Hispanic/Latine(x) youth and disparities in the referral of students to law enforcement.⁴⁵⁴ In this Report, the Board examines in depth the RIPA data reported for stops of students in K-12 schools. Examining the RIPA data is critical to understand how law enforcement interacts with students in public schools. The adverse and disproportionate impact of school policing on Black and Hispanic/Latine(x) students and students with disabilities is incompatible with California’s constitutional guarantee of the right for each child in California to attend a public school that is free from discrimination.⁴⁵⁵

School policing is closely tied to racial and identity profiling because of the disparate impact of school policing on Black and Hispanic/Latine(x) youth and youth with disabilities across California’s schools. In 2019, in a report examining school discipline policies and connections to the school-to-prison pipeline, the U.S. DOJ asserted that eliminating racial discrimination in student discipline is part of establishing a “truly unitary school system.”⁴⁵⁶ In the same year, in a review of research on school policing to provide guidance to local educational agencies regarding students experiencing homelessness, the U.S. Department of Education found that the presence of armed law enforcement “disproportionately criminalizes certain vulnerable student populations, including students of color and students with disabilities, and that inappropriate reliance on school-based law enforcement can actually promote distrust in schools.”⁴⁵⁷

449 Pen. Code, § 13519.4, subd. (j)(3)(D-E).

450 Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at p. 109.

451 Nationally, only one percent of schools had a police officer present in 1975. (Connery, *The Prevalence and the Price of Police in Schools* (2020) U. Conn. Center for Education Public Analysis, p. 1 <https://cepa.uconn.edu/wp-content/uploads/sites/399/2020/10/Issue-Brief-CEPA_C-Connery.pdf> [as of Nov. 15, 2023].) By 2018, police officers patrolled approximately 58 percent of schools. *Id.*

452 Fedders, *The End of School Policing* (2021) 109 Cal. L.Rev. 1443, 1464-1465; Sojoyner, *Black Radicals Make for Bad Citizens: Undoing the Myth of the School to Prison Pipeline* (2013) Berkeley Rev. Ed. 252 <<https://www.education.pitt.edu/sites/default/files/Sojoyner-Black-Radicals-TLL-Commons.pdf>> [as of Nov. 15, 2023].

453 Fedders, *The End of School Policing*, *supra* note 452, at p. 1452.

454 Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at pp. 127–128.

455 See Cal. Const., art. I, § 7.

456 U.S. Com. on Civil Rights, *Beyond Suspensions: Examining School Discipline Policies and Connections to the School-To-Prison Pipeline for Students of Color with Disabilities* (July 2019) p. 18 <<https://www.usccr.gov/files/pubs/2019/07-23-Beyond-Suspensions.pdf>> [as of Nov. 15, 2023].

457 Cal. Dept. of Ed., *Designating Liaisons for Students Experiencing Homelessness* (Aug. 2019) p. 4 <<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.cde.ca.gov%2Fsp%2Fhs%2Fcy%2Fdocuments%2Fdesignatingliaisons.docx&wdOrigin=BROWSELINK>> [as of Nov. 15, 2023].

This Report discusses both responses to calls for service at K-12 school campuses and the interactions of school-based and non-school-based officers with students. Some school-based law enforcement officers are employed by school district administered police departments and others are employed by municipal police departments and assigned to work on K-12 school campuses. A substantial body of research demonstrates that police priorities vary across different school settings, with school-based law enforcement officers in White suburban school districts more often viewing students as charges to be protected and school-based law enforcement officers in urban districts with a larger amount of Black students more often treating students as potential criminals to be feared.⁴⁵⁸ Researchers found that:

Officers in schools with more students of color may be more frequently engaged in tasks that focus on students as a potential source of danger. This might involve conducting searches of students and their belongings, patrolling the hallways, or responding to student misbehavior.⁴⁵⁹

Researchers also found that in schools with more White students, officers may engage in tasks unrelated to crime-monitoring, such as “[f]orming close police-community relations, like those in advantaged neighborhoods that view the police as an amenity”⁴⁶⁰ A 2022 study examining differences in police roles in relation to school racial composition defined crime control-oriented activities in school policing as: “carries a firearm, conducts security enforcement and patrol, coordinates with local police and emergency teams, and maintains school discipline” and defined service-oriented activities in school policing as: “trains teachers and staff members on safety or crime prevention, identifies problems in the school and proactively seeks solutions to those problems, mentors students, and teaches a law-related education course or trains students (e.g., drug-related education, criminal law, or crime prevention courses).”⁴⁶¹

In this Report, the RIPA data and the Board’s research highlight the consequences of school-based policing on student discipline, student threat assessment procedures, and school climate. The Board’s recommendations then provide evidence-based guidance and best practices to move beyond the existing paradigm of harmful school policing.

a. Funding School-Based Policing

California schools reported the presence of 1,429 school-based law enforcement officers in the U.S. Department of Education’s 2017-2018 Civil Rights Data Collection (the most recent year of data available).⁴⁶² During the same period, California schools reported referring 24,727 students to law enforcement⁴⁶³ and 2,188 arrests of students at schools.⁴⁶⁴

The U.S. Department of Justice, Office of Community Oriented Policing Services (COPS) grant funding and state funding have supported the trend of increased presence of law enforcement in schools in

458 See, e.g., Neath and Rau, *Redesigning Public Safety: K-12 Schools*, *supra* note 411, at p. 6; Gleit, *Cops on Campus: The Racial Patterning of Police in Schools* (2022) 8 *Socius* <<https://journals.sagepub.com/doi/10.1177/23780231221108037>> [as of Nov. 15, 2023]; see also Curran et al., *Why and When Do School Resource Officers Engage in School Discipline? The Role of Context in Shaping Disciplinary Involvement* (2019) 126 *Am. J. of Ed.* 33, 57-58 (citing Kupchik, *Homeroom Security: School Discipline in an Age of Fear* (2010); Nolan, *Police in the Hallways: Discipline in an Urban High School* (2011)).

459 Gleit, *Cops on Campus: The Racial Patterning of Police in Schools*, *supra* note 458.

460 *Ibid.*

461 *Ibid.*

462 U.S. Dept. of Ed. Civil Rights Data Collection, *2017-18 CRDC: School Support [CSV]* (2017-2018) <<https://ocrdata.ed.gov/assets/ocr/docs/2017-18-crdc-data.zip>> [as of Nov. 15, 2023].

463 U.S. Dept. of Ed. Civil Rights Data Collection, *2017-18 Referred to Law Enforcement Estimations: Referred to Law Enforcement With and Without Disability* (2017-2018) <https://ocrdata.ed.gov/assets/downloads/2017-2018/School-Climate/Arrests/Referred-to-Law-Enforcement/Referred-to-Law-Enforcement_by-disability-and-no.xlsx> [as of Nov. 15, 2023].

464 U.S. Dept. of Ed. Civil Rights Data Collection, *2017-18 School-Related Arrests Estimations: Referred to Law Enforcement With and Without Disability* (2017-2018) <https://ocrdata.ed.gov/assets/downloads/2017-2018/School-Climate/Arrests/School-Related-Arrest/School-Related-Arrest_by-disability-and-no.xlsx> [as of Nov. 15, 2023].

recent decades.⁴⁶⁵ Legal scholars and researchers have studied the funding that incentivizes police hiring over other types of safety investments.⁴⁶⁶ They found that in the early 1990s, the federal government introduced funding to assist school districts wishing to hire police officers.⁴⁶⁷ The 1994 Safe Schools Act provided funding to schools with evidence of crime, violence, and disciplinary problems, which could be used to hire law enforcement officers.⁴⁶⁸

Between 1999 and 2005, the COPS in Schools program awarded approximately \$823 million in grants to districts for hiring officers, funding 7,242 positions.⁴⁶⁹ The COPS in Schools program ended in 2005, making it more difficult to track grant funding for school-based policing.⁴⁷⁰

After the shooting at Sandy Hook Elementary School, the Obama administration announced funding that facilitated the hiring of 370 additional officers in 2013.⁴⁷¹ Since then, additional COPS grants have facilitated new funding. Current programs include the COPS Hiring Program, through which law enforcement agencies may solicit funding for officer positions, including to hire and/or deploy law enforcement officers into schools, and the School Violence Prevention Program grant.⁴⁷² In addition to federal grants, funding from the California DOJ-administered Tobacco Grant Program may also be used for school and community education and enforcement operations.⁴⁷³

A study by the University of Texas Education Research Center examined the impact of federal grants for police in schools through the analysis of data from 1999 through 2008 on over 2.5 million students in Texas.⁴⁷⁴ In the study period, “approximately \$60 million was distributed to hire police officers in Texas public schools.”⁴⁷⁵ The study found “that federal grants for police in schools increase middle school discipline rates by 6%, with Black students experiencing the largest increases in discipline,” and the increase was driven by disciplinary actions for low-level offenses or school conduct code violations.⁴⁷⁶

465 Connery, *The Prevalence and the Price of Police in Schools*, *supra* note 451, at pp. 1–3.

466 *Ibid.*; Fedders, *The End of School Policing*, *supra* note 452, at p. 1460.

467 Fedders, *The End of School Policing*, *supra* note 452, at p. 1460.

468 *Ibid.*

469 Connery, *The Prevalence and the Price of Police in Schools*, *supra* note 451, at pp. 1–3.

470 *Ibid.*

471 Fedders, *The End of School Policing*, *supra* note 452, at p. 1460.

472 U.S. DOJ Community Oriented Policing Services Office, *COPS Hiring Program (CHP) – How Decisions Were Made to Allocate \$140 Million When More Than \$330 Million Was Requested* (2022) p. 1 <<https://cops.usdoj.gov/pdf/2022AwardDocs/chp/methodology.pdf>> [as of Nov. 15, 2023]. In 2022, 11 jurisdictions in California received approximately \$13.1 million toward funding up to 75 percent of the cost of 96 officer positions through the COPS Hiring Program: City of Auburn (\$500,000), City of Azusa (\$375,000), City of Brawley (\$1,348,996), City of Corcoran (\$125,000), City of Fresno (\$1,500,000), City of Madera (\$500,000), City of Oakland (\$1,875,000), City of Ontario (\$1,250,000), City of Parlier (\$575,844), County of Riverside (\$3,750,000), and City of San Bernardino (\$1,250,000). (See U.S. DOJ Community Oriented Policing Services Office, *FY23 COPS Hiring Program* (2023) p. 5 <<https://apply07.grants.gov/apply/opportunities/instructions/PKG00280417-instructions.pdf>> [as of Nov. 15, 2023]; U.S. DOJ Community Oriented Policing Services Office, *2022 COPS Hiring Program (CHP) Awards* (2022) p. 1 <https://cops.usdoj.gov/pdf/2022AwardDocs/chp/Award_List.pdf> [as of Nov. 15, 2023]). Also in 2022, the COPS Office awarded grants to 13 California school districts through the School Violence Prevention Program: Antioch Unified School District (\$468,000), Cajon Valley Union School District (\$500,000), Guadalupe Union School District (\$159,000), Hacienda-La Puente Unified School District (\$78,843), Merced Union High School District (\$123,404), Pleasant Ridge Union School District (\$375,000), Rim of World Unified School District (\$500,000), San Joaquin Office of Education (\$500,000), Santa Ana Unified School District Public Facilities Corporation (\$472,093), Sierra Unified School District (\$375,000), South Whittier School District (\$473,019), West Covina Unified School District (\$500,000), and Wheatland Union High School District (\$330,262). (U.S. DOJ Community Oriented Policing Services Office, *2022 COPS Office School Violence Prevention Program (SVPP) Awards* (2022) p. 1 <https://cops.usdoj.gov/pdf/2022AwardDocs/svpp/Award_List.pdf> [as of Nov. 15, 2023].)

473 For example, for fiscal year 2022-2023, the Pleasanton Police Department was awarded \$431,459 for school and community education and enforcement operations. (See Cal. DOJ, *Tobacco Grant Program Fiscal Year 2022-23* (2022) p. 1 <<https://oag.ca.gov/system/files/media/tobacco-grant-2022-2023-grantees.pdf>> [as of Nov. 15, 2023].)

474 Weisburst, *Patrolling Public Schools: The Impact of Funding for School Police on Student Discipline and Long-Term Education Outcomes* (*Patrolling Public Schools*) (2018) U. of Tex. Education Research Center, pp. 1–2 <<https://files.eric.ed.gov/fulltext/ED612423.pdf>> [as of Nov. 15, 2023].

475 *Id.* at p. 2.

476 *Id.* at pp. 1–2.

The study additionally found “that exposure to a three-year federal grant for school police is associated with a 2.5% decrease in high school graduation rates.”⁴⁷⁷

b. School Police Departments in California

School-based law enforcement officers are sometimes employed by local police or sheriff’s departments and in other instances are employed by school districts. The most common school-based law enforcement strategy in California is to have an officer who reports to a municipal law enforcement agency or sheriff’s department, which is in line with the national data suggesting that more than half of school-based law enforcement officers work for a local police or sheriff’s department.⁴⁷⁸

California law authorizes the governing board of a school district to establish a school police department under the supervision of a school chief of police, as discussed in the 2023 Board Report.⁴⁷⁹ Nineteen school district-administered police departments operate in California.⁴⁸⁰ These school district police departments are independent of the municipal police agencies or sheriff’s departments.⁴⁸¹ Children and youth of color comprise the majority of students in school districts with police departments, as displayed in the following chart. For reference, 56.1 percent of K-12 public school students statewide are Hispanic/Latine(x), 20.1 percent are White, 9.5 percent are Asian, and 4.7 percent are Black.⁴⁸² As shown in the chart, the majority of school district police departments are concentrated in Southern California.⁴⁸³ Seven of the departments in Southern California are in Los Angeles County and five are in San Bernardino County.⁴⁸⁴

477 *Id.* at p. 1.

478 Curran et al., *Why and When Do School Resource Officers Engage in School Discipline?*, *supra* note 458, at p. 35; Burke, *Should Police Officers Be in Schools? California Education Leaders Rethink School Safety* (June 11, 2020) EdSource <<https://edsources.org/2020/should-police-officers-be-in-schools-california-education-leaders-rethink-school-safety/633460>> [as of Nov. 15, 2023].

479 See Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at pp. 127–128.

480 Com. on Peace Officer Stds. and Training, *California Law Enforcement Agencies* (2023) <<https://post.ca.gov/le-agencies>> [as of Nov. 15, 2023]. The Pomona Unified School District Security Department is identified as an obsolete agency. (*Ibid.*) Additionally, based on the school district’s website, it appears that the security department does not employ law enforcement officers. (Pomona Unified School District <<https://proudtobe.pusd.org/apps/pages/Security>> [as of Nov. 15, 2023].)

481 Petrosino et al., *Research in Brief: School-Based Law Enforcement* (2020) Regional Educational Laboratory at WestEd, p. 1 <<https://www.wested.org/resources/research-in-brief-school-based-law-enforcement/>> [as of Nov. 15, 2023]; Ed. Code, § 38000, subd. (b).

482 Cal. Dept. of Ed., *DataQuest: 2022-23 Enrollment by Ethnicity and Grade* (2023) <<https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthGrd.aspx?cds=00&aggllevel=state&year=2022-23>> [as of Nov. 15, 2023] (Annual enrollment consists of the number of students enrolled on Census Day, which was October 5, 2022).

483 See Com. on Peace Officer Stds. and Training, *California Law Enforcement Agencies* (2023), *supra* note 480.

484 *Ibid.*

Table 5. School District-Administered Police Departments and District Enrollment by Race/Ethnicity⁴⁸⁵

Northern California	Central California	Southern California	
Stockton Unified School District Department of Public Safety (69.6% Hispanic or Latino, 9.2% Black, 8.8% Asian)	Clovis Unified School District Police Department (near Fresno; 40.0% Hispanic or Latino, 33.9% White, 15.5% Asian)	Apple Valley Unified School District Police Department (in San Bernardino County; 56.5% Hispanic or Latino, 30.0% White, 7.4% Black)	Los Angeles School Police Department (74.2% Hispanic or Latino, 4.8% White, 3.8% Black [13.9% not reported])
Twin Rivers Unified School District Police Department (near Sacramento; 37.5% Hispanic or Latino, 30.6% White, 12.7% Asian; 9.6% Black)	Kern High School District Police Department (70.1% Hispanic or Latino, 17.0% White, 5.5% Black)	Compton Unified School District Police Department (79.5% Hispanic or Latino, 18.7% Black, 0.5% two or more races, 0.4% Pacific Islander)	Montebello Unified School District Police Department (in Montebello/Los Angeles; 95.3% Hispanic or Latino, 1.2% Asian, 0.5% White [2.4% not reported])
	San José Unified School District Police Department (54.8% Hispanic or Latino, 20.7% White, 13.3% Asian)	El Rancho Unified School District Police Department (near Pico Rivera/Los Angeles; 97.3% Hispanic or Latino, 1% White, 0.6% Asian)	San Bernardino City Unified School District Police Department (80.6% Hispanic or Latino, 10.3% Black, 4.3% White)
		Fontana Unified School District Police Department (in San Bernardino County; 86.6% Hispanic or Latino, 5.1% Black, 3.9% White)	San Diego Unified School District Police Department (47.3% Hispanic or Latino, 22.8% White, 8.7% Asian)
		Hacienda-La Puente Unified School District Police Department (in Los Angeles County; 74.5% Hispanic or Latino, 18.4% Asian, 2.3% White)	Santa Ana Unified School District Police Department (in Orange County; 95.9% Hispanic or Latino, 1.8% Asian, 0.9% White)
		Hesperia Unified School District Police Department (in San Bernardino County; 74.5% Hispanic or Latino, 15.4% White, 6.4% Black)	Snowline Joint Unified School District (in San Bernardino County; 58.4% Hispanic or Latino, 26.5% White, 4.4% Black [6.5% not reported])
		Inglewood Unified School District Police Department (59.7% Hispanic or Latino, 35.9% Black, 1.2% two or more races)	Val Verde Unified School District Police Department (in Riverside County; 79.8% Hispanic or Latino, 11.0% Black, 3.7% White)

485 *Ibid.* We have listed the three racial/ethnic groups that represent the largest proportion of student enrollment within each district. Annual enrollment consists of the number of students enrolled on Census Day, which was October 5, 2022. (Cal. Dept. of Ed., *DataQuest: 2022-23 Enrollment by Ethnicity and Grade: Stockton Unified Report (39-68676)* (2023) <<https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthGrd.aspx?cds=3968676&aggllevel=district&year=2022-23>> [as of Nov. 15, 2023]; Cal. Dept. of Ed., *DataQuest: 2022-23 Enrollment by Ethnicity and Grade: Twin Rivers Unified Report (34-76505)* (2023) <<https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthGrd.aspx?cds=3476505&aggllevel=district&year=2022-23>> [as of Nov. 15, 2023]; Cal. Dept. of Ed., *DataQuest: 2022-23 Enrollment by Ethnicity and Grade: Clovis Unified Report (10-62117)* (2023) <<https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthGrd.aspx?cds=1062117&aggllevel=district&year=2022-23>> [as of Nov. 15, 2023]; Cal. Dept. of Ed., *DataQuest: 2022-23 Enrollment by Ethnicity and Grade: Kern High Report (15-63529)* (2023) <<https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthGrd.aspx?cds=1563529&aggllevel=district&year=2022-23>> [as of Nov. 15, 2023]; Cal. Dept. of Ed., *DataQuest: 2022-23 Enrollment by Ethnicity and Grade: San Jose Unified Report (43-69666)* (2023) <<https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthGrd.aspx?cds=4369666&aggllevel=district&year=2022-23>> [as of Nov. 15, 2023]; Cal. Dept. of Ed., *DataQuest: 2022-23 Enrollment by Ethnicity and Grade: Apple Valley Unified Report (36-75077)* (2023) <<https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthGrd.aspx?cds=3675077&aggllevel=district&year=2022-23>> [as of Nov. 15, 2023]. The Department of Education category “African American” was renamed “Black” to match the RIPA category.

c. Training for Policing in Schools in California

Although law enforcement officers who are employed by school districts have mandatory training for their assignment, law enforcement officers employed by a county sheriff or municipal law enforcement agency who are assigned to work in schools have no such requirement. POST provides a legislatively mandated 40-hour campus law enforcement course that satisfies the specialized training requirements in Penal Code section 832.3, subdivision (h), for peace officers who are employed by a K-12 public school district to complete a specialized course of training.⁴⁸⁶ The course description lists the following topics: the role and responsibility of school police in campus communities, laws and liability, mandated reporting requirements, de-escalation skills and conflict resolution, dynamics of student development, principled policing and problem-solving, operational awareness in the educational environment, and emergency operations.⁴⁸⁷ There is no mandate for law enforcement officers employed by a county sheriff or city police department and assigned to K-12 schools to complete this course.⁴⁸⁸

There are additional POST-certified School Resource Officer courses available. Participation in these courses is not mandated. At the time of this writing, the Sacramento Regional Public Training Center offered a 40-hour course entitled “School Resource Officer” designed for “the officer assigned or newly assigned as a school resource officer.”⁴⁸⁹ The topics included in the course description are school law, mentoring, basic teaching skills, instructional techniques, and constructing a course outline.⁴⁹⁰ Additionally, the Government Training Agency offers an 8-hour course.⁴⁹¹ The course description lists the following topics: strategies to foster positive relationships with youth, short and long-term consequences of adverse childhood experiences, working collaboratively within the school system to address students’ needs, identification and awareness of child abuse, exploitation and human trafficking in educational settings, education and penal codes for SROs, trauma-informed interactions with children, de-escalation, and working with students in crisis.⁴⁹² Included in the course is a live simulation component to reinforce skills taught during the course.⁴⁹³ This course satisfies the POST perishable skills training requirement in the area of Strategic Communications.⁴⁹⁴

d. Police Deployment and Support Services in California Schools

Even with training for law enforcement officers deployed to schools, research indicates that community resources would be better spent on non-police alternatives that promote positive student development.

Typically a greater number of law enforcement officers are present in secondary schools, as compared to primary schools.⁴⁹⁵ Nationally, in the 2017-2018 school year, 40.1 percent of elementary schools and

486 Cal. Peace Officer Stds. and Training, *2023-2025 Course Catalog: Campus Law Enforcement* <<https://catalog.post.ca.gov/SearchMap.aspx?mapLocation=&latLong=&radius=10&mapTitle=campus%20law%20enforcement&mapFromDate=10%2f01%2f2023&mapToDate=10%2f01%2f2025&mapPresenter=&pageId=1&searchForPSRequirements=False&includeSelfPaced=True&MAC=pqz08HjTN%2bo9iFLGpUROyhvv5B8>> [as of Nov. 15, 2023].

487 Sac. Regional Public Safety Training Center, *Campus Law Enforcement* (rev. Dec. 5, 2022) p. 1 <<https://arc.losrios.edu/arc/main/doc/ARC-Off-Campus-Centers/ARC-McClellan-Public-Safety-Center/ARC-Law-Enforcement/ARC-2023-Course-Information/campus-law-enforcement.pdf>> [as of Nov. 15, 2023].

488 *Ibid.*

489 Sac. Regional Public Safety Training Center, *School Resource Officer* (rev. Dec. 6, 2022) p. 1 <<https://arc.losrios.edu/arc/main/doc/ARC-Off-Campus-Centers/ARC-McClellan-Public-Safety-Center/ARC-Law-Enforcement/ARC-2023-Course-Information/school-resource-officer.pdf>> [as of Nov. 15, 2023].

490 *Ibid.*

491 Government Training Agency, *Courses: School Resource Officer-Intervention & De-Escalation Techniques for SROs* (2023) <<https://www.govtraining.com/course/school-resource-officer-intervention-de-escalation-techniques-for-sros/>> [as of Nov. 15, 2023].

492 *Ibid.*

493 *Ibid.*

494 *Ibid.*

495 Inst. of Ed. Sciences National Center for Ed. Statistics, *Percentage of Public Schools with Security Staff Present at School at Least Once a Week, by Type of Security Staff, School Level, and Selected School Characteristics: 2005-06*,

73.8 percent of secondary schools reported the presence of law enforcement officers at least once a week.⁴⁹⁶ Alternative education programs may differ from traditional public schools with respect to the presence of law enforcement officers.⁴⁹⁷ Approximately 10 percent of California high school students and as many as 1 in 7 high school seniors are enrolled in alternative schools for youth vulnerable to school pushout.⁴⁹⁸ For instance, in a 2017 letter, the Kern County Office of Education stated that an armed probation officer was present in every court school classroom administered by the district.⁴⁹⁹

School administrators' desire to avoid seeming defenseless against safety threats is one of the key social forces driving school-based policing.⁵⁰⁰ A 2005 study surveying principals about their reasons for hiring school police found that the most widely cited reason was "national media attention about school violence (24.5%);" only 3.7 percent of respondents indicated that the actual level of violence in the school was the reason for hiring school-based police.⁵⁰¹ The media attention generated by the 1999 mass shooting at Columbine High School in Littleton, Colorado, "combined with the fact that it occurred during a decade of increased arrests of young people rendered it a potent source of public worry about the safety of students. Yet the intense focus on this mass shooting obscured two important facts: first, while juvenile crime was up overall, school crime was down, and, second, school shootings are statistically exceedingly rare."⁵⁰² Incidents of school violence and safety issues decreased over the decade between 2009 and 2019, with the exception of shootings,⁵⁰³ and researchers found that school-based law enforcement officers do not prevent gun-related incidents.⁵⁰⁴

Between the 2015-2016 and 2017-2018 academic years, California schools reported a reduction in the number of sworn law enforcement officers, from 2,080 officers to 1,429 officers.⁵⁰⁵ In 2017-2018, the statewide student-to-school-based law enforcement ratio was 4,352-to-1.⁵⁰⁶ California districts reported

2015-16, and 2017-18 (2019) <https://nces.ed.gov/programs/digest/d19/tables/dt19_233.70b.asp> [as of Nov. 15, 2023]. Primary schools are schools in which the lowest grade is not higher than third grade and the highest grade is not higher than eighth grade. (*Ibid.*) Secondary schools include both middle and high schools. (*Ibid.*) Middle schools are defined as schools in which the lowest grade is not lower than fourth grade and the highest grade is not higher than ninth grade. (*Ibid.*) High schools are defined as schools in which the lowest grade is not lower than ninth grade. (*Ibid.*)

496 *Ibid.*

497 Gleit, *Cops on Campus: The Racial Patterning of Police in Schools*, *supra* note 458.

498 Ruiz de Velasco and McLaughlin, *Raising the Bar, Building Capacity: Driving Improvements in California's Continuation High Schools* (2012) John W. Gardner Center, Stanford University School of Education and the Chief Justice Earl Warren Institute on Law and Social Policy, UC Berkeley School of Law, p. 4 <https://gardnercenter.stanford.edu/sites/g/files/sbiybj24036/files/media/file/raising_the_bar_building_capacity_report.pdf> [as of Nov. 15, 2023]; see Ruiz de Velasco and Gonzales, *Accountability for Alternative Schools in California. Stanford, CA: Policy Analysis for California Education* (2017) Policy Analysis for California Education, pp. 2-3 <https://gardnercenter.stanford.edu/sites/g/files/sbiybj24036/files/media/file/accountability_for_alternative_schools_policy_brief.pdf> [as of Nov. 15, 2023].

499 California State Auditor, *School Violence Prevention: School Districts, County Offices of Education, and the State Must Do More to Ensure That School Safety Plans Help Protect Students and Staff During Emergencies Report 2016-136* (2016) p. 40. <<https://www.auditor.ca.gov/pdfs/reports/2016-136.pdf>> [as of Nov. 15, 2023].

500 Fedders, *The End of School Policing*, *supra* note 452, at p. 1462.

501 *Id.* at p. 1463.

502 *Id.* at pp. 1455-1456.

503 Irwin et al., *Report on Indicators of School Crime and Safety: 2021* (June 2022) National Center for Ed. Statistics and Bur. of J. Statistics, p. 2 [as of Nov. 15, 2023].

504 Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at p. 139; see also, e.g., Coronado, *Uvalde School Police Chief Fired for Response to Shooting*, AP News (Aug. 25, 2022) <<https://apnews.com/article/uvalde-school-shooting-police-shootings-texas-6c5ba12b382b5cc42a6e5816dc418383>> [as of Nov. 15, 2023]; *Judge: School Officer who Hid During Shooting Facing Charges*, AP News (Aug. 19, 2021) <<https://apnews.com/article/shootings-parkland-florida-school-shooting-bb5c5fe81cecb63886bd325b53b2e597>> [as of Nov. 15, 2023].

505 See Whitaker et al., *Cops and No Counselors*, *supra* note 349, at pp. 17, 51; U.S. Dept. of Ed. Civil Rights Data Collection, 2017-18 CRDC: School Support [CSV], *supra* note 462 (sum of law enforcement officers listed in fields R4986 through R15106).

506 This ratio of students-to-school-based law enforcement was calculated by dividing the number of students (6,220,413) by the number of law enforcement officers (1,429). Student annual enrollment consists of the number of students enrolled on Census Day, which was October 4, 2017. (See Cal. Dept. of Ed., *DataQuest: 2017-18 Enrollment by Ethnicity and Grade* (2017-2018) <<https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthGrd.aspx?cde=00&agglevel=s>

a larger number of law enforcement officers than social workers and a greater number of security guards than nurses.⁵⁰⁷ The following chart displays the ratios of students to social workers, students to psychologists, students to nurses, and students to counselors, in addition to the recommended ratios from standards developed by professional organizations.⁵⁰⁸ Over this same two-year period (2015-2016 to 2017-2018), the ratio of counselors slightly improved, the ratio of social workers to students improved, the ratio of psychologists to students worsened, and the ratio of nurses to students significantly worsened; across these areas, during the two-year period, caseloads in California were persistently larger than what is recommended.⁵⁰⁹

Table 6. Comparison of Ratios of Students-to-Officers and Students-to-School Service Professionals

	California’s Reporting in 2017-18 U.S. Department of Education’s Civil Rights Data Collection ⁵¹⁰	Recommended Ratios in Standards Developed by Professional Associations ⁵¹¹
Student-to-School-Based Law Enforcement Ratio	4,352-to-1	
Student-to-Social Worker Ratio	5,930-to-1	250-to-1
Student-to-Psychologist Ratio	1,079-to-1	500-to-1
Student-to-Nurse Ratio	1,673-to-1	750-to-1
Student-to-Counselor Ratio	631-to-1	250-to-1

The shortage of support staff fails to meet the current needs of students. Research shows that students are experiencing “record levels” of anxiety and depression.⁵¹² The COVID-19 pandemic has negatively impacted the emotional and mental well-being of children and young people and has exacerbated underlying mental health challenges.⁵¹³ Research also shows that mental health staff can help students improve their emotional well-being, which can lead to higher academic achievement, fewer disciplinary infractions, and greater school connectedness; results that, in turn, further reduce crime and violence in schools.⁵¹⁴

tate&year=2017-18&ro=y> [as of Nov. 15, 2023]; see also U.S. Dept. of Ed. Civil Rights Data Collection, *2017-18 CRDC: School Support [CSV]*, *supra* note 462.)

- 507 U.S. Dept. of Ed. Civil Rights Data Collection, *2017-18 CRDC: School Support [CSV]*, *supra* note 462 (noting that California schools reported 1,429 law enforcement officers, 1,049 social workers, 4,568 security guards, and 3,719 nurses for the academic year 2017-2018 using the sum of social workers listed in fields V4986 through V15106, the sum of security guards listed in fields S4986 through S15106, and the sum of nurses listed in fields T4986 through T15106).
- 508 U.S. Dept. of Ed. Civil Rights Data Collection, *2017-18 CRDC: School Support [CSV]*, *supra* note 462; Whitaker et al., *Cops and No Counselors*, *supra* note 349, at pp. 13–14; National Assn. of School Psychologists, *Student to School Psychologist Ratio 2021-2022* (2023) <https://www.nasponline.org/Documents/Research%20and%20Policy/Research%20Center/Ratio_by_state_21-22.pdf> [as of Nov. 15, 2023].
- 509 See Whitaker et al., *Cops and No Counselors*, *supra* note 349, at pp. 12–14, 17, 41 (In 2015-2016, there were 682 students for every counselor in California public schools.); U.S. Dept. of Ed. Civil Rights Data Collection, *2017-18 CRDC: School Support [CSV]*, *supra* note 462 (This ratio of students to counselors was calculated by dividing the number of students (6,220,413) by the number of counselors (1,429 (sum of counselors listed in fields Q4986 through Q15106).); see also Cal. Dept. of Ed., *DataQuest: 2017-18 Enrollment by Ethnicity and Grade* (2017-2018).
- 510 See U.S. Dept. of Ed. Civil Rights Data Collection, *2017-18 CRDC: School Support [CSV]*, *supra* note 462 (This ratio of students to counselors was calculated by dividing the number of students (6,220,413) by the number of counselors (1,429 (sum of counselors listed in fields Q4986 through Q15106).); see also Cal. Dept. of Ed., *DataQuest: 2017-18 Enrollment by Ethnicity and Grade* (2017-2018) (Student annual enrollment consists of the number of students enrolled on Census Day, which was October 4, 2017).
- 511 Whitaker et al., *Cops and No Counselors*, *supra* note 349, at p. 11; National Assn. of School Psychologists, *Student to School Psychologist Ratio 2021-2022*, *supra* note 508.
- 512 Fedders, *The End of School Policing*, *supra* note 452, at p. 1462.
- 513 *Ibid.*
- 514 *Ibid.*

Many organizations and school districts are endorsing alternatives to law enforcement in schools. The UN HRC Expert’s September 2023 report concluded that law enforcement officers should not be responsible for the implementation of school discipline and their presence in schools should be reduced to the greatest extent possible.⁵¹⁵ Further, police should be prohibited from using force, conducting arrests, and criminalizing disciplinary infractions in school.⁵¹⁶ Instead, the UN HRC Expert recommended that schools implement alternatives that promote positive student development with sufficient qualified personnel such as counselors, social workers, nurses and mental health professionals.⁵¹⁷

Meanwhile, several school districts have decided to remove police from their schools, including Oakland Unified School District and San Francisco Unified School District Boards of Education.⁵¹⁸ Currently, there are no studies or data regarding the impacts of disbanding the police departments in these schools.

National data show that youth exposure to violence and youth exposure to police are generally greater in spaces outside of school.⁵¹⁹ The National Center for Education Statistics (NCES) recognizes that “[v]iolent deaths and shootings at schools are rare but tragic events with far-reaching effects on the school population and surrounding community.” In the 2019-2020 school year, the most recent year reported by NCES, there were 11 homicides of students at schools across the United States.⁵²⁰ In comparison, there were 1,844 homicides of youth ages 5 to 18 outside of school during that same school year.⁵²¹ The RIPA data show that law enforcement officers stop a much larger number of children and youth in community settings compared to stops occurring in schools. In the 2022 RIPA data, officers reported that 157,433 stops of 5 to 18 year olds occurred off K-12 campuses (95.7% of all stops of 5 to 18 year olds), while only 7,054 stops of 5 to 18 year olds occurred on K-12 campuses (4.3% of all stops of 5 to 18 year olds). Given the greater proportion of stops of children and youth occurring in community settings, there is a need to refocus training for patrol officers in the community regarding de-escalation with youth and move away from law enforcement efforts and resources being concentrated on youth in schools.

In its 2023 Report, the Board resolved to continue exploring the efficacy of school-based police and whether school-based police should continue to be present in K-12 schools, given the research presented by the Board showing the negative impacts.⁵²²

515 See U.N. Human Rights Council, *Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement*, *supra* note 5, at p. 12.

516 See *ibid.*

517 See *ibid.*

518 Kupchik, *Research on the Impact of School Policing*, *supra* note 411, at p. 1; Oakland Unified School District Board of Education, *Resolution No. 1920-0260: George Floyd Resolution to Eliminate the Oakland Schools Police Department (George Floyd Resolution)* (2020) p. 2 <https://www.google.com/url?client=internal-element-cse&cx=000167840080604682518:bjoa9gllxnu&q=https://www.ousd.org/cms/lib/CA01001176/Centricity/Domain/123/20-1335%2520Elimination%2520-%2520Department%2520of%2520Police%2520Services%2520-%2520Board%2520of%2520Education.pdf&sa=U&ved=2ahUKewjcpq-XjoiBAXX_OOQIHsghCSYQFnoECAEQAAQ&usq=AOvVaw1UoHiVkpNt7WdmsvGm-rrJ> [as of Nov. 15, 2023]; San Francisco Unified School District Board of Education, *Resolution No. 206-23A3 – In Support of Black Lives in SFUSD and the Abolition of Armed Law Enforcement in Schools (Resolution in Support of Black Lives)* (Nov. 2020) p. 3 <<https://drive.google.com/file/d/1EuwaNhwTx0z5f3DTiPvLkAPG78g0UKEh/view?usp=sharing>> [as of Nov. 15, 2023].

519 Kupchik, *Research on the Impact of School Policing*, *supra* note 411, at p. 1.

520 National Center for Ed. Statistics, *Condition of Education: Violent Deaths at School and Away From School, School Shootings, and Active Shooter Incidents* (Sept. 2023) U.S. Dept. of Ed. Inst. of Education Sciences, p. 1 <https://nces.ed.gov/programs/coe/pdf/2023/A01_508c.pdf> [as of Nov. 15, 2023].

521 *Id.* at pp. 1–2.

522 Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at p. 140.

2. Analysis of 2022 RIPA Data

In this Report, the Board examines in depth the RIPA data reported for stops of students in K-12 schools. Examining the RIPA data is critical to understand how law enforcement interacts with students in public schools. The RIPA regulations define the circumstances in which officers must report these interactions with students:⁵²³

- Officers must report interactions with students on K-12 campuses when the purpose of questioning is to investigate whether the student committed a violation of law, including specific Education Code sections, or whether the student is truant;⁵²⁴
- Officers must report interactions with students on K-12 campuses when the interaction results in temporary custody under Welfare and Institutions Code section 625, citation, arrest, permanent seizure of property as evidence of a criminal offense, or referral to a school administrator because of suspected criminal activity;⁵²⁵
- Officers must report interactions with students on K-12 campuses when the officer took reportable actions toward the student during the interaction;⁵²⁶ and
- If the officer does not question the student for the purpose of investigating whether the student violated the law or is truant and the officer does not take reportable actions toward the student during the interaction, they should not report the interaction.⁵²⁷

The RIPA regulations also require officers to indicate their assignment type for each stop they report.⁵²⁸ In 2022, 743 officers reported making stops while working an assignment type of “K-12 Public School, including school resource officer or school police officer.” Both school district-administered police departments and municipal law enforcement agencies may assign officers to work in K-12 public schools. These officers reported making 9,130 stops while working this assignment type.⁵²⁹ For comparison, as noted earlier in this section, California schools reported the presence of 1,429 school-based law enforcement officers in 2017-2018, the most recent available data from the Civil Rights Data Collection.⁵³⁰

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- 523 Cal. DOJ, *Initial Statement of Reasons: Proposed Adoption of Regulations Pursuant to California’s Racial and Identity Profiling Act of 2015* (2017) pp. 25–26 <<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/isor-11292016.pdf>> [as of Nov. 15, 2023]; Cal. Code Regs., tit. 11, § 999.227, subd. (e)(3)-(4) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].
- 524 Cal. Code Regs., tit. 11, § 999.227, subd. (e)(3)(B) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].
- 525 Cal. Code Regs., tit. 11, § 999.227, subd. (e)(3)(A) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].
- 526 Cal. Code Regs., tit. 11, § 999.227, subd. (e)(3)(C) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023]; see also Cal. Code Regs., tit. 11, § 999.226, subd. (a)(17)(A) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023] (stating that reportable actions include: Admission or written statement obtained from student; Person removed from vehicle by order; Person removed from vehicle by physical contact; Field sobriety test conducted; Curbside detention; Handcuffed or flex cuffed; Patrol car detention; Canine removed from vehicle or used to search; Firearm pointed at person; Firearm discharged or used; Electronic control device used; Impact projectile discharged or used; Canine bit or held person; Baton or other impact weapon used; Chemical spray used; Other physical or vehicle contact; Person photographed; Asked for consent to search person; Search of person was conducted; Asked for consent to search property; Search of property was conducted; Property was seized; and Vehicle impounded).
- 527 Cal. Code Regs., tit. 11, § 999.227, subd. (e)(3)(C) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].
- 528 Cal. Code of Regs., tit. 11 § 999.226, subd. (a)(16) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].
- 529 Of the 9,130 stops reported by officers with a K-12 Public School assignment, 3,514 (38.5%) were of students on campus. The remaining stops reported by K-12 Public School officers were stops of non-students on campus and stops made off campus.
- 530 U.S. Dept. of Ed. Civil Rights Data Collection, *2017-18 CRDC: School Support [CSV]*, *supra* note 462.

Separate from the requirement to indicate the type of assignment the officer was working at the time of the stop, the regulations also require officers to indicate when they make a stop on a K-12 public school campus and indicate whether the person they stopped is a student.⁵³¹ In 2022, officers reported making 11,070 stops on K-12 public school campuses and that 6,441 of these stops were of students.

Among stops of students on campus, 3,514 stops (54.6%) were made by officers with an assignment type of K-12 Public School and 2,735 stops (42.5%) were made by officers with an assignment type of “Patrol, traffic enforcement, field operations.” The next most common officer assignment types in stops of students on campuses were “Investigative/detective” making 74 stops (1.2%), “Other” making 48 stops (0.8%), and “Gang Enforcement” making 42 stops (0.7%). The remaining officer assignment types collectively made 28 stops (less than 1% of stops of students on campuses).⁵³²

When considering stops of students on K-12 campuses, the agencies with the most reported stops in 2022 included Kern High School District Police Department (545 stops; population of 43,020 students), the Fontana Unified School District Police Department (385 stops; population of 34,170 students), and the Los Angeles County Sheriff’s Department (245 stops; not a school district administered department).⁵³³

Table 7. Top 10 Agencies Ranked by Total Number of Stops of Students on Campuses

Agency	Total Stops of Students on K-12 Public School Campuses	2022-23 Student Enrollment for Districts Responsible for Police Department ⁵³⁴	Number of Sworn Law Enforcement Officers Employed by Agency ⁵³⁵
Kern High School District Police Department	545	43,020 students enrolled	32 F/T police officers and 1 P/T officer on December 31, 2022
Fontana Unified School District Police Department	385	34,170 students enrolled	14 police officers in 2022

531 Cal. Code of Regs., tit. 11 § 999.227, subd. (e)(4)(A) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].

532 These other assignment types include “Compliance check (e.g., parole/probation/PRCS/mandatory supervision),” “Special events (e.g., sports, concerts, protests),” “Roadblock or DUI sobriety checkpoint,” “Narcotics/vice,” and “Task force.”

533 See Cal. Dept. of Ed., *DataQuest: 2022-23 Enrollment by Ethnicity and Grade: Kern High Report*, *supra* note 485; Cal. Dept. of Ed., *DataQuest: 2022-23 Enrollment by Ethnicity and Grade: Fontana Unified Report (36-67710)* (2023) <<https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthGrd.aspx?cds=3667710&aggllevel=district&year=2022-23>> [as of Nov. 15, 2023] (Student annual enrollment consists of the number of students enrolled on Census Day, which was October 5, 2022).

534 Cal. Dept. of Ed., *DataQuest: 2022-23 Enrollment by Ethnicity and Grade: Kern High Report*, *supra* note 485; Cal. Dept. of Ed., *DataQuest: 2022-23 Enrollment by Ethnicity and Grade: Fontana Unified Report*, *supra* note 533; Cal. Dept. of Ed., *DataQuest: 2022-23 Enrollment by Ethnicity and Grade: San Diego Unified Report (37-68338)* <<https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthGrd.aspx?cds=3768338&aggllevel=district&year=2022-23>> [as of Nov. 15, 2023]; Cal. Dept. of Ed., *DataQuest: 2022-23 Enrollment by Ethnicity and Grade: Hesperia Unified Report (36-75044)* <<https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthGrd.aspx?cds=3675044&aggllevel=district&year=2022-23>> [as of Nov. 15, 2023]; Cal. Dept. of Ed., *DataQuest: 2022-23 Enrollment by Ethnicity and Grade: Val Verde Unified Report (33-75242)* <<https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthGrd.aspx?cds=3375242&aggllevel=District&year=2022-23&ro=y>> [as of Nov. 15, 2023]. Note that student annual enrollment consists of the number of students enrolled on Census Day, which was October 5, 2022.

535 Officer employment and assignment numbers in this chart were provided by each law enforcement agency in response to outreach by the California DOJ.

Agency	Total Stops of Students on K-12 Public School Campuses	2022-23 Student Enrollment for Districts Responsible for Police Department ⁵³⁴	Number of Sworn Law Enforcement Officers Employed by Agency ⁵³⁵
Los Angeles County Sheriff's Department	245	n/a	3,132 deputies; 132 deputies assigned to K-12 schools at some point during 2022
San Diego Unified School District Police Department	193	112,790 students enrolled	[response not provided by San Diego Unified School District]
Hesperia School District Police Department	188	25,006 students enrolled	8 police officers in December 2022
Escondido Police Department	165	n/a	145 police officers; 3 officers assigned to K-12 schools on December 31, 2022
Val Verde Unified School District Police Department	163	19,379 students enrolled	[response not provided by Val Verde School District]
Ridgecrest Police Department	155	n/a	23 police officers; 2 officers assigned to K-12 schools on December 31, 2022
Vacaville Police Department	129	n/a	98 sworn officers; 4 officers assigned to K-12 schools on December 31, 2022
Glendale Police Department	124	n/a	[response not provided by Glendale Police Department]

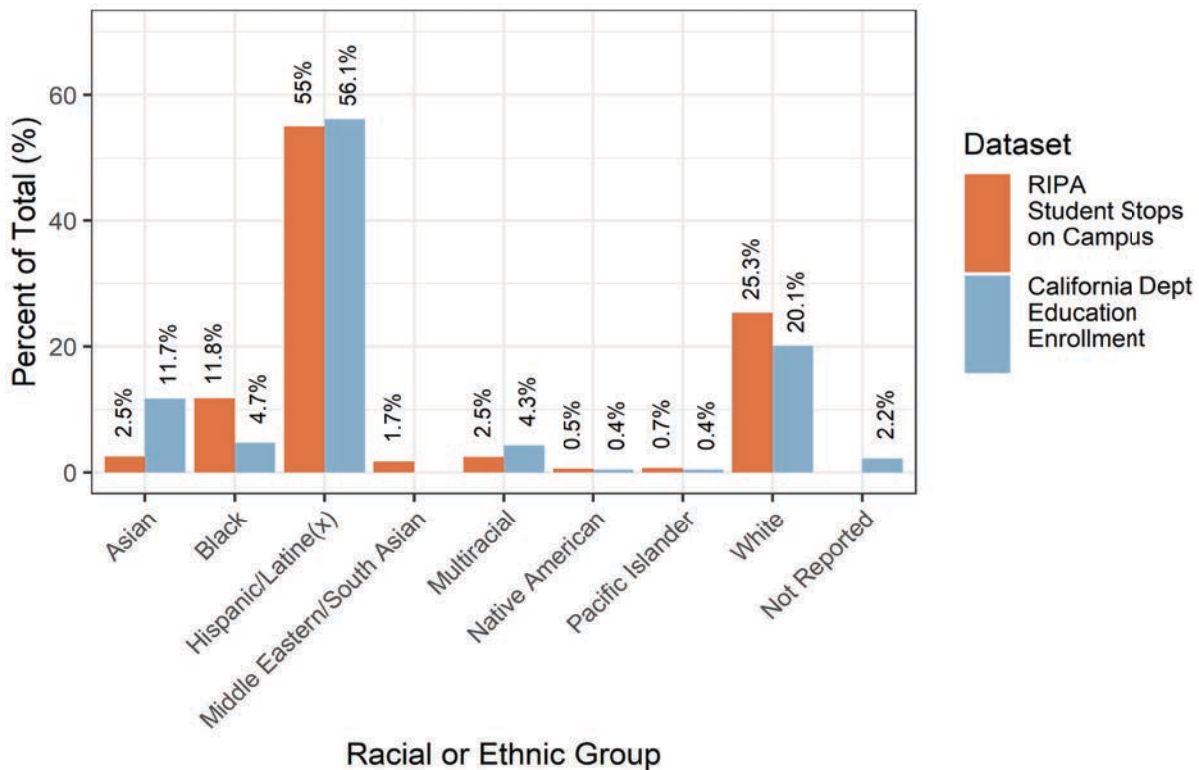
The California Department of Education (CDE) compiles student racial or ethnic self-identification data for public schools across California as reported by schools.⁵³⁶ Student annual enrollment consists of the number of students enrolled on Census Day, which was October 5, 2022.⁵³⁷ Individuals perceived as Black were overrepresented when comparing the racial or ethnic composition of stops of students

536 To match categories between the 2022 RIPA racial or ethnic group categories and 2022-2023 California Department of Education student enrollment, we used the following equivalencies. From the Department of Education categories, "African American" was renamed "Black," "American Indian/Alaska Native" was renamed "Native American," "Filipino" and "Asian" were combined into "Asian," and "Two or more races" was renamed "Multiracial." "Pacific Islander," "Hispanic or Latino," and "White" categories were not renamed. The category "Not Reported" does not match the remaining RIPA category of "Middle Eastern/South Asian." Accordingly, these two categories were kept separate in Figure 61.

537 *Ibid.*

on campus (11.8% Black) to the composition of enrolled students in California (4.7% Black).⁵³⁸ Additional groups that were overrepresented among stops of students on campus compared to their enrollment percentage were individuals perceived as White (25.3% of stops of students on campus and 20.1% of enrolled students), Native American (0.54% of stops of students on campus and 0.45% of enrolled students), and Pacific Islander (0.68% of stops of students on campus and 0.41% of enrolled students).⁵³⁹ Groups that are underrepresented among students stopped on campus compared to their enrollment percentages were students perceived as Asian (2.5% of stops of students on campus and 11.7% of enrolled students), Multiracial (2.5% of stops of students on campus and 4.3% of enrolled students), and Hispanic/Latine(x) (55% of stops of students on campus and 56.1% of enrolled students).⁵⁴⁰

Figure 61. Racial or Ethnic Composition of 2022 RIPA Stops of Students on Campus and California Department of Education 2022-2023 Enrollment



Among students stopped on K-12 campuses, 9.2 percent (592) were perceived to be 12 years of age or younger and 0.8 percent (51) were perceived to be five through nine years old. The next data analyses examine the stops of students and the reported reasons for stop by different categories, including perceived age, racial or ethnic group, and gender.

538 See Cal. Dept. of Ed., *DataQuest: Enrollment Multi-Year Summary by Ethnicity (2022-2023)* <<https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthYears.aspx?cds=00&agglevel=state&year=2022-23>> [as of Nov. 15, 2023] (Student annual enrollment consists of the number of students enrolled on Census Day, which was October 5, 2022).

539 *Ibid.*

540 *Ibid.*

a. Reasons for Stops

Among stops of students on campus, the most common primary reason for stops was reasonable suspicion that the student was engaged in criminal activity (3,705 stops, 57.5% of stops of students on campus).⁵⁴¹ When selecting reasonable suspicion as the primary reason for a stop, officers must select all applicable circumstances that gave rise to their reasonable suspicion from the following list:

- Officer witnessed commission of a crime
- Matched suspect description
- Witness or victim identification of suspect at the scene
- Carrying suspicious object
- Actions indicative of casing a victim or location
- Suspected of acting as a lookout
- Actions indicative of a drug transaction
- Actions indicative of engaging in a violent crime
- Other reasonable suspicion of a crime.⁵⁴²

The next most common primary reasons for stops among students on K-12 campuses were “to determine whether student violated school policy” (1,143 stops, 17.8% of stops of students on campus), traffic violation (724 stops, 11.2% of stops of students on campus), “possible conduct under Education Code” (308 stops, 4.8% of stops of students on campus), and truancy (290 stops, 4.5% of stops of students on campus).

Table 8. Counts and Percentages of Primary Reasons for Stops of Students on K-12 Campuses

Reason for Stop	Count	Percentage of Student Stops
Reasonable Suspicion	3,705	57.53%
To Determine Whether Student Violated School Policy	1,143	17.75%
Traffic Violation	724	11.24%
Possible Conduct Warranting Discipline Under Education Code	308	4.78%
To Determine Truancy	290	4.50%
Consensual Encounter that Resulted in a Search	171	2.66%
Outstanding Warrant/Wanted	62	0.96%
Supervision	37	0.57%

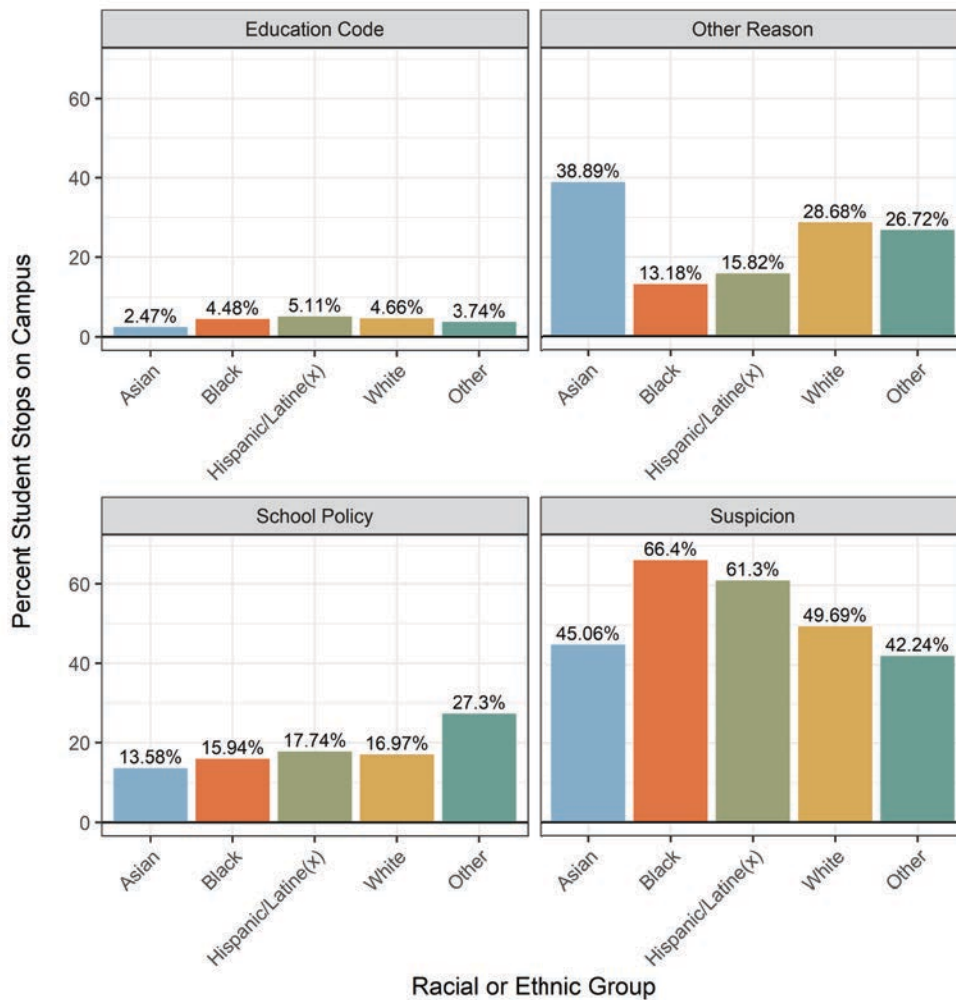
⁵⁴¹ A single stop of a student on campus was reported without a reason for stop, so it is excluded from this table.

⁵⁴² Cal. Code of Regs., tit. 11 § 999.226, subd. (a)(14)(A)(2) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].

i. Reasons for Stops and Racial or Ethnic Group

Within stops of students on campus, the percentage of stops for particular reasons varied among racial or ethnic groups.⁵⁴³ Specifically, students on campus perceived to be Black had a larger percentage of stops for reasonable suspicion (66.4% of stops) compared to other racial or ethnic groups of students on campus (Hispanic/Latine(x) – 61.3%, White – 49.7%, Asian – 45%, Other – 42% stops for suspicion). Additionally, the percentage of stops for reasons grouped together as “Other Reasons” for purposes of this analysis (traffic violation, known warrant/wanted person, truancy, consensual encounter resulting in a search, and known supervision status) was highest among students perceived as Asian (38.9%) compared to all other perceived racial or ethnic groups (White – 28.7%, Other – 26.7%, Hispanic/Latine(x) –15.8%, Black –13.2% stops for other reasons).⁵⁴⁴

Figure 62. Reasons for Stops – Percent of Stops of Students on Campus by Identity Group



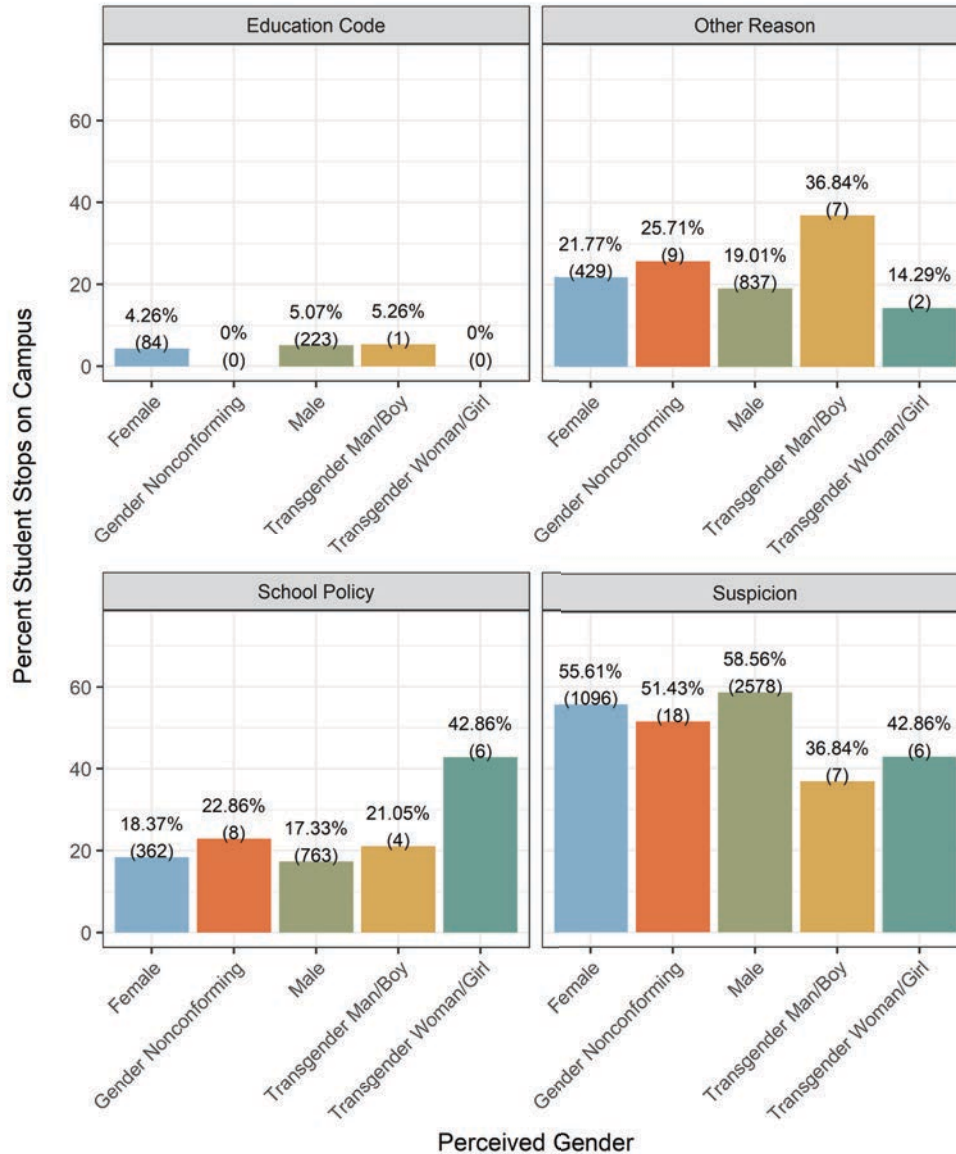
543 For purposes of this analysis, the categories of Native American, Middle Eastern/South Asian, Pacific Islander, and Multiracial were aggregated in the category labeled “Other.”

544 Amongst the “Other” categories, stops for traffic violations are most prevalent within the data.

ii. Reasons for Stops and Gender

Within the stops of students on campus, the percentage of stops varied by the perceived gender of the stopped students.⁵⁴⁵ Specifically, students on campus perceived to be male had a larger percentage of stops for reasonable suspicion (58.6% of stops) compared to other perceived genders (female – 55.6%, gender nonconforming – 51.4%, transgender woman/girl – 42.9%, transgender man/boy – 36.8% stops for suspicion).

Figure 63. Reasons For Stops – Percent Of Stops Of Students On Campus By Perceived Gender⁵⁴⁶



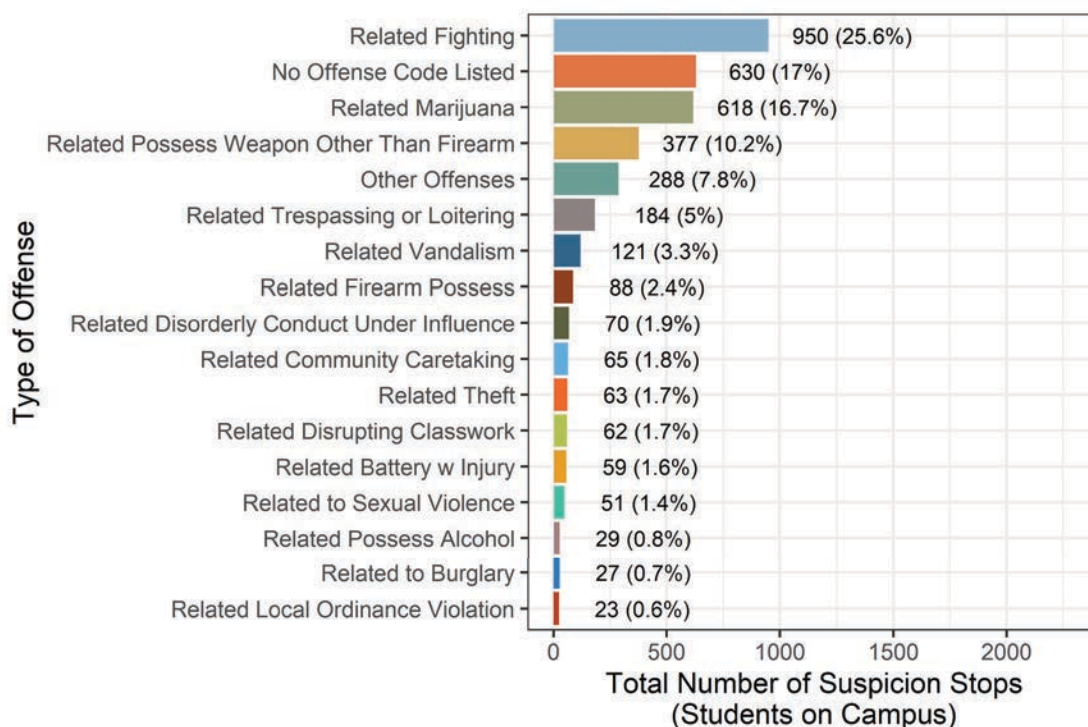
545 For the purposes of this analysis, the following reasons were aggregated into the category of “Other Reason”: Traffic violation, Known warrant/wanted person, Truancy, Consensual encounter resulting in a search, and Known supervision status.

546 Given that the number of stops for the gender-nonconforming, transgender man/boy, and transgender woman/girl bars for all of the categories included in this figure are relatively small (less than 10 stops in all cases), percentages for these groups should be interpreted with caution.

iii. Reasonable Suspicion

As described previously, the percentage of stops for particular reasons varied among racial or ethnic groups.⁵⁴⁷ Specifically, students on campus perceived to be Black had a larger percentage of stops for reasonable suspicion (66.4% of stops) compared to other racial or ethnic groups of students on campus (Hispanic/Latine(x) – 61.3%, White – 49.7%, Asian – 45%, Other – 42% stops for suspicion). Among the 3,705 stops of students on campuses for reasonable suspicion, 950 stops were for suspected code violations related to fighting, assault and battery without injury, or threats of assault and battery (25.6%), 618 stops were for suspected code violations related to marijuana possession (16.7%), 377 stops were for suspected code violations related to possession of a weapon other than a firearm (10.2%), 184 stops were for suspected violations related to loitering or trespassing (5%), 121 stops were for suspected code violations related to vandalism or graffiti (3.3%), 88 stops were for suspected violations of codes related to possession of a firearm (2.4%), 70 stops were for suspected violations of codes related to disorderly conduct-under influence (1.9%), 65 stops were reported as resulting from a community caretaking contact (1.8%), 63 stops were for suspected violations of codes related to theft (1.7%), 59 stops were for suspected code violations related to battery with injury (1.6%), 51 stops were for suspected code violations related to sexual violence (1.4%), 29 stops were for suspected code violations related to possession of alcohol (0.8%), 27 stops were for suspected code violations related to burglary (0.7%), and 23 stops were for suspected code violations related to a local ordinance (0.6%).⁵⁴⁸ Sixty-two stops were related to disrupting classwork (1.7%).⁵⁴⁹ There were 630 stops that did not include an offense code and therefore could not be categorized (17%). All remaining stops (288, 7.8%) were other offenses unrelated to the 15 specified categories of codes.

Figure 64. Offense Categories Within Reasonable Suspicion Stops of Students on Campuses



The suspected offenses related to fighting, assault and battery without injury, or threats of assault and battery and marijuana possession can also be treated as violations of the Education Code, a non-

547 For purposes of this analysis, the categories of Native American, Middle Eastern/South Asian, Pacific Islander, and Multiracial were aggregated in the category labeled “Other.”

548 See Appendix A, Table A.22 for a full list of reasonable suspicion offenses listed as reason for stop during stops of students on campuses.

549 Disrupting classwork is not categorized as an offense under the Penal Code.

criminal offense.⁵⁵⁰ The American Civil Liberties Union Foundation’s 2021 review of RIPA stop data regarding stops of students in schools addressed racial disparities in officer treatment of student behaviors that may be treated as education code violations, school policy violations, or criminal activity.⁵⁵¹ The reporting officer selects the reason for the stop and thus categorizes the student behavior, allowing officers discretion to determine the applicable legal standard and consequences. While not feasible within the Board’s current review, it would be valuable for researchers to analyze the racial distribution of the common reported suspected offenses.

b. Calls for Service

There were 3,149 stops of students on campus that officers reported as related to calls for service (48.9%). This compares to 9.3 percent of stops statewide that officers reported as related to calls for service. Officers with patrol and K-12 public school assignments each accounted for almost half of the stops with a related call for service (1507 stops and 1566 stops, respectively). Stops with a related call for service constituted a larger portion of the stops that patrol officers made on K-12 campuses, relative to the proportion of stops on campuses made by officers with a K-12 public school assignment.

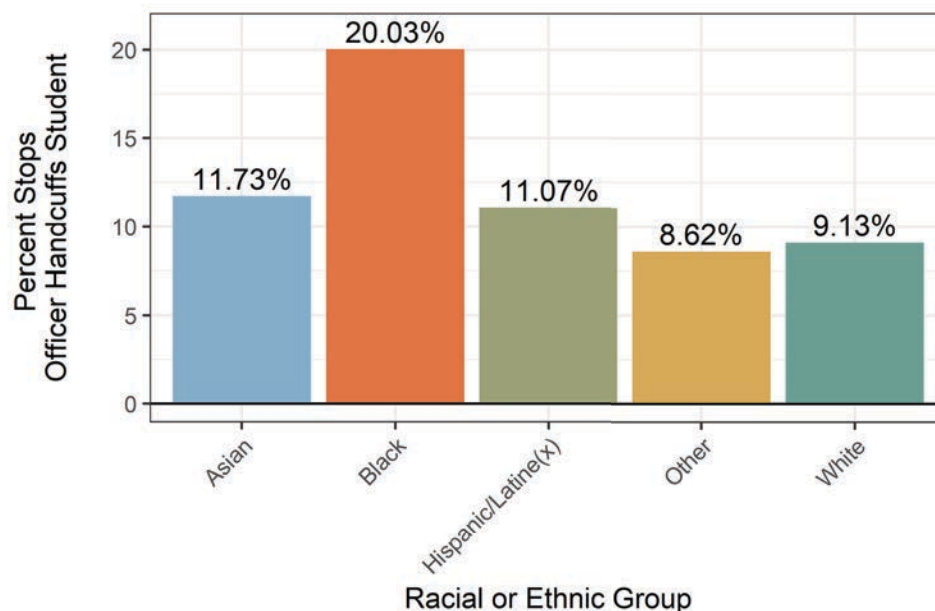
c. Actions Taken During Stops

The next set of data analyses review some of the actions taken during stops of students.

i. Stop Characteristics – Use of Handcuffs

Police handcuffing youth in schools has a disproportionate impact on Black students. Officers handcuffed students on campus perceived as Black in the highest percentage of stops (20%) compared to other racial or ethnic groups (Asian – 11.7%, Hispanic/Latine(x) – 11.1%, White – 9.1%, or Other – 8.6%).

Figure 65. Percentage of Stops in which Officers Used Handcuffs – Students on Campus by Racial or Ethnic Group



In total, officers reported handcuffing 742 students during stops on campuses (11.5% of all stops of students on campuses). Among students who were handcuffed, 55.3 percent were also arrested. Research demonstrates that regardless of whether a stop results in arrest, handcuffing students can

550 Whitaker et al., *No Police in Schools*, *supra* note 348, at pp. 18–19.

551 *Id.* at p. 18. The ACLU’s analysis of the 2019 data did not include a review of the racial distribution of any of the common reported suspected offenses; this may be an area ripe for future evaluation.

traumatize them, resulting in negative outcomes, including physical and psychological impacts that harm their education.⁵⁵² Furthermore, police contact can result in social exclusion and stigmatization among peers.⁵⁵³

Stigmatization may be worse among students who are handcuffed while being placed on a psychiatric hold. California Welfare and Institutions Code section 5585.50 states that a law enforcement officer may take a minor into custody and place them into a facility for a 72-hour involuntary treatment hold when the officer has probable cause to believe that the minor, as a result of a mental health disorder, is a danger to others or to themselves, or gravely disabled and authorization for voluntary treatment is not available.⁵⁵⁴ Officers reported that among all 6,441 stops of students on campuses, 6.3 percent were placed on a psychiatric hold. Of students placed on a psychiatric hold, 17.6 percent were also handcuffed. Forced restraints and other police involvement during mental health crises contribute to the criminalization of mental illness.⁵⁵⁵ This stigmatization particularly harms students in distress, especially when the handcuffing is visible before peers and teachers.⁵⁵⁶ Witnessing the handcuffing of a fellow student and other vicarious experiences of police contact can also negatively shape youth attitudes towards teachers, police, and the law.⁵⁵⁷

The U.S. Department of Education uses the term mechanical restraint to refer to any device or equipment used to restrict a student's freedom of movement (e.g., handcuffs or similar devices).⁵⁵⁸ Notably, during the 2017-18 Civil Rights Data Collection period, schools were instructed not to include incidents in which law enforcement handcuffed a student during an arrest of the student.⁵⁵⁹ However, the CRDC has subsequently revised the reporting requirements to require that schools report any instance in which a student is handcuffed by law enforcement personnel or school staff, regardless of whether the student is arrested, removed from school grounds, or handcuffed and not arrested.⁵⁶⁰

The use of mechanical restraints in schools disproportionately affects students with disabilities. In California, students with disabilities served under the Individuals with Disabilities Education Act (IDEA) represented 11.5 percent of all public school students in 2017-2018, though they accounted for 20.4 percent of the students subjected to mechanical restraint.⁵⁶¹ Federal agencies have provided guidance on the restraint of students and behavioral support. The U.S. Department of Education's 2016 Dear Colleague Letter informed school districts how the restraint of students may result in unlawful discrimination against students with disabilities.⁵⁶² Section 504 of the Rehabilitation Act of 1973 (Section

552 Gottlieb and Wilson, *The Effect of Direct and Vicarious Police Contact on the Educational Achievement of Urban Teens* (2019) 103 *Children and Youth Serv. Rev.* 190–199.

553 *Ibid.*; see also Jackson et al., *Police Stops Among At-Risk Youth*, *supra* note 266, at pp. 627–632.

554 Welf. & Inst. Code, § 5585.50, subd. (a).

555 Jones et al., *Youths' and Young Adults' Experiences of Police Involvement During Initiation of Involuntary Psychiatric Holds and Transport* (2021) 73 *Psych. Serv.* 910–917.

556 *Ibid.*

557 Gottlieb and Wilson, *The Effect of Direct and Vicarious Police Contact on the Educational Achievement of Urban Teens*, *supra* note 552; Jindal et al., *Police Exposures and the Health and Well-Being of Black Youth in the US: A Systematic Review* (2022) 176 *JAMA Pediatrics* 78–88 <<https://doi.org/10.1001/jamapediatrics.2021.2929>> [as of Nov. 15, 2023].

558 U.S. Dept. of Ed. Civil Rights Data Collection, *Data Tip: Restraint & Seclusion (RSTR) Module* (2021) p. 1 <<https://crdc.comunities.ed.gov/services/PDCService.svc/GetPDCDocumentFile?fileId=41820>> [as of Nov. 15, 2023].

559 *Ibid.*

560 *Ibid.*

561 U.S. Dept. of Ed., *Number and Percentage of Public School Students Subjected to Mechanical Restraint by Race/Ethnicity, Disability Status, and English Proficiency, by State: School Year 2017-18* (2017-2018) <<https://ocrdata.ed.gov/estimations/2017-2018>> [as of Nov. 15, 2023]; U.S. Dept. of Ed., *Public School Students Overall and by Race/Ethnicity, Students with Disabilities Served Under IDEA and Those Served Solely Under Section 504, and Students Who Are English Language Learners, by State: School Year 2017-18* (2017-2018) <<https://ocrdata.ed.gov/assets/downloads/2017-2018/Student-Enrollment/All-Enrollment/Enrollment-Overall.xlsx>> [as of Nov. 15, 2023]. This number was calculated by dividing the number of students with disabilities served under IDEA (717,502 students) by the number of students enrolled (6,230,002 students).

562 U.S. Government Accountability Office, *K-12 Education: Federal Data and Resources on Restraint and Seclusion, Hearings before House Com. on Education and Labor, Subcom. on Early Childhood, Elementary and Secondary Education, Testimony of Director Jacqueline Nowicki (K-12 Education)* (Feb. 27, 2019) p. 6 <<https://www.gao.gov/>

504) prohibits discrimination against individuals with disabilities in programs or activities of entities that receive federal financial assistance.⁵⁶³ The use of restraints could violate section 504 in several ways — if the restraint of a student with a disability constitutes unnecessary different treatment, is based on a policy, practice, procedure, or criterion that has a discriminatory effect on students with disabilities, or denies a student’s right to a free appropriate public education.⁵⁶⁴ Section 504 covers school officials, school employees, and any person over whom a school exercises some control, whether through contract or other arrangement, including school-based law enforcement officers, whether they are school district employees or work for a non-district law enforcement agency.⁵⁶⁵

The U.S. Department of Education’s 2012 Restraint and Seclusion Resource Document states that restraints should not be used as routine school safety measures or as strategies to address instructional problems or inappropriate behavior.⁵⁶⁶ The document outlines principles to consider when developing policies to avoid the use of restraints.⁵⁶⁷ One of the principles states that policies restricting the use of restraints should apply to all children, not just children with disabilities.⁵⁶⁸ Another principle is that multiple uses of restraints by the same individual should trigger a review and potentially a revision of strategies in place to address behavior that poses imminent danger of serious physical harm to self or others.⁵⁶⁹

Disability rights advocates in Texas used CRDC data showing disparities in the mechanical restraint of students with disabilities to support legislation to prevent such disparities; they promoted the recent enactment of S.B. 133 (2023), which amends Section 37.0021 of the Texas Education Code and prohibits law enforcement officers and school security personnel from using physical restraints, chemical irritant spray, and Tasers on students in fifth grade or below unless the student poses a serious risk of harm to themselves or another person.⁵⁷⁰

In the 2022 RIPA data reporting, officers reported handcuffing 31 children whom they perceived to be 12 years old or younger during stops on K-12 campuses. Among the stops of these 31 students, 12 resulted in a psychiatric hold and seven resulted in a custodial arrest. Table 9 displays officers’ narrative description of the reason for the stops of the 31 students perceived to be 12 years old or younger who were handcuffed.

Table 9.

Reasons for Stops Narratives – Handcuffing of Students 12 Years and Under
“Suspect threatened officer with gang 187 at LHS football game”
“Unruly Juv”
“Fight”
“Was called to Toddy Thomas Elementary School for a juvenile assaulting staff and throwing items in the classroom.”
“Subject was reported to have stolen from a gas station. Subject was caught on video stealing items.”

assets/gao-19-418t.pdf> [as of Nov. 15, 2023].

563 29 U.S.C. § 794; 34 C.F.R. § 104.

564 U.S. Dept. of Ed. Office for Civil Rights, *Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities* (Dec. 28, 2016) p. 12 <<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>> [as of Nov. 15, 2023].

565 *Id.* at p. 15.

566 U.S. Government Accountability Office, *K-12 Education*, *supra* note 562, at p. 6.

567 *Ibid.*

568 *Ibid.*

569 *Ibid.*

570 Tex. Educ. Code Ann., § 37.0021, subd. (j).

Reasons for Stops Narratives – Handcuffing of Students 12 Years and Under

“I was dispatched to the school for students assaulting teachers.”

“I was dispatched to the school for students assaulting teachers.”⁵⁷¹

“Call for service, for two juveniles who were acting violently towards staff”

“Call for service for two juveniles acting violently towards staff.”⁵⁷²

“Student was disrupting school and attempting to locate other students in class to fight.”

“Call for service”

“The subject was hitting kids and teachers on school property.”

“Witnessed student in a fight”

“Student trying to harm themselves”

“Juvenile was detained by probation officer after he fled the scene of a large fight involving multiple students on school grounds and was positively identified by victim.”

“Student was accused of threatening to kill another student and brandished an airsoft pistol.”

“Subject was in an abandoned house during school hours with a group of other truant students”

“Subject was contacted in an abandoned house during school hours with another group of students”⁵⁷³

“The subject threatened a student and came to school the next day and assaulted him. The subject was detained by school staff.”

“Call for service”

“Juvenile was running in the street and stating he was suicidal. He ran back into the school and was contacted inside his classroom. He was evaluated and placed on a psychiatric hold.”

“Juvenile struck at least one other student at Whittier El School and was defiant with school staff and security. Student asked if I was going to shoot him, then stated he will shoot himself and tried reaching for my gun.”

“Suicidal student attempted suicide by overdose”

“Person trespassed on campus.”

571 This narrative entry and the entry that immediately precedes it have the same DOJ Record ID and have different person numbers for the two entries, reflecting two students stopped in the same incident.

572 This narrative entry and the entry that immediately precedes it have two different DOJ Record IDs, but the school name, officer ID, and date of stop are the same and times of stops are one minute apart. The officer probably stopped multiple students, but rather than enter them as different persons on the same stop incident, entered two stop incidents (one for each person).

573 This narrative entry and the entry that immediately precedes it have the same DOJ Record ID and have different person numbers for the two entries, reflecting two students stopped in the same incident. If this stop did not occur on a public K-12 school campus, the officer may have misclassified this as a stop on a K-12 campus; officers only indicate whether the stopped person was a student when they indicate that the stop occurred on a public K-12 campus. (Cal. Code of Regs., tit. 11 § 999.224, subd. (a)(16) <<https://oag.ca.gov/system/files/media/RIPA%202022%20Rulemaking%20Final%20Text%20of%20Regulations.pdf>> [as of Nov. 15, 2023].)

Reasons for Stops Narratives – Handcuffing of Students 12 Years and Under

“Subject contacted for trespassing”

“Subject contacted and detained for trespassing”⁵⁷⁴

“Student stated he was going to shoot up the school.”

“Juv. was contacted attempting to wander around campus after threatening to harm himself and others.”

“Sbj. was detained for 5150 after attempting to run away from staff. Sbj. was danger to self, handcuffed.”

“Radio call of student sending threatening messages.”

“(S) was observed in school surveillance assaulting another student”

In reviewing these narrative descriptions, the Board hopes to better understand the context in which officers handcuff young children at school and the impact of the stops on the children involved. References to self-harm and suicidality in the narratives may suggest that the children handcuffed during those stops were experiencing a mental health crisis; handcuffing children in mental health crisis is likely especially harmful.⁵⁷⁵ In their position statement on responding to mental health crises, the national organization Mental Health America (MHA) stated, “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.”⁵⁷⁶

Regarding the need to avoid the use of handcuffs and restraints on children with mental health concerns, MHA states:

People in crisis may pose such a danger to themselves or others that restraints may seem necessary, but more often than not, restraints are overused by default. Children with mental health concerns should not be restrained mechanically and certainly not handcuffed when being transported in the community – especially out of school.⁵⁷⁷

While not feasible within the Board’s current review, it would be valuable for researchers to do a similar review of the narratives from the stops in which older students were handcuffed.

ii. Stop Characteristics – Use of Chemical Spray

Officers reported using chemical spray toward students in 10 stops on K-12 campuses. Research has shown that “[p]epper spray can cause coughing, gagging, blistering or scarring of the eyes, persistent and debilitating pain around the eyes, chemical burns, lung inflammation, and severe asthma attacks.”⁵⁷⁸ Currently, 35 states and seven California counties prohibit the use of chemical spray in their juvenile detention facilities,⁵⁷⁹ but its use is not prohibited in many school districts.

574 This narrative entry and the entry that immediately precedes it have the same DOJ Record ID and have different person numbers for the two entries, reflecting two students stopped in the same incident.

575 Mental Health America, *Position Statement 59: Responding to Behavioral Health Crises* (2017) <<https://mhanational.org/issues/position-statement-59-responding-behavioral-health-crises>> [as of Nov. 15, 2023].

576 *Ibid.*

577 *Ibid.*

578 Hamaji and Terenzi, *Arrested Learning: A Survey of Youth Experiences of Police and Security at School* (2021) The Center for Popular Democracy, p. 17 <<https://www.populardemocracy.org/sites/default/files/Police-Free%2BSchools%2BFinal%2BV4%2B%281%29.pdf>> [as of Nov. 15, 2023].

579 American Civil Liberties Union Foundation of Southern California, *Toxic Treatment: The Abuse of Chemical Spray in California Juvenile Detention* (2019) p. 4 <https://www.aclusocal.org/sites/default/files/aclu_social_toxic_treatment_report_2019.pdf> [as of Nov. 15, 2023].

Research into the health impact of various chemical irritants suggests children are more vulnerable to severe injuries from chemical toxicity.⁵⁸⁰ Increasing evidence of moderate to severe and permanent injuries from chemical sprays challenges the general perception of chemical spray as a less lethal or non-lethal weapon.⁵⁸¹ Several studies demonstrate that individuals with asthma or other respiratory complications have an increased risk of asphyxiation and other injuries from chemical spray.⁵⁸² Other underlying cardiac and pulmonary diseases are also exacerbated by the effects of chemical spray.⁵⁸³

In 2021, the Los Angeles Unified School District Board adopted a policy prohibiting the use of chemical spray against students.⁵⁸⁴ The Los Angeles School Police Department Policy Manual 303.7 Oleoresin Capsicum (OC) Guidelines state:

OC spray may be considered for use as self-defense or a method of defending others from imminent threat of or actual use of physical force of violence. OC spray should not, however, be used against individuals or groups who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public. OC spray is intended as a person-specific dispersal agent and NOT as a crowd dispersal agent. **LASPD sworn personnel and SSOs shall not utilize OC spray on campus involving persons who reasonably appear to be K-12 students or minors.**⁵⁸⁵

The LASPD requirement that OC spray not be used as a crowd dispersal agent aligns with the recommendations of researchers studying chemical irritant weapons.⁵⁸⁶

d. Results of Stops

Among stops of students on campuses, the percentage of stops that had particular results differ among perceived racial or ethnic groups.⁵⁸⁷ In particular, students stopped on campus who were perceived as Black or Hispanic/Latine(x) had a higher percentage of stops that ended in a custodial arrest without a warrant (14.2% and 15.2%, respectively) compared to all other racial or ethnic groups.⁵⁸⁸ These same groups had a lower percentage of stops resulting in a warning compared to other racial or ethnic groups (9.8% and 11% warning for Black and Hispanic/Latine(x) students, respectively).⁵⁸⁹

580 Physicians for Human Rights and The International Network of Civil Liberties Organizations, *Lethal in Disguise: The Health Consequences of Crowd-Control Weapons* (Mar. 2016) p. 44 <<https://phr.org/wp-content/uploads/2018/09/lethal-in-disguise.pdf>> [as of Nov. 15, 2023].

581 *Id.* at p. 39.

582 Pinney, *Pepper Spray in the Texas Youth Commission: Research Review and Policy Recommendations*, Tex. Crim. Justice Coalition Juvenile Justice Initiative (Nov. 2007) p. 4 <https://www.texascjc.org/system/files/publications/Pepper_Spray_in_TYC.pdf> [as of Nov. 15, 2023].

583 *Ibid.*

584 Márquez Rosales, *LA Unified Ends Use of Pepper Spray, Diverts School Police Money to Support Black Students*, EdSource (Feb. 17, 2021) <<https://edsources.org/updates/la-unified-ends-use-of-pepper-spray-diverts-school-police-money-to-support-black-students>> [as of Nov. 15, 2023].

585 L.A. School Police Dept., *Policy Manual* (2023) pp. 69–70 (emphasis in original) <<https://achieve.lausd.net/cms/lib/CA01000043/Centricity/Domain/596/LASPD%20Policy%20Manual%202023.pdf>> [as of Nov. 15, 2023].

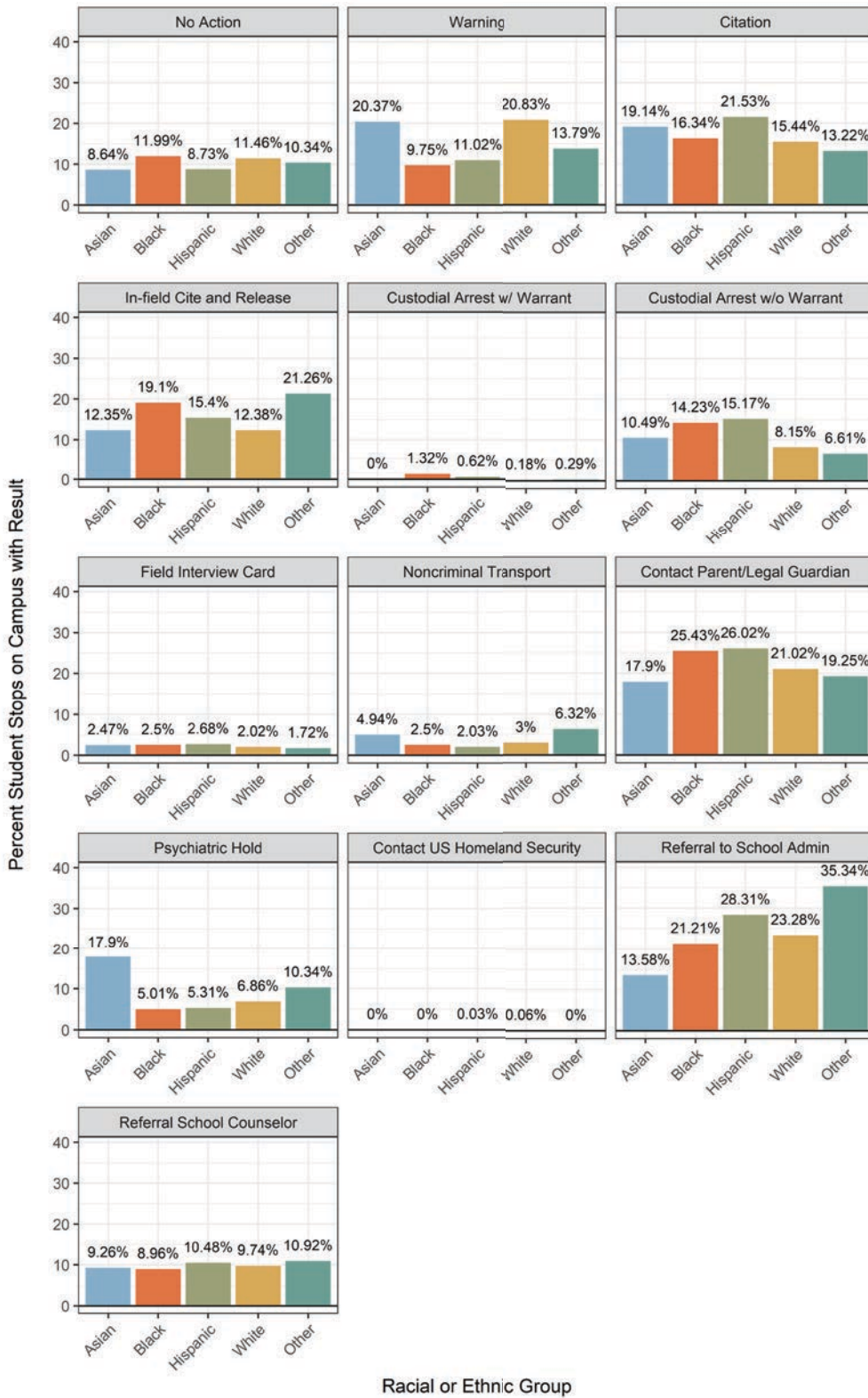
586 Glaser and Lim, *Review of Research on Policing Demonstrations* (2020) pp. 12–13 <<https://www.gov.ca.gov/wp-content/uploads/2020/10/Policing-and-Protests-Recommendations.pdf>> [as of Nov. 15, 2023].

587 Multiple results of a stop may be included in RIPA reporting. Because of this, the percentages reported for a particular racial or ethnic group do not sum to 100 percent.

588 Percent of stops of students that resulted a custodial arrest without a warrant: Asian (10.49%), Other (6.61%), and White (8.15%).

589 Percent of stops of students resulting in a warning: Asian (20.37%), Other (13.79%), and White (20.83%).

Figure 66. Percentage of Stops with Specific Results by Racial or Ethnic Group



The most common “Result of Stop” during stops of students on campus was a referral to a school administrator (1,688 results), followed by contact of a parent/legal guardian or other person responsible for the student (1,553 results), citation for an infraction (1,215 results), in-field cite and release (986 results), warning (885 results), and custodial arrest without warrant (818 results). Officers reported that 403 students were placed on psychiatric holds following stops on K-12 campuses. Officers reported completing field interview cards as a result of 157 stops of students on K-12 campuses.

Table 10. Total Results of Stops of Students on Campus⁵⁹⁰

Count of Result	Result
1,688	Referral to School Administrator
1,553	Contact Parent/Legal Guardian or Other Person Responsible for the Minor
1,215	Citation for Infraction
986	In-field Cite and Release
885	Warning (Verbal or Written)
818	Custodial Arrest without Warrant
651	Referral to School Counselor or Other Support Staff
637	No Action
403	Psychiatric Hold (Pursuant to Welfare & Institutions Code Sections 5150 and/or 5585.20)
170	Noncriminal Transport or Caretaking Transport. This includes transport by an officer, transport by ambulance, or transport by another agency.
157	Field Interview Card Completed
36	Custodial Arrest Pursuant to Outstanding Warrant
2	Contacted U.S. Department of Homeland Security (e.g., Immigration and Customs Enforcement, Customs and Border Protection)

In its 2023 Report, the Board reviewed findings from The Center for Civil Rights Remedies’ preliminary comparison of RIPA data with data reported by school officials as part of the Civil Rights Data Collection regarding the arrest of students in K-12 schools in California.⁵⁹¹ For reference, in the 2017-2018 school year, schools reported the arrest of more students at California schools (2,188 school-related arrests of students) than the number of students that officers reported arresting at schools in the 2022 calendar year through RIPA data reporting (1,840 arrests of students on K-12 campuses).⁵⁹² In future years,

590 Individual stops can have more than one result; therefore, a single stop can be counted in multiple result categories and these counts do not sum to the total number of stops of students on campus.

591 Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at p. 138.

592 See U.S. Dept. of Ed. Office for Civil Rights, *Civil Rights Data Collection (CRDC) (2018)* <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Focrdata.ed.gov%2Fassets%2Fdownloads%2F2017-2018%2FSchool-Climate%2FArrests%2FSchool-Related-Arrest%2FSchool-Related-Arrest_by-disability-and-no.xlsx&wdOrigin=BROWSELINK> [as of Nov. 15, 2023]. In our analysis of RIPA data here, we added stop results for custodial arrest without warrant (818), custodial arrest pursuant to outstanding warrant (36), and in-field cite and

researchers will retrospectively be able to compare the reporting in these two data sets across more comparable time periods, which is not currently possible because the data that schools will report for the 2021-2022 school year is not yet due.⁵⁹³

Officers reported contacting the U.S. Department of Homeland Security (e.g., Immigration and Customs Enforcement, Customs and Border Protection) regarding two students stopped on K-12 campuses. One of these stops additionally resulted in the custodial arrest of the student and the other additionally resulted in the in-field cite and release of the student. In both instances, the students were suspected of violations of codes related to fighting.

Table 11 displays officers' narrative description of the reason for the stops of the two students about whom officers contacted the U.S. Department of Homeland Security.

Table 11.

Reason for Stop Narratives – Students about whom Officers Contacted U.S. Department of Homeland Security
<ul style="list-style-type: none">Reasonable suspicion to believe juvenile committed a battery on school grounds due to a report from another student.
<ul style="list-style-type: none">Ftb two female students who were fighting in class. Fight was mutual.

In 2017, the California Legislature enacted the California Values Act to ensure effective policing and protect the safety and constitutional rights of the people of California.⁵⁹⁴ In enacting the Values Act, the Legislature made clear in its findings that immigrants are valuable and essential members of the California community. The Legislature declared that “a relationship of trust between California’s immigrant community and state and local agencies is central to the public safety of the people of California.”⁵⁹⁵ Additionally, California Government Code section 7284.2, subdivision (e), states that “State and local participation in federal immigration enforcement programs also raises constitutional concerns, including the prospect that California residents could be . . . targeted on the basis of race or ethnicity in violation of the Equal Protection Clause.”⁵⁹⁶

California law prohibits California law enforcement agencies from inquiring into an individual’s immigration status.⁵⁹⁷ California law requires that school districts, county offices of education, and charter schools avoid the disclosure of information that might indicate a student’s or family’s citizenship or immigration status if the disclosure is not authorized by the Family Educational Rights and Privacy Act.⁵⁹⁸ California law requires that all school districts, county offices of education, and charter schools implement the model policy issued by the Attorney General in accordance with California Government Code section 7284.8 or an equivalent policy limiting assistance with immigration enforcement at public

release (986), totaling 1,840 arrests. An in-field cite and release result of stop is an arrest. The person is arrested, but permitted to leave. While a person is not taken into custody at the time of an in-field cite and release, a warrant will be issued if the person does not present themselves in response to the citation.

593 *Ibid.*

594 Gov. Code, § 7284.2, subd. (f); Cal. DOJ Division of Law Enforcement, *Information Bulletin: DLE-2018-01 Responsibilities of Law Enforcement Agencies Under the California Values Act, California TRUST Act, and the California TRUTH Act* (Mar. 2018) pp. 1–2 <https://oag.ca.gov/sites/all/files/agweb/pdfs/law_enforcement/dle-18-01.pdf> [as of Nov. 15, 2023].

595 Gov. Code, § 7284.2, subd. (b); Cal. DOJ Division of Law Enforcement, *Information Bulletin: DLE-2018-01, supra* note 594, at pp. 1-2.

596 Gov. Code, § 7284.2, subd. (b); Cal. DOJ Division of Law Enforcement, *Information Bulletin: DLE-2018-01, supra* note 594, at pp. 1-2

597 Gov. Code, § 7284.6, subd. (a)(1)(A).

598 Cal. DOJ, *Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California’s K-12 Schools in Responding to Immigration Issues (Promoting a Safe and Secure Learning Environment for All)* (Apr. 2018) p. 20 <<https://oag.ca.gov/sites/all/files/agweb/pdfs/bcj/school-guidance-model-k12.pdf>> [as of Nov. 15, 2023].

schools to the fullest extent possible consistent with federal and state law.⁵⁹⁹

School districts, county office of education, or charter school personnel must receive consent from the student’s parent or guardian before a student can be interviewed or searched by any officer seeking to enforce the civil immigration laws at the school, unless the officer presents a valid, effective warrant signed by a judge or presents a valid, effective court order.⁶⁰⁰ School district, county office of education, or charter school personnel must immediately notify the student’s parents or guardians if a law enforcement officer requests or gains access to a student for immigration enforcement purposes, unless such access was in compliance with a judicial warrant or subpoena that restricts the disclosure of the information to the parent or guardian.⁶⁰¹ School district, county office of education, and charter school personnel are required to notify the California DOJ regarding any attempt by a law-enforcement officer to access a school site or a student for immigration enforcement purposes.⁶⁰²

In 2016, California’s State Superintendent of Public Instruction released a letter encouraging California public schools to become “safe havens” for students and their families.⁶⁰³ Safe haven policies should include provisions requiring school districts, county offices of education, or charter schools to seek commitments from outside contractors or service providers, particularly school-based law enforcement officers, who are regularly present at sensitive or safe locations⁶⁰⁴ or have access to student information, that they will not facilitate immigration enforcement at any of the sensitive or safe locations unless required by law.⁶⁰⁵

The RIPA data provide an important tool for the Board and other stakeholders to examine how California students interact with law enforcement. The data paint a picture of what happens during those interactions, the results of the interactions, and the impact of having armed law enforcement respond to school-based incidents.

3. Research Findings

The following section examines the research that the Board has reviewed regarding the impact of school-based law enforcement on school discipline practices and school climate, law enforcement involvement in student threat assessment processes, and the involvement of school-based law enforcement as informal counselors and mentors.

a. Impact of School-Based Law Enforcement on School Discipline Practices

The role officers play in student discipline varies and depends in large part upon the specific guidance followed and school demographics. In 2022, the COPS Office published *Guiding Principles for the Implementation of School Resource Officers*.⁶⁰⁶ Among other things, the COPS guidance recommended that law enforcement agencies should have a memorandum of understanding (MOU) with the school districts where law enforcement officers are assigned that prohibits “[school-based law enforcement officers] from engaging in school disciplinary incidents or enforcing school codes of conduct or addressing typical student behavior that can be safely and appropriately handled by school officials.”⁶⁰⁷ Currently, there is no requirement of transparency or oversight in the contracts between school

599 *Id.* at p. 12.

600 *Id.* at p. 31.

601 *Ibid.*

602 *Ibid.*

603 *Id.* at p. 27.

604 Sensitive or safe locations include schools, official activities of schools, including those occurring in public places and adjacent areas, and all of the school district, county office of education, or charter school’s property, including but not limited to, facilities owned, controlled by, or leased by the school district, county office of education, or charter school. (*Ibid.*)

605 *Ibid.*

606 U.S. DOJ Community Oriented Policing Services Office, *Guiding Principles for the Implementation of School Resource Officers* (2022) <<https://cops.usdoj.gov/RIC/Publications/cops-p460-pub.pdf>> [as of Nov. 15, 2023].

607 *Ibid.*

districts and law enforcement agencies.

At a national level, in the 2017-2018 School Survey on Crime and Safety, among the schools that reported a sworn law enforcement officer was present at least once a week, 51 percent reported that law enforcement officer participated in maintaining student discipline.⁶⁰⁸

- Among schools that reported having an officer present who participated in maintaining student discipline, fewer than half (43%) reported that there were specific policies defining the role of officers related to discipline and 35 percent reported that there was not a specific policy outlining officers' roles related to discipline.⁶⁰⁹
- Among schools that reported having an officer present who did not participate in maintaining student discipline, 27 percent reported that there were specific policies defining the role of officers related to discipline and 54 percent reported there was not a specific policy outlining officers' roles related to discipline.⁶¹⁰

Additionally, researchers observed “that as an [officer] takes on a more active role in formal education [e.g., as teachers], the need for them to engage in discipline increases.”⁶¹¹

In 2023, the Center for Policing Equity (CPE) published a paper about redesigning public safety in K-12 schools.⁶¹² CPE found that school-based law enforcement officers in predominantly White suburban school districts more often viewed students as charges to be protected and students in urban school districts with larger populations of students of color as possible criminals needing to be policed.⁶¹³ The role of school-based law enforcement officers varies across schools and officers are more involved in the disciplinary process in schools with more students of color.

A 2017 study helps explain how officers come to perceive their role in school discipline. It found that “[a]lthough [school-based law enforcement officers] were fairly consistent in describing discipline as not being a function of their role . . . there was significant nuance in what ‘not being involved in discipline’ meant for each [officer].”⁶¹⁴ The study was largely based on the responses of [school-based law enforcement officers], whose descriptions were largely corroborated by other participating stakeholders and the researchers' observations.⁶¹⁵ In contrast with the majority of schools nationwide with a law enforcement officer present, both school districts in this study had MOUs with the law enforcement agencies defining the officers' roles as “one of law enforcement and not of school discipline.”⁶¹⁶ While both MOUs specifically prohibited officer involvement in school discipline issues, the officers' disciplinary involvement expanded when the meaning of involvement in discipline was open to interpretation and negotiation at the local level.⁶¹⁷ This raised concerns that “[l]eaving administrators and [school-based law enforcement officers] to informally negotiate the role they will play in discipline at the school potentially involves less forethought, consideration, or stakeholder input. Likewise, there may be less accountability given a lack of more uniform guidance on what constitutes appropriate or

608 Inst. of Ed. Sciences National Center for Ed. Statistics, *Policies Outlining the Role of Sworn Law Enforcement Officers in Public Schools* (May 2020) p. 2 <<https://nces.ed.gov/pubs2020/2020027.pdf>> [as of Nov. 15, 2023].

609 *Ibid.*

610 *Ibid.*

611 Curran et al., *Why and When Do School Resource Officers Engage in School Discipline?*, *supra* note 458, at pp. 52–53. The National Association of School Resource Officers (NASRO) promotes a triad model of school-based policing, in which, in addition to serving as law enforcement officers, school-based officers have responsibilities as mentors, informal counselors, and guest teachers. (National Assn. of School Resource Officers (NASRO), *About NASRO* <<https://www.nasro.org/main/about-nasro/>> [as of Nov. 15, 2023].)

612 See generally Neath and Rau, *Redesigning Public Safety: K-12 Schools*, *supra* note 411.

613 *Id.* at p. 6; see also Curran et al., *Why and When Do School Resource Officers Engage in School Discipline?*, *supra* note 458, at p. 57.

614 Curran et al., *Why and When Do School Resource Officers Engage in School Discipline?*, *supra* note 458, at p. 44.

615 *Ibid.*

616 *Ibid.*

617 *Id.* at pp. 53–54.

inappropriate involvement with discipline.”⁶¹⁸

The 2017 study also found that relationships with school personnel influence school-based law enforcement officers’ disciplinary involvement. When principals explicitly viewed officers’ involvement in discipline as inappropriate and actively communicated this to school personnel, officers’ disciplinary involvement was lower.⁶¹⁹ When principals and teachers requested officer involvement in discipline, and officers viewed doing so as being a helpful part of the school community, school-based law enforcement officers’ disciplinary involvement was greater.⁶²⁰

The researchers found that:

Many [school-based law enforcement officers] described activities that fell on a spectrum of school discipline involvement. On the one hand, [officers] almost universally reported no formal involvement in writing disciplinary referrals or determining disciplinary outcomes (e.g., assigning a suspension) On the other hand, [school-based law enforcement officers] were involved with discipline through a number of less formal mechanisms including verbal reprimands, one-on-one counseling or talks with students, lecturing classes on rules/consequences, being physically present for discipline responses (from school administrators), assisting school administrators with investigating misbehavior, and reporting misbehavior to school personnel.⁶²¹

The researchers reported that:

[School-based law enforcement officers] sometimes viewed one-on-one meetings with students for disciplinary reasons as a form of counseling or role modeling rather than a punitive, disciplinary response In cases such as this, [officers] appeared to describe an involvement in discipline that meshed into that of (in NASRO’s [National Association of School Resource Officers] terms) informal counseling.⁶²²

While less common in the researchers’ sample, the researchers found that:

[I]n some instances, [school-based law enforcement officers] took on roles as more active enforcers of school discipline. Sometimes such activities were [officer] initiated. Although some [officers] reported that turning students in for misbehavior was beyond their job description, many were active in bringing misbehaving students to school personnel or reporting observed misbehavior to such staff. Although such reporting fits with NASRO’s recommendations, other [school-based law enforcement officers] reported deeper involvement such as being present at administrators’ discretion in the interviewing of students who were suspected of misconduct. In many cases, such presence amounted to no more than being a fly on the wall in an exchange between a student and an administrator. In other cases, [officers] took on more active roles in questioning students or bringing evidence (such as from security cameras) to bear on the disciplinary situation.⁶²³

The researchers were informed of a few cases in which the school-based law enforcement officer led the enforcement of discipline. In one school, the officer described being the primary respondent to a disciplinary situation, which illustrated “the potential for school disciplinary involvement to escalate into an arrestable offense, as has been described previously by scholars studying [school-based law enforcement officers].”⁶²⁴ The researchers found that at the middle and high school levels, “a student’s

618 *Id.* at p. 57.

619 *Id.* at p. 48.

620 *Ibid.*

621 *Id.* at p. 44.

622 *Id.* at p. 45.

623 *Id.* at p. 46.

624 *Id.* at pp. 46–47. “One SRO describes such a situation in detail. ‘Uh, last week, or the week before, we had a kid upstairs who wasn’t doing what he was told to do, wasn’t doing his work. Um, he was kinda getting smart with the teacher. Teacher said, ‘Fine, you know, if you’re not gonna listen to me, pick up your stuff and go to in-school

defiance could quickly escalate into an arrest because both the school administration and the [officers] were more willing to read these sorts of behaviors as illegal.”⁶²⁵

While, overall, the researchers found that school-based law enforcement officer involvement with discipline was lower at the elementary school level, they found that officers were particularly likely to assist with misbehavior from elementary school students with disabilities.⁶²⁶ In particular, when restraining students with disabilities:

[T]he [school-based law enforcement officer] was commonly called in to maintain a presence, help diffuse the situation, or in some cases help the school staff to restrain the student. Some schools also had concerns about [students with disabilities] running out of the building, so the administrators called on [officers] to help block doors or chase down students trying to leave campus. Several [school-based law enforcement officers] described building relationships with [students with disabilities] specifically so that they could take an effective role if that student was having difficulties behaviorally. Both the school district leadership and the law enforcement agency’s leadership supported this being part of the [officers’] unofficial duties.⁶²⁷

It is important to keep in mind, as highlighted by the researchers conducting this study, that “[i]n many ways, [their] findings represent what might occur under optimal conditions in well-resourced and high-functioning school systems.”⁶²⁸ Other research has shown that “the relationship between [school-based law enforcement officer] presence and exclusionary discipline has been found to differ according to schools’ disciplinary orientation as well as the racial and socioeconomic makeup of the student body.”⁶²⁹ The school-based law enforcement officers in this study “generally approached their jobs with a view of students as charges to be protected rather than potential criminals to be policed; this result differs from prior studies in which [officers] are observed treating students as criminals to be feared and studies in which [school-based law enforcement officers] take on a dual notion of protecting vulnerable students while policing potential student criminals.”⁶³⁰ The researchers noted that “in other settings, such as in schools that are less well-functioning or in areas where law enforcement agencies have much more strained relationships with the community, such informal negotiation of the role of [officers] in discipline could result in more punitive or confrontational approaches.”⁶³¹

Together, these guidelines and studies of officer involvement in school discipline demonstrate the importance of establishing guidelines for officer interactions with students in lieu of unfettered discretion.

suspension (ISS).’ Um, kid in and goes, ‘No. I’m not doing it.’ Well, now what? And he kinda had a stalemate, you know, right? Is the teacher going to physically pick him up and carry him down to ISS? So they uh, they notified the AP [assistant principal], and the AP said, ‘Okay, fine well I’ll write the referral up. Call the officer and have him go up there.’ Well I know the kid real well. And when I walked in I said, ‘Hey man, grab your backpack, go to ISS.’ And he says, ‘Why?’ And I said, ‘Because I told you to go to ISS, that’s why. Don’t make me ask you again.’ He got his backpack, up he went. Didn’t like it, but he went. So. You know, the next step after that is, if you’re refusing to do what I tell you to do . . . I’m probably going to take him into custody for unruly juvenile, and we’ll settle it that way. (SRO 104).” (*Id.* at p. 46).

625 *Id.* at p. 51.

626 *Ibid.*

627 *Ibid.*

628 *Id.* at pp. 58–59.

629 *Id.* at p. 37.

630 *Id.* at pp. 57–58.

631 *Id.* at p. 57.

b. School-Based Law Enforcement Involvement as Informal Counselors, Mentors, and Teachers

NASRO promotes a triad model of school-based policing, in which officers have responsibilities as guest teachers, mentors, and informal counselors, in addition to serving a law enforcement role.⁶³² NASRO describes that when serving as informal counselors and mentors, officers engage in informal counseling sessions and refer students to social services, legal aid, community services, and public health agencies.⁶³³ The U.S. DOJ and researchers recognize that decision makers may seek out law enforcement officers to serve in a mentorship role and “[a]dministrators may believe that police complement perceived deficits in communities’ or students’ lives, framing officers as potential role models for young people who they view as not getting enough support from adults at home.”⁶³⁴ This rationale often relies “on ideas about neighborhood crime and narratives of insufficient adult role models, both of which are deeply embedded in racialized stereotypes about communities of color.”⁶³⁵

Advocates assert that using law enforcement officers as mentors “comes with risks, since it means that the mentor has information about the student, or [their] family, that would not otherwise be available to law enforcement.”⁶³⁶ In 2019, the CDE provided guidance to local educational agencies (school districts, county offices of education, charter schools, and special education local plan areas), specifying that, given the stigma many families and youth feel around their housing status and the concerns they have about sharing their information with law enforcement, educational agencies should not designate law enforcement personnel as school site liaisons for children and youth experiencing homelessness.⁶³⁷

c. Law Enforcement Involvement in Student Threat Assessment Processes

In California, Student Threat Assessment processes are another area in which law enforcement officers participate in addressing student behavior. Education advocates describe threat assessments as typically involving “a small group of school personnel, including a school police officer, discussing a student whom someone has identified as a potential ‘threat’ before a violent act occurs.”⁶³⁸ The CDE describes a Threat Assessment Team as “a group of officials that convene to identify, evaluate, and address threats or potential threats to school security. Threat Assessment Teams review incidents of threatening behavior by students (current and former), parents, school employees, or other individuals.”⁶³⁹

While Threat Assessment Teams are not a required element in Comprehensive School Safety Plans (CSSP), the CDE recommends that schools and their districts consider collaborating to establish or enhance a Threat Assessment Team as a best practice for developing the CSSPs, which are required under the Interagency School Safety Demonstration Act.⁶⁴⁰

Although threat assessments are common in school districts nationally, their effectiveness is questionable. A 2002 report by the Secret Service and the U.S. Department of Education concluded that there is “no accurate or useful ‘profile’ of students who engaged in targeted school violence.”⁶⁴¹

632 National Assn. of School Resource Officers (NASRO), *About NASRO*, *supra* note 611.

633 National Assn. of School Resource Officers (NASRO), *How to Advocate for Your School Resource Officers* (2023) <<https://www.nasro.org/membership/how-to-advocate-for-your-school-resource-officers/>> [as of Nov. 15, 2023].

634 Gleit, *Cops on Campus: The Racial Patterning of Police in Schools*, *supra* note 458.

635 *Ibid.*

636 Kupchik, *Research on the Impact of School Policing*, *supra* note 411, at p. 3.

637 Cal. Dept. of Ed., *Designating Liaisons for Students Experiencing Homelessness*, *supra* note 457, at pp. 3–4.

638 Hamaji and Terenzi, *Arrested Learning: A Survey of Youth Experiences of Police and Security at School*, *supra* note 578, at p. 49.

639 Cal. Dept. of Ed., *Comprehensive School Safety Plans: Best Practice Considerations and Resources for Reviewing and Approving Plans* (2022) <<https://www.cde.ca.gov/ls/ss/vp/cssp.asp>> [as of Nov. 15, 2023].

640 *Ibid.*

641 Sawchuck, *What Schools Need to Know About Threat Assessment Techniques*, Education Week (Sep. 3, 2019) <<https://www.edweek.org/leadership/what-schools-need-to-know-about-threat-assessment-techniques/2019/09>> [as of Nov.

Data on threat assessments and their long-term effects is scarce.⁶⁴² Few studies have examined how these assessments are carried out and how they affect students.⁶⁴³ A report assessing the civil rights impact of threat assessment practices found that the assessments often have “the practical effect of shifting the burden to prove safety onto the student and family,” and “threat assessments can fracture important bonds and relationships of trust that are essential for families to access school-based supports and resources, as they situate the school in opposition to the student.”⁶⁴⁴

Advocates with the National Disability Rights Network, the National Center for Youth Law, and UCLA’s Center for Civil Rights Remedies report that as currently implemented, threat assessments “place law enforcement directly into the life of the student and into what are often mundane discipline situations, in place of decision making by trained educators.”⁶⁴⁵ These advocates reported that school staff have stated that “threat assessment teams often do not engage in a collaborative discussion when a law enforcement officer is present on the team; what the officer recommends is generally what occurs.”⁶⁴⁶ In their 2023 Paper, the Center for Policing Equity recommended that schools, at minimum, eliminate incidents of self-harm from being assessed as threats.⁶⁴⁷

Notably, California’s threat assessment model differs in that law enforcement are involved at every step, as opposed to most other threat assessment models that involve law enforcement only after a threat has been deemed credible. While more research should be performed on California’s specific threat assessment process, studies of other states’ processes can illuminate points for improvement. Most existing data stem from studies of Virginia’s statewide threat assessment model, as it is the oldest in the country, standardized, and mandatory.⁶⁴⁸ In Virginia public schools, researchers found that the threat assessment process does not result in statistically significant differences across racial groups in rates of suspension (46.6% for White students and 50.3% for Black students), alternative school placement (15.4% for White students and 18.2% for Black students), expulsion (0.5% for White students and 1.4% for Black students), or law enforcement action (5% for White students and 4.3% for Black students), racial disparities still exist in the processes that occur before a threat assessment is made.⁶⁴⁹ However, schools recommended markedly more Black students receive threat assessments than students of other racial or ethnic groups.⁶⁵⁰ In Virginia, approximately 50.1 percent of students are White and 22.6 percent are Black. While schools’ referrals to threat assessment for White students were relatively proportional to their share of the population (51.2%), Black students were disproportionately referred (30.2% of students receiving threat assessments).⁶⁵¹

15, 2023].

642 National Disability Rights Network, *K-12 Threat Assessment Processes: Civil Rights Impact* (Feb. 2022) p. 8 <<https://www.ndrn.org/wp-content/uploads/2022/02/K-12-Threat-Assessment-Processes-Civil-Rights-Impacts-1.pdf>> [as of Nov. 15, 2023].

643 See *ibid*; Cornell et al., *Student Threat Assessment as a Standard School Safety Practice: Results From a Statewide Implementation Study* (2017) 33 *School Psychol. Q.* 213, 214–215 <<http://dx.doi.org/10.1037/spq000220>> [as of Nov. 15, 2023]; Cornell et al., *Racial/Ethnic Parity in Disciplinary Consequences Using Student Threat Assessment* (2018) 47 *School Psychol. Rev.* 183, 184–185 <<http://dx.doi.org/10.17105/SPR-2017-0030.V47-2>> [as of Nov. 15, 2023].

644 National Disability Rights Network, *K-12 Threat Assessment Processes: Civil Rights Impact*, *supra* note 642, at pp. 4, 14.

645 *Id.* at p. 2.

646 *Id.* at p. 10.

647 Neath and Rau, *Redesigning Public Safety: K-12 Schools*, *supra* note 411, at p. 9.

648 National Disability Rights Network, *K-12 Threat Assessment Processes: Civil Rights Impact*, *supra* note 642, at p. 2.

649 See Cornell et al., *Student Threat Assessment as a Standard School Safety Practice: Results From a Statewide Implementation Study*, *supra* note 643, at p. 217; see also National Disability Rights Network, *K-12 Threat Assessment Processes: Civil Rights Impact*, *supra* note 642, at pp. 12–14; O’Malley et al., *Cultural-Competence Considerations for Contemporary School-based Threat Assessment* (2018) 56 *Psychology in the Schools* 255 <<https://onlinelibrary.wiley.com/doi/10.1002/pits.22197>> [as of Nov. 15, 2023].

650 See Cornell et al., *Student Threat Assessment as a Standard School Safety Practice: Results From a Statewide Implementation Study*, *supra* note 643, at p. 217; see also National Disability Rights Network, *K-12 Threat Assessment Processes: Civil Rights Impact*, *supra* note 642, at pp. 12–14; O’Malley et al., *Cultural-Competence Considerations for Contemporary School-based Threat Assessment*, *supra* note 649, at p. 255.

651 Cornell et al., *Student Threat Assessment as a Standard School Safety Practice: Results From a Statewide Implementation Study*, *supra* note 643, at p. 217.

Moreover, outcomes from threat assessments are unequally punitive for students with disabilities. Schools refer students who receive special educational services to threat assessment teams at a disproportionate rate — students receiving special education services comprise approximately 33 percent of referrals, while 12.5 percent of the student population receives special education services.⁶⁵² During threat assessments, teams determine that students receiving special education services are a serious threat at a rate 1.26 times higher than other students referred for assessments.⁶⁵³

Advocates are concerned that the threat assessment process sidesteps school discipline codes and the legally required due process and emphasize that schools should follow the legally mandated process for school discipline.⁶⁵⁴ When the use of threat assessment processes persist, threat assessment outcomes should be formally studied to ensure they are consistent, align with the programs' formal guidelines, and are actually effective at reducing violence and improving student experiences. Case-level data should be required for every case; this would help overcome the lack of literature and data regarding threat assessments across the country. Schools should also inform parents and students of the threat assessment process before they are personally involved, by including materials on it in the school's orientation materials and presentations.

d. Impact of School-Based Law Enforcement on School Climate

Research suggests that “contemporary policing and punishment in schools can often deteriorate the school social climate by making schools more hostile and less inclusive” and may directly teach students aggressive behavior.⁶⁵⁵ Researchers cite multiple studies that “document the use of harsh discipline and harassment of students, as schools respond to real and perceived student misconduct using policing practices rather than social welfare-oriented interventions.”⁶⁵⁶ How school security and punishment policies are enforced involves a power imbalance (child vs. adult), are repeated over time (students defined as “troublemakers” are targeted by disciplinarians), and may leave their victims demoralized.⁶⁵⁷ School rules, punishment, and security can create a context that is conducive to aggressive student behavior as a means to responding to stress or conflict, and research on school climate can help illustrate how this plays out in schools.⁶⁵⁸

Research documenting California student experiences of school climate across racial groups shows that Black students feel less school connectedness than their peers.⁶⁵⁹ The biennial California Healthy Kids Survey found that in the last decade, Black middle school and high school students consistently

652 Maeng et al., *Student Threats of Violence Against Teachers: Prevalence and Outcomes Using a Threat Assessment Approach* (2020) 87 *Teaching and Teacher Education* 102934 <<https://doi.org/10.1016/j.tate.2019.102934>> [as of Nov. 15, 2023].

653 *Ibid.*

654 National Disability Rights Network, *K-12 Threat Assessment Processes: Civil Rights Impact*, *supra* note 642, at p. 3.

655 Kupchik and Farina, *Imitating Authority Students Perceptions of School Punishment and Security, and Bullying Victimization* (2016) 14 *Youth Violence & Juv. Just.* 147, 148–149 (emphasis in original omitted) <<https://heinonline.org/HOL/P?h=hein.journals/yvja14&i=144>> [as of Nov. 15, 2023].

656 *Id.* at p. 148

657 *Id.* at p. 149.

658 *Id.* at pp. 147–150.

659 School connectedness is a measure of feelings of safety, closeness to people, part of the school, happiness, and about teachers treating students fairly. For the period from 2017 to 2019, Black students consistently reported lower levels of connectedness. (Population Reference Bureau, *School Connectedness (Student Reported)*, by *Race/Ethnicity*, Kidsdata.org <<https://www.kidsdata.org/topic/391/school-connectedness-race/table#fmt=537&l>

reported the lowest levels of school connectedness of any demographic group.⁶⁶⁰ In 2017-2019, Black students reported low school connectedness at nearly double the rate of their White counterparts (16.3% and 8.9%, respectively).⁶⁶¹

4. Rethinking Policing in Schools

The section that follows includes examples of policies, settlement agreements, school board resolutions, draft bills, and a union proposal that the RIPA Board reviewed in the process of developing recommendations to address the profiling of students in K-12 schools.

a. Exemplar School District Judgments and Policies

i. Stockton Unified School District (SUSD)

The 2019 California DOJ Stipulated Judgment (Judgment) with Stockton Unified School District (SUSD) and its police department required the district to reform its use of law enforcement officers and disciplinary practices.⁶⁶² The Judgment required the district's police department to adopt a policy explicitly stating that police officers should not be involved in addressing low-level disciplinary infractions that are more appropriately addressed by school administrators and teachers.⁶⁶³ SUSD subsequently adopted the Police Assistance and Student Referral policy (5145.10) in 2020, defining when district employees may or may not request police assistance.⁶⁶⁴

The Judgment also required the district to incorporate Positive Behavior Interventions and Supports and other restorative practices in its revised discipline policies.⁶⁶⁵ Apart from directives limiting student referrals to law enforcement, the district's Student Behavior Intervention and Discipline Matrix specifies classroom interventions, restorative interventions, reentry plans, and student support actions that are

oc=2,127,347,1763,331,348,336,171,321,345,357,332,324,369,358,362,360,337,327,364,356,217,353,328,354,323,352,320,339,334,365,343,330,367,344,355,366,-368,265,349,361,4,273,59,370,326,333,322,341,338,350,342,329,325,359,351,363,340,335&tf=134&ch=430,432,433,7,11,70,10,72,9,73,127> [as of Nov. 15, 2023]; Austin et al., *School Climate and Student Engagement and Well-being in California 2017/19* (2020) WestEd., pp. 59–61 <https://data.calschls.org/resources/Biennial_State_1719.pdf> [as of Nov. 15, 2023]; Voight et al., *The Racial School Climate Gap: Within-School Disparities in Students' Experiences of Safety, Support, and Connectedness* (2015) 56 Am. J. Community Psychol. 252 <<https://doi.org/10.1007/s10464-015-9751-x>> [as of Nov. 15, 2023]; Neath and Rau, *Redesigning Public Safety: K-12 Schools*, *supra* note 411, at p. 16.

660 Austin et al., *School Climate and Student Engagement and Well-being in California 2017/19*, *supra* note 659, at pp. 59-61.

661 Cal. Dept. of Ed., *CalSCHLS, School Connectedness (Student Reported), by Race/Ethnicity (2017-2019)* <<https://calschls.org/reports-data/query-calschls/?ind=127>> [as of Nov. 15, 2023]. Data from 2019-2021 did not capture school engagement using the same metrics due to disruptions in schooling caused by COVID-19; however, evidence shows that schools returning to in-person learning must concentrate on developing healthy school climates. (See *id.* at pp. 17–18 <<https://calschls.org/reports-data/query-calschls/?ind=127>> [as of Nov. 15, 2023].)

662 It is important to note that this was a negotiated agreement, which was the result of compromise, based on the specific findings of the investigation at the time, and does not necessarily reflect current best practice in all respects.

663 See Final Judgment, *People ex. rel. Xavier Becerra, as Attorney General v. Stockton Unified School District (People v. Stockton Unified)* (Super. Ct. Sac. County, 2019, Case No. 34-2019-00248766) p. 2 <<https://oag.ca.gov/system/files/attachments/press-docs/91079411.pdf>> [as of Nov. 15, 2023].

664 Stockton Unified School District, *Police Assistance and Student Referral Policy (5145.10)* (2020) p. 1 <https://www.google.com/url?client=internal-element-cse&cx=005069855296510407953:tr7ra6fy_ne&q=https://www.stocktonusd.net/cms/lib/CA01902791/Centricity/Domain/159/5145.10%2520BP%2520-%2520Police%2520Assistance%2520And%2520Student%2520Referral%2520Policy%2520-%2520Adopted%25208-25-20%2520v3.pdf&sa=U&ved=2ahUKewiH4o2-urKAAXWbJUQIHwYmBUcQFnoECAKQAQ&usg=AOvVaw30pVbk4RdIr__kHX30yKQk> [as of Nov. 15, 2023].

665 Final Judgment, *People v. Stockton Unified*, *supra* note 663, at p. 6. Successful School-Wide Positive Behavior Interventions and Supports utilize multi-tiered support: primary/universal interventions for all students, secondary level prevention for students who are at risk, and tertiary/intensive interventions focused on students and families who are the most chronically and intensely at risk of negative behavior, and in need of greater supports. (Public Counsel, *Fix School Discipline: Toolkit for Educators* (2023) p. 7 <http://www.fixschooldiscipline.org/?smd_process_download=1&download_id=5069> [as of Nov. 15, 2023].)

recommended for each type of behavior.⁶⁶⁶

The Student Behavior Intervention and Discipline Matrix specifies that students should not be referred to law enforcement for certain offenses, which should instead be subject to school discipline: defiance or disruption, disorderly conduct, trespassing, truancy, loitering, use of profanity, theft of property valued under \$50, verbal altercations unless there is a threat of serious bodily injury or, for students in grades 4-12, a threat of hate violence, fights with no injuries unless more than two students are involved, and causing or attempting to cause less than \$400 of damage to property (including graffiti) unless the “vandalism pertains to gang affiliation or hate groups.”⁶⁶⁷

The district’s police department was also required to revise its use of force policy under the Judgment to impose restrictions on the use of force with respect to youth. The Policy Manual requires an officer to consider whether the student or other person has a known disability or other special needs relating to mental health or behavior and the emotional and physical capacity of the student or other person when determining whether to apply force and evaluating whether an officer has used reasonable force.⁶⁶⁸ Under the Policy Manual, officers must evaluate the totality of circumstances presented at the time in each situation and, when feasible, engage in de-escalation and crisis intervention.⁶⁶⁹

ii. Oroville Union High School District (OUHSD) and Barstow Unified School District (BUSD)

The 2020 California DOJ Stipulated Judgments with the Oroville Union High School District and Barstow Unified School District focused on addressing the use of citations and arrests that disproportionately impacted students of color.⁶⁷⁰

The Stipulated Judgment with the Oroville Union High School District required the district to provide the required state statutory and regulatory justification for the district’s allocation of supplemental and concentration funding provided through the California Local Control Funding Formula (LCFF) to expenditures for school-based law enforcement officers and security, including justification for how these allocations are effective at increasing or improving outcomes for student groups for whom the funding is intended.⁶⁷¹

- 666 Stockton Unified School District, *Student Behavior Intervention and Discipline Matrix* (2020) <https://www.google.com/url?client=internal-element-cse&cx=005069855296510407953:tr7ra6fy_ne&q=https://www.stocktonusd.net/cms/lib/CA01902791/Centricity/Domain/159/Student%2520discipline%2520and%2520intervention%2520matrix%2520FINAL.pdf&sa=U&ved=2ahUKEwj_pc7TxbKAAxXSIO4BHQs8CwwQFnoECAyQAg&usg=AOvVaw1uv7ILHwgtEXE-kiGnLLwuy> [as of Nov. 15, 2023].
- 667 *Id.* at pp. 1–2, 6–8, 10–12; Final Judgment, *People v. Stockton Unified*, *supra* note 663, at p. 3.
- 668 Stockton Unified School District Dept. of Pub. Safety, *Stockton USD PD Policy Manual* (2022) pp. 37–38 <https://www.stocktonusd.net/cms/lib/CA01902791/Centricity/Domain/154/RELEASE_20220801_T152202_Stockton_USD_PD_Policy_Manual.pdf> [as of Nov. 15, 2023]; Final Judgment, *People v. Stockton Unified*, *supra* note 663, at pp. 9–13.
- 669 Stockton Unified School District Dept. of Pub. Safety, *Stockton USD PD Policy Manual*, *supra* note 668, at pp. 39–40.
- 670 See Complaint for Injunctive Relief, *The People of the State of California, Ex. Rel. Xavier Becerra, Attorney General of the State of California v. Barstow Unified School District (People v. Barstow Unified)* (Super. Ct. L.A. County, 2020, 20 ST CV 32328) p. 10 <<https://oag.ca.gov/system/files/attachments/press-docs/BUSD%20File-Stamped%20Complaint.pdf>> [as of Nov. 15, 2023]. It is important to note that this was a negotiated agreement, which was the result of compromise, and based on the specific findings of the investigation at the time, and does not necessarily reflect current best practice in all respects.
- 671 See Stipulation for Entry of Final Judgment, *People ex. rel. Xavier Becerra, as Attorney General v. Oroville Union High School District* (Super. Ct. Butte County, 2020) p. 10 <<https://oag.ca.gov/system/files/attachments/press-docs/OUHSD%20Stipulation%20for%20Entry%20of%20Final%20Judgment.pdf>> [as of Nov. 15, 2023]. Enacted on July 1, 2013, LCFF changed the way California finances public education. Under LCFF, for each unduplicated pupil (i.e., English language learners, low-income students, and foster youth), a district receives a supplemental grant equal to 20 percent over the base amount. Additionally, when the overall unduplicated pupil enrollment in the school district equals or exceeds 55 percent of total enrollment, LCFF provides an additional concentration grant equal to 50% of the base amount for each student over the 55 percent threshold. School districts are required to “increase and improve services for unduplicated pupils” in proportion to the supplemental and concentration funds received. (Cal. Code Regs., tit. 5, § 15496, subd. (a).) Districts may use supplemental and concentration funds for districtwide/school wide purposes but such services must be “principally directed towards,” and effective in meeting the district’s goals for

The Attorney General’s investigation found that Barstow Unified School District had a practice of issuing several-hundred-dollar citations to students for low-level misbehaviors at school, such as cursing and truancy.⁶⁷² The Stipulated Judgment with the district required the district to review its practices for citing students for low-level offenses to assess whether these practices had an adverse impact on students of color and whether they were necessary to meet the district’s educational goals.⁶⁷³

a. Exemplar Proposals to Limit Response by Law Enforcement Officers

i. Oakland Unified School District (OUSD)

In June 2020, the Oakland Unified School District Board of Education adopted a resolution directing the Superintendent to eliminate the Oakland Schools Police Department (OSPD) and ensure that the district will no longer employ law enforcement or an armed security presence of any kind.⁶⁷⁴

In December 2020, the district adopted the George Floyd District Safety Plan Phase 1, which instituted a “Law Enforcement Protocols” document, instructing staff on “the specific circumstances under which law enforcement must be contacted or notified in writing,” and a revised Discipline Matrix.⁶⁷⁵ The district’s Safety Plan Phase 1 was developed by a design team that included 35 OUSD staff and community partners; this team revised policies and school guides to reflect alternatives to police responses and created mental health crisis and child abuse response protocols.⁶⁷⁶ During the planning process, the design team reviewed OSPD’s data.⁶⁷⁷ The team found that 22 percent of the OSPD activities in 2019 were not responses to disturbances or emergency situations (these activities included 456 routine security checks and patrols and 17 responses to traffic incidents).⁶⁷⁸ Within the remaining activities, the majority were listed as “field visits” or “calls for service” to respond to a situation for which the officer did not deem it appropriate to file an incident report (including incidents of disturbing the peace, fights, and mental health crises).⁶⁷⁹ The activities that resulted in an incident report were reported as responses to incidents including battery, inflicting injury on a child, and mental health crises, and a smaller proportion of these responses were for minor incidents such as vandalism, marijuana possession, traffic, and possession of non-deadly weapons.⁶⁸⁰

A working group helped to revise the district’s Administrative Regulation on the Questioning and Apprehension of Students (Administrative Regulation).⁶⁸¹ The Administrative Regulation requires:

[S]chool staff [shall] only call a peace officer when there is a real and immediate threat to pupils, teachers, or public safety, or when mandated by existing law. A peace officer shall not arrest or discipline pupils for violations of school rules or low-level misconduct. Counselors and other school officials shall handle bullying, harassment, disruptiveness, vandalism, drug and alcohol abuse, and other nonviolent incidents.⁶⁸²

unduplicated pupils in the state and local priority areas. (Cal. Code Regs., tit. 5, § 15496, subd. (b).) As mentioned above, it is important to note that this was a negotiated agreement, which was the result of compromise, and based on the specific findings of the investigation at the time, and does not necessarily reflect current best practice in all respects.

672 Complaint for Injunctive Relief, *People v. Barstow Unified*, *supra* note 670, at p. 10.

673 Stipulation for Entry of Final Judgment, *People ex. rel. Xavier Becerra, as Attorney General v. Barstow Unified School District* (Super. Ct. L.A. County, 2020, 20 ST CV 32328) at pp. 10–11 <<https://oag.ca.gov/system/files/attachments/press-docs/BUSD%20Stipulation%20for%20Entry%20of%20Final%20Judgment.pdf>> [as of Nov. 15, 2023].

674 Oakland Unified School District Board of Education, *George Floyd Resolution*, *supra* note 518, at p. 2.

675 Oakland Unified School District, *Memo: George Floyd District Safety Plan Phase 1 (Adoption)* (Nov. 12, 2020) pp. 1–2 <<https://oaklandside.org/wp-content/uploads/2020/12/20-2147-Board-Memorandum-Resolution-Plan-George-Floyd-District-Safety-Plan-Phase-1-Second-Reading-1292020-1.pdf>> [as of Nov. 15, 2023].

676 *Id.* at pp. 3–4.

677 *Id.* at p. 5.

678 *Ibid.*

679 *Ibid.*

680 *Ibid.*

681 *Id.* at p. 2.

682 Oakland Unified School District, *AR 5145.11: Questioning and Apprehension* (2020) <<https://boepublic.ousd.org/>

OUSD’s Board Policy for Tracking and Reducing Student Contacts and Arrests by Law Enforcement specifically directs employees not to contact law enforcement officers for school-based offenses such as possession of alcohol or marijuana or physical altercations.⁶⁸³

The district’s Administrative Regulation provides that when law enforcement officers, acting in their official capacity as part of an official non-school related investigation, request to interview students as suspects or witnesses, the principal or their designee shall request that the investigation be conducted outside of the school setting.⁶⁸⁴ When a law enforcement officer determines the need to interview or question a student, the Administrative Regulation requires the school principal or designee to make every reasonable attempt to notify a student’s parent or guardian prior to the interview or questioning of the student.⁶⁸⁵ OUSD’s Board Policy for Tracking and Reducing Student Contacts and Arrests by Law Enforcement further requires that if the parent or guardian requests that the student not be questioned until they can be present, the student may not be made available to the peace officer for questioning until the parent or guardian is present.⁶⁸⁶ The Administrative Regulation also requires school staff to keep a record of any interviews of students by law enforcement officers on school premises.⁶⁸⁷

The working group that reviewed district policies also revised the Board Policy for Tracking and Reducing Student Contacts with and Arrests by Law Enforcement including Immigration: OUSD Staff Responsibilities and Obligations.⁶⁸⁸ The policy requires the district to identify any disparities in referrals to, contact with, and arrests and citations of students within any student subgroup.⁶⁸⁹ It also requires OUSD staff to develop and implement school-focused, district-wide interventions in which the greatest amount of support is provided to the schools showing the greatest disparities in law enforcement contacts and arrests.⁶⁹⁰

The district’s policy sets limits on interviewing students and provides protocols for any arrest.⁶⁹¹ The policy also requires annual training for OUSD staff on how to implement it, and requires that the district post the policy in the main office of each school site, include it in the parent-student handbook, and post it on the district’s website.⁶⁹²

ii. San Francisco Unified School District (SFUSD)

In November 2020, the San Francisco Unified School District Board unanimously adopted a resolution directing all staff “to do everything legally possible to protect children from witnessing or being subject to engagement with federal, state or local law enforcement on school grounds.”⁶⁹³

The resolution adds that “[i]n the event law enforcement is needed on school grounds, interactions will be limited as much as possible to only adult staff and scheduled before or after school, with no or as few children as possible present, and if students are involved, law enforcement will only be involved

Policies.aspx> [as of Nov. 15, 2023]. The District’s prohibition of law enforcement officers’ enforcement of school rules and policies is also stated in BP 5145.13, which is discussed further below. (See Oakland Unified School District, *BP 5145.13: Tracking and Reducing Student Contacts With and Arrests by Law Enforcement Including Immigration: OUSD Staff Responsibilities and Obligations (BP 5145.13: Tracking and Reducing Student Contacts)* (2021) <<https://boepublic.ousd.org/Policies.aspx>> [as of Nov. 15, 2023].

683 Oakland Unified School District, *BP 5145.13: Tracking and Reducing Student Contacts*, *supra* note 682. _

684 Oakland Unified School District, *AR 5145.11: Questioning and Apprehension*, *supra* note 682.

685 *Ibid.*

686 Oakland Unified School District, *BP 5145.13: Tracking and Reducing Student Contacts*, *supra* note 682.

687 Oakland Unified School District, *AR 5145.11: Questioning and Apprehension*, *supra* note 682._

688 Oakland Unified School District, *Memo: George Floyd District Safety Plan Phase 1 (Adoption)*, *supra* note 675, at p. 2.

689 See Oakland Unified School District, *BP 5145.13: Tracking and Reducing Student Contacts*, *supra* note 682.

690 *Ibid.*

691 *Ibid.*

692 *Ibid.*; see Oakland Unified School District, *Memo: George Floyd District Safety Plan Phase 1 (Adoption)*, *supra* note 675, at p. 2.

693 San Francisco Unified School District Board of Education, *Resolution in Support of Black Lives*, *supra* note 518, at p. 3.

after parents/caregivers and the Public Defender’s office are notified.”⁶⁹⁴ The resolution additionally directed the district not to renew its MOU with the San Francisco Police Department.⁶⁹⁵

The district’s policy provides:

[P]roperly identified law enforcement officers will be permitted to interview students on school premises as suspects or witnesses if the law enforcement officer has legal authority to conduct the interview, which includes: a warrant, court order, parent/guardian consent, or in exigent circumstances. If the law enforcement officer has a warrant, court order, parent/guardian consent, or exigent circumstances exist, the principal or designee shall accommodate the interview in a way that causes the least possible disruption to the school process and gives the student appropriate privacy.⁶⁹⁶

Additionally, the district’s policy establishes parent notification protocols when law enforcement officers are permitted to interview students on school premises.⁶⁹⁷ The district’s policy also states that when an officer determines that an arrest is necessary, they “should coordinate with the principal or designee to find a private location out of sight and sound of other students, to the extent practicable and absent exigent circumstances.”⁶⁹⁸

The district’s policy requires:

[S]taff members [shall] only request police assistance when (1) necessary to protect the physical safety of students or staff; (2) required by law; (3) appropriate to address criminal behavior of persons other than students. Police are not to act as school disciplinarians and police involvement should not be requested in a situation that can safely and appropriately be handled by the [d]istrict’s internal disciplinary procedures.⁶⁹⁹

The policy requires staff to notify the district’s Leadership, Equity, Achievement, and Design Office and prepare a written incident report on the same day of any incident for which they request police response.⁷⁰⁰

iii. Los Angeles Police Protective League

In March 2023, the largest union representing employees of the Los Angeles Police Department (LAPD), the Los Angeles Police Protective League, identified the following situations for which unarmed service providers would be better equipped to respond. In its proposed Alternative Unarmed Response to Certain Calls for Service, the union proposed that sworn police officers in the LAPD cease to respond to all “non-violent juvenile disturbance or juveniles beyond parental control calls; (won’t go to school)” calls and “calls to schools unless the school administration is initiating a call for an emergency police response or making a mandatory reporting notification.”⁷⁰¹ In response, the Los Angeles City Council approved a motion in June 2023 to begin the process of creating an Office of Unarmed Response, which would mean having someone other than police officers to respond to certain emergency calls.⁷⁰²

694 *Ibid.*

695 *Ibid.*

696 San Francisco Unified School District, *Student and Family Handbook: Police Contact and Intervention* (2023) ch. 6.4.3 <<https://www.sfusd.edu/services/know-your-rights/student-family-handbook/chapter-6-student-discipline/64-interactions-police-and-law-enforcement/643-police-contact-and-intervention>> [as of Nov. 15, 2023].

697 *Ibid.*

698 *Ibid.*

699 *Ibid.*

700 *Ibid.*

701 L.A. Police Protective League, *Alternative Response Proposal* (Mar. 2, 2023) p. 1 <https://mcusercontent.com/6a0707887484bfcead01dcf9d/files/673f0eaa-11ca-0de9-ae6a-a3c69a787978/Alternative_Response_to_911_Calls_for_Service_1_.pdf> [as of Nov. 15, 2023]; see also Zahniser, *LAPD Should Stop Handling Many Non-Emergency Calls, Police Union Says*, *supra* note 124.

702 Hayes, *LA Council Approves Steps To Create Office Of Unarmed Response, But How Will It Work?* (Jun. 7, 2023) ABC7 <<https://abc7.com/los-angeles-city-council-office-of-unarmed-response-officer-involved-shootings-lapd/13357149/>> [as of Nov. 15, 2023].

c. Legislative Attempts

The California Legislature has attempted to impose standards on law enforcement in schools with proposed legislation, but no bill has been passed. During the 2017-2018 legislative session, Assembly Bill No. 163 (Weber) (AB 163) and Assembly Bill No. 173 (Jones-Sawyer) (AB 173) sought to impose standards on peace officer interactions with students and the adoption of policies and procedures for school-based law enforcement officers. Neither bill made it out of committee.

i. AB 163: School Safety – Peace Officer Interactions with Pupils

The purpose of AB 163 was to address conflicting, vague, or absent school district policies to guide school staff on when to call law enforcement. AB 163 would have required school boards to adopt and annually review a policy regarding the scope of peace officer interactions with pupils.⁷⁰³ The proposed bill directed the school boards to consider how their policies could reduce the presence of peace officers on campus.⁷⁰⁴ The bill also would have required that every school board with a permanent law enforcement officer presence on campus assess the viability of alternatives to that presence “to ensure school safety and promote a climate for learning.”⁷⁰⁵

AB 163 would also have mandated that school districts enter into an MOU with any law enforcement agency to have one or more regularly assigned law enforcement officers at any of its schools. The bill proposed that the MOU contain the following required provisions:⁷⁰⁶

- School staff shall only call a law enforcement officer when there is a real and immediate physical threat to students, teachers, or public safety, or when mandated by law.
- Law enforcement officers are prohibited from arresting or disciplining students for violations of school rules or for low-level misconduct.
- Counselors and other school officials shall handle bullying, harassment, disruptiveness, vandalism, drug and alcohol abuse, and other nonviolent incidents.
- Law enforcement officers are prohibited from interviewing or arresting students on a school campus during school hours absent a real and immediate physical threat to students, teachers, or public safety.

ii. AB 173: School Safety – Peace Officer Interactions with Pupils

The original text of proposed AB 173 (before its amendments) would have required school districts to adopt policies to protect students’ rights in interactions with law enforcement, including that school staff shall not call a peace officer to arrest, discipline, or otherwise interact with a pupil for a violation of school rules and that school staff exhaust all alternatives before involving a peace officer for low-level misconduct. The bill also would have required school districts to collect and publicly report comprehensive data about officer-student interactions, and to have a procedure through which students and community members can complain about misconduct relating to officer interactions with students.⁷⁰⁷ The bill was then amended to require the school districts that establish school police departments, contract with or employ peace officers, or permit a law enforcement agency to assign peace officers or SROs to a school site to require the applicable agency or officers to collect and report the data in accordance with RIPA and its implementing regulations relating to the agency’s interactions with students.⁷⁰⁸

703 Assem. Bill No. 163 (2017-2018 Reg. Sess.) § 2, as introduced Jan. 13, 2017 <https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB163> [as of Nov. 15, 2023].

704 *Ibid.*

705 *Ibid.*

706 *Ibid.*

707 Assem. Bill No. 173 (2017-2018 Reg. Sess.) as introduced Jan. 17, 2017 <https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB173&search_keywords=school+safety> [as of Nov. 15, 2023].

708 *Id.* at § 1.

5. Board Recommendations

After reviewing the data and research on law enforcement interactions with students in schools and the disproportionate adverse impact of such interactions on students of color and students with disabilities, the Board has developed recommendations on school-based law enforcement.

In its 2023 paper, the Center for Policing Equity emphasized:

Jurisdictions considering alternatives to school-based policing programs should be mindful that even without police on campus, school safety procedures can still perpetuate racial bias and unnecessary punishment. Removing police from schools should be part of a holistic approach to school safety that includes investments in public health approaches, regulations limiting the role of law enforcement in school discipline, and a comprehensive reexamination of the policies and training that shape how school staff interact with students to assess potential contributors to racial disparities in student discipline and referrals to police.⁷⁰⁹

To mitigate the disproportionate and detrimental impacts of law enforcement interactions with Black and Hispanic/Latine(x) students and students with disabilities, the Board recommends the following as a matter of priority:

- (1) Based on the findings in the Board’s 2023 Report and the present Report demonstrating racial bias in policing in schools, the Board recommends that the Legislature repeal the part of Education Code section 38000 authorizing school districts to operate their own police departments.
 - Eliminating school district police departments would help reduce students’ exposure to unnecessary police actions and mitigate any negative effects that students may experience from the presence of law enforcement at schools.⁷¹⁰ Doing so would free up resources and funding for critical education and support services in those districts that operate school police departments. This would also resolve policy problems relating to a school district — with no specialized training or knowledge of law enforcement policies and procedures — overseeing a police department.
- (2) The Legislature should explore identifying specific student conduct or statutory violations that require disciplinary action that should be handled by school staff, and for which law enforcement officers should not be involved. This review should include making clear the responsibility of schools to respond to conduct requiring disciplinary action without relying on police and the related responsibility of police not to respond to disciplinary issues in schools.
 - The regulatory status quo is ambiguous and therefore allows for considerable discretion by school staff and law enforcement officers. This discretion may contribute to disparities in the criminalization of students across identity groups for similar behavior.⁷¹¹

709 Neath and Rau, *Redesigning Public Safety: K-12 Schools*, *supra* note 411, at p. 7.

710 Nakamoto et al., *High School Students’ Perceptions of Police Vary by Student Race and Ethnicity* (2019) WestEd., pp. 4–5<<https://www.wested.org/wp-content/uploads/2019/05/resource-high-school-students-perceptions-of-police.pdf>> [as of Nov. 15, 2023]; Jindal et al., *Police Exposures and the Health and Well-Being of Black Youth in the US: A Systematic Review*, *supra* note 557.

711 Girvan et al., *The Relative Contribution of Subjective Office Referrals to Racial Disproportionality in School Discipline* (2017) 32 *School Psychol. Q.* 392.

- (3) School districts should adopt policies that require staff to obtain approval from an administrator prior to reporting a student to law enforcement with respect to non-emergency matters. Districts should set clear policies that staff are only permitted to contact law enforcement without prior approval in circumstances involving an immediate threat to school safety or imminent risk of serious physical harm to students or staff. Districts should clearly define those situations that would qualify as an emergency and require staff to document the reasons law enforcement was contacted.
- (4) The Legislature should more clearly define how suspected offenses related to fighting, assault and battery without injury or threats of assault and battery and drug possession by students on K-12 campuses should be treated by school staff and whether or not they should be referred to police.
- These categories of offenses are inconsistently treated as violations of the Education Code and as suspicion of criminal activity.⁷¹² This discretion may contribute to disparities in the criminalization of students across identity groups for similar behavior.⁷¹³ Additionally, these categories represented the two most frequently reported suspected offenses among the 3,705 stops of students on campuses for reasonable suspicion (25.6% of reasonable suspicion stops were for codes related to fighting, assault and battery without injury or threats of assault and battery and 16.7% of reasonable suspicion stops were for codes related to marijuana possession).
 - OUSD’s Board Policy for Tracking and Reducing Student Contacts and Arrests by Law Enforcement specifically directs employees not to contact law enforcement officers for school-based offenses such as possession of alcohol or marijuana or physical altercations.⁷¹⁴
- (5) The Legislature should prohibit law enforcement officers from pursuing or using force in an effort to detain, apprehend, or overcome resistance of students who are fleeing relating solely to low-level disciplinary conduct.
- The international standard for use of force by law enforcement limits force to that which is legitimate, necessary, and proportionate. This standard is articulated in the United Nations’ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Code of Conduct for Law Enforcement Officials, which derive from treaties that the United States has made, including the International Covenant on Civil and Political Rights.⁷¹⁵
 - In California, a “peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.” California law further requires “officers to utilize deescalation techniques, crisis intervention tactics, and other alternatives to force when feasible as well” as a requirement that “an officer may only use a level of force that they reasonably believe is proportional to the seriousness

712 The American Civil Liberties Union’s 2021 review of stops of students in schools reported in RIPA stop data addressed racial disparities in officer treatment of student behaviors that may be treated as education code violations, school policy violations, or criminal activity. (See Whitaker et al., *No Police in Schools*, *supra* note 348, at p. 19.)

713 Girvan et al., *The Relative Contribution of Subjective Office Referrals to Racial Disproportionality in School Discipline*, *supra* note 711, at p. 392.

714 Oakland Unified School District, *BP 5145.13: Tracking and Reducing Student Contacts*, *supra* note 682.

715 U.N., *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders: Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (1990) pp. 112–114 <<https://www.ohchr.org/sites/default/files/firearms.pdf>> [as of Nov. 15, 2023]; U.N. Gen. Assem., *Code of Conduct for Law Enforcement Officials* (1979) article 3 <<https://www.ohchr.org/sites/default/files/codeofconduct.pdf>> [as of Nov. 15, 2023]; U.N. Gen. Assem., *International Covenant on Civil and Political Rights* (1966) articles 6–7 <<https://www.ohchr.org/sites/default/files/ccpr.pdf>> [as of Nov. 15, 2023].

of the suspected offense or the reasonably perceived level of actual or threatened resistance.”^{716, 717} An officer shall use deadly force “only when necessary in defense of human life.”⁷¹⁸

- (6) The Board recommends that school districts adopt policies establishing that under no circumstance should law enforcement use force against students that is not legitimate, necessary, and proportionate.

In addition, the Board recommends:

Stop Data Reporting by Law Enforcement in Schools

- (1) Law enforcement agencies should implement practices to ensure the accurate and complete reporting of RIPA stop data among primary and secondary school-aged children and youth. Agencies should provide training to clarify the requirements for reporting stops of students.
- (2) The Board recommends incorporating data, disaggregated by identity groups, about all law enforcement stops of students and the outcomes of these stops into California’s existing school accountability system as an indicator of school climate.

Student Threat Assessment Processes

- (1) The Legislature should develop due process protections for student threat assessment processes and mandate that incidents involving only self-harm may not be assessed as threats.
 - Without due process protections, the threat assessments are an extralegal process used to remove students without the required due process in school discipline codes.
- (2) Researchers should study threat assessment outcomes to evaluate whether they are consistent, align with the programs’ guidelines, and are effective at reducing violence and improving student experiences.
- (3) The Legislature should require schools to inform parents and students of threat assessment processes on an annual basis by including information in the school’s policies and orientation materials and on its website.

Use of Restraints, Electronic Control Weapons, and Chemical Agents

- (1) The Legislature should prohibit law enforcement officers and school security personnel from using mechanical restraints on all students unless the student poses a serious risk of harm to themselves or another person. This is especially the case for students with a perceived or known disability or a student having a mental health crisis.
 - Forced restraints and other police involvement during mental health crises contribute to the criminalization of mental illness.⁷¹⁹ This stigmatization particularly harms students in distress, especially when the handcuffing is visible before peers and teachers.⁷²⁰ Witnessing the handcuffing of a fellow student and other vicarious experiences of police

716 Gov. Code, § 7286, subd. (b)(1)-(2).

717 The decision by a peace officer to use force “shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies,” and is “evaluated from the perspective of a reasonable officer in the same situation, based on the totality of circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.” (Pen. Code, § 835a, subd. (a)(3)-(4).)

718 Pen. Code, § 835a, subd. (a)(2).

719 Jones et al., *Youths’ and Young Adults’ Experiences of Police Involvement During Initiation of Involuntary Psychiatric Holds and Transport*, *supra* note 555.

720 *Ibid.*

contact can also negatively shape youth attitudes towards teachers, police, and the law.⁷²¹

- (2) The Legislature should prohibit law enforcement officers and school security personnel from using electronic control weapons against students or individuals who reasonably appear to be minors in K-12 schools.
- (3) The Legislature should prohibit the use of all chemical agents, including, but not limited to, OC spray, against students or individuals who reasonably appear to be minors in K-12 schools.
 - This draws upon the standard adopted in seven California counties for the treatment of youth in those counties' juvenile detention facilities and the Los Angeles School Police Department Policy.⁷²²

Training

- (1) The Legislature should mandate that any law enforcement officer who is working an assignment that may require responding to a school receive training provided by POST, which is currently mandated for officers employed by a school district-administered police department. The Legislature should also mandate that POST update this training.
 - The Board welcomes the opportunity to participate in the development of any training with POST to assist with areas involving racial and identity profiling. The mandated training should address that youth are psychologically, emotionally, and physically different than adults and these differences require officers to be aware of the unique circumstances and needs youth may have when interacting with youth during the scope of their duties. The training should further address typical developmental tendencies of youth to react anxiously, distrustfully, or defiantly to unfamiliar individuals, particularly those in positions of power and authority.⁷²³
 - Most law enforcement contacts with children and youth occur in the community (95.7% of stops of 5 to 18 year olds in 2022 occurred off K-12 campuses) and officers working patrol assignments may additionally respond to incidents in schools. (Of the 6,441 stops of students on K-12 campuses in 2022, 54.6% of stops were made by officers with an assignment type of K-12 Public School and 42.5% were made by officers with an assignment type of "Patrol, traffic enforcement, field operations.").

Funding

- (1) The Legislature should limit or prohibit the use of funding to pay for school-based police, school-based probation department staff, and school security officers, and reinvest funding into resources that promote safe environments for and improve services to students, such as family resource navigators, school climate advocates, and restorative justice teachers.
 - When behavioral health services are not available for youth, it may increase their exposure to contact with law enforcement.⁷²⁴ A study of adolescent use of mental health services across delivery sites found that adolescents are 21 times more likely to visit school-based health centers for mental health care than anywhere else.⁷²⁵ In the 2019-20 School Survey on Crime and Safety, the majority of schools reported that inadequate

721 See Gottlieb and Wilson, *The Effect of Direct and Vicarious Police Contact on the Educational Achievement of Urban Teens*, *supra* note 552.

722 L.A. School Police Department, *Policy Manual*, *supra* note 585, at pp. 69–70.

723 City of Madison, Wisconsin, *City of Madison Police Department Standard Operating Procedure: Interactions with Youth* (Dec. 30, 2019) <www.cityofmadison.com/police/documents/sop/InteractionswithYouth.pdf> [as of Nov. 15, 2023].

724 Whitaker et al., *Cops and No Counselors*, *supra* note 349, at p. 5.

725 *Id.* at p. 4.

funding hindered their efforts to provide mental health services.⁷²⁶

- In 2017, the California Department of Education resolved a complaint against Fresno Unified School District and directed the district to redirect some of the funds designated for high-needs students (Supplemental and Concentration Funds) away from expenses for policing and surveillance.⁷²⁷ More broadly, the California Department of Education affirmed that “[d]istrict assertions that adding police is particularly serving the interests of high-needs students or is improving school climate lacks a research basis and raises serious questions about the legitimacy of those expenditures.”⁷²⁸
- Black students are more likely than other students to experience intense security conditions, such as metal detectors, random sweeps, locked gates, surveillance cameras, and law enforcement officers, even when controlling for the level of serious misconduct in schools or violence in school neighborhoods. These intense security measures may create barriers of adversity and mistrust between students and educators.⁷²⁹
- As part of Los Angeles County’s process of transitioning its juvenile justice system from the Probation Department to the Department of Youth Development, the County will begin to replace school-based supervision with community-based alternatives.⁷³⁰

(2) The Board recommends that government agencies prioritize grant and other funding that focuses on educational and supportive programs like counseling as opposed to funding law enforcement presence in schools.

- The U.S. Department of Justice COPS grant funding and state funding has supported the trend of increased presence of law enforcement in schools in recent decades.⁷³¹
 - Examples of relevant grant programs that the COPS Office currently administers are the COPS Hiring Program, through which law enforcement agencies may solicit funding for officer positions, including to hire and/or deploy law enforcement officers into schools, and the School Violence Prevention Program grant.⁷³²
- A study by the University of Texas Education Research Center examined the impact of federal grants for police in schools through the analysis of data from 1999-2008 on over 2.5 million students in Texas.⁷³³ In the study period, “approximately \$60 million

726 Irwin et al., *Report on Indicators of School Crime and Safety: 2021*, *supra* note 503, at p. 26.

727 Losen et al., *Unmasking School Discipline Disparities in California: What the 2019-2020 Data Can Tell Us About Problems and Progress* (July 2022) Center for Civil Rights Remedies at the Civil Rights Project of UCLA, pp. 23–24, 46, endnote 38 <https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/summary-reports/unmasking-school-discipline-disparities-in-california/Unmasking_School_Discipline_Disparities_CA_Report.pdf> [as of Nov. 15, 2023].

728 *Id.* at p. 22.

729 Nance, *Students, Security, and Race* (2013) U. Fla. Levin College of Law <<https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1390&context=facultypub>> [as of Nov. 15, 2023].

730 Hayward Burns Institute, *Los Angeles County: Youth Justice Reimagined* (Oct. 2020) pp. 11, 13, 64 <<https://burnsinstitute.org/wp-content/uploads/2020/11/Youth-Justice-Reimagined-2020.pdf>> [as of Nov. 15, 2023].

731 Connery, *The Prevalence and the Price of Police in Schools*, *supra* note 451, at pp. 1–3.

732 U.S. DOJ Community Oriented Policing Services Office, *COPS Hiring Program*, *supra* note 472, at p. 1. In 2022, 11 jurisdictions in California received approximately \$13.1 million toward funding up to 75 percent of the cost of 96 officer positions through the COPS Hiring Program. (For details on the funding, see U.S. DOJ Community Oriented Policing Services Office, *FY23 COPS Hiring Program*, *supra* note 472, at p. 5; and U.S. DOJ Community Oriented Policing Services Office, *2022 COPS Hiring Program (CHP) Awards* (2022), *supra* note 472, at p. 1.) Also in 2022, the COPS Office awarded grants to 13 California school districts through the School Violence Prevention Program. . (See U.S. DOJ Community Oriented Policing Services Office, *2022 COPS Office School Violence Prevention Program (SVPP) Awards*, *supra* note 472, at p. 1.)

733 Weisburst, *Patrolling Public Schools*, *supra* note 474, at p. 2.

was distributed to hire police officers in Texas public schools.”⁷³⁴ The study found “that federal grants for police in schools increase middle school discipline rates by 6percent, with Black students experiencing the largest increases in discipline” and the increase was driven by disciplinary actions for low-level offenses or school conduct code violations.⁷³⁵ The study additionally found “that exposure to a three-year federal grant for school police is associated with a 2.5 percent decrease in high school graduation rates.”⁷³⁶

- An example of state funding includes the California DOJ-administered Tobacco Grant Program, which may be used for school and community education and law enforcement operations related to preventing youth from using tobacco.⁷³⁷ For fiscal year 2022-2023, the Pleasanton Police Department was awarded \$431,459 for school and community education and enforcement operations; the Lassen County Sheriff was awarded \$794,237 to “fund tobacco prevention education to youth within the public school system;” and the Piedmont Police Department was awarded \$410,117 to “provide student and parent education classes on the harms of tobacco use.”

These recommendations reflect a broad approach to ensuring that students can obtain an education free from the additional stress of having law enforcement officers present in schools, and avoiding the risk of officers criminalizing normal childhood behaviors. The Board’s research has shown not only the physical and emotional differences in judgment and impulse control that youth have compared to adults, but also the disparities in how law enforcement reacts to these lapses of judgment. The goal of these recommendations is to ensure that school disciplinary matters are not unnecessarily escalated into law enforcement matters that may have long-lasting negative repercussions on the youth and their families. The Board appreciates the opportunity to develop in-depth research on this topic and looks forward to engaging stakeholders for the implementation of the Board’s recommendations.

734 *Ibid.*

735 *Id.* at pp. 1–3.

736 *Id.* at p. 1.

737 See Cal. DOJ, *Tobacco Grant Program Fiscal Year 2022-23*, *supra* note 473.

POLICIES AND ACCOUNTABILITY

A. Police Unions, Law Enforcement Agencies, and Cities

The 2023 Report featured internal and external mechanisms for police accountability. This year’s Report discusses additional influences on police accountability and highlights two of these influences, specifically police unions and qualified immunity. This year’s section is a starting point for this discussion. At many points, this section will uncover questions that may require more evidence or more in-depth research, so they do not have clear-cut answers. To the extent law enforcement agencies, researchers, advocates, and other stakeholders are capable, they may seek to analyze publicly available RIPA data to bring more insight into these questions.

1. Functions of Police Unions

Today, police have one of the highest union membership levels in the United States, with roughly 75 percent of law enforcement officers in unions.⁷³⁸ Two major functions of police unions related to accountability are collective bargaining and lobbying.⁷³⁹

a. Collective Bargaining

Collective bargaining is the process by which unions negotiate contracts with employers on behalf of employees to determine terms of employment, including pay, benefits, hours, leave, job health and safety policies, and work-life balance.⁷⁴⁰ Management at public agencies and employee representatives have an obligation to “meet and confer,” meaning to bargain in good faith to reach an agreement on terms and conditions of employment.⁷⁴¹

Collective bargaining on behalf of law enforcement is often a confidential process between elected officials, unions, and police management.⁷⁴² Elected officials decide whether to ratify a negotiated labor contract, thus offering an opportunity for consideration of expressed support or criticism, if any, by the public.⁷⁴³ However, Walter Katz, a criminal justice advocate, argues,

738 Cunningham et al., *Overview of Research on Collective Bargaining Rights and Law Enforcement Officer’s Bills of Rights* (2020) p. 4 <http://craftmediabucket.s3.amazonaws.com/uploads/LEOBR_Cunningham_12_3_20.pdf> [as of Nov. 15, 2023].

739 Rad et al., *Police Unionism, Accountability, and Misconduct* (2023) 6 Ann. Rev. Criminol. 181, 187 <<https://www.annualreviews.org/doi/pdf/10.1146/annurev-criminol-030421-034244>> [as of Nov. 15, 2023]. Collective bargaining refers to the negotiation of contracts governing the terms of employment with respect to wages, benefits, working conditions, and worker rights for a particular group of employees. When an employer has a “duty to bargain,” it is required to negotiate with employee representatives. (*Ibid.*)

740 AFL-CIO, *Collective Bargaining* <<https://aflcio.org/what-unions-do/empower-workers/collective-bargaining>> [as of Nov. 15, 2023]. Collective bargaining is also a way to solve workplace problems. (AFL-CIO, *Collective Bargaining* <<https://aflcio.org/what-unions-do/empower-workers/collective-bargaining>> [as of Nov. 15, 2023].)

741 Gov Code, § 3505. Wages and benefits, hours and other terms and conditions of employment are the “mandatory” subjects within the scope of bargaining and upon which the parties must meet and confer in good faith. (Institute for Local Government, *A Local Official’s Guide to Labor Relations Terminology* (Dec. 10, 2013) Collective Bargaining, p. 3 <https://www.ca-ilg.org/sites/main/files/file-attachments/labor_relations_glossary_2013_update.pdf?1491845013> [as of Nov. 15, 2023].)

742 See, e.g., Katz, *Beyond Transparency: Police Union Collective Bargaining and Participatory Democracy* (2021) 74 SMU L.Rev. 419, 422; Rushin, *Police Union Contracts* (2017) 66 Duke. L.J. 1192, 1199; Abraham, *Opening the Curtain on Government Unions* (2015) pp. 5–8 <http://www.commonwealthfoundation.org/docLib/20150609_CBTransparency.pdf> [as of Nov. 15, 2023] (providing links to various state statutes that limit public participation and transparency in collective bargaining negotiations); Rad et al., *Police Unionism, Accountability, and Misconduct*, *supra* note 739, at p. 190; see also San Francisco Bar Association, *Letter to the San Francisco Board of Supervisors and the San Francisco Police Commission Office* (Oct. 22, 2020) p. 13 <<https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/Oct%2022%20BASF%20ltr%20re%20SFPOA%20MC%20-%20Final%20-%20Signed.pdf>> [as of Nov. 15, 2023] (“Human Resources’ meet-and-confer process with SFPOA occurs behind closed doors.”).

743 Katz, *Beyond Transparency: Police Union Collective Bargaining and Participatory Democracy*, *supra* note 742, at p. 436.

The public, especially the portion that is most impacted by policing practices, is locked out of the negotiation process and relies on elected officials to look out for its interests in having an accountable police force that treats members in predominantly racial minority neighborhoods fairly The lack of meaningful public accessibility to the negotiation process has contributed to officials agreeing to police labor contracts that undermine accountability and run counter to the interests of residents who are already estranged from the political process.⁷⁴⁴

California law does not require meet and confer discussions to occur behind closed doors, and some of those communications may be accessible to the public.⁷⁴⁵ Meet and confer correspondence between parties (i.e., opening bargaining offers, counter, and any other communications between parties) may be released to the public and stakeholders.⁷⁴⁶ The Meyers Miliias Brown Act also expressly permits the release of information legislative bodies acquire during closed sessions, so legislative bodies may release salaries, salary schedules, or compensation paid in the form of fringe benefits to its represented and unrepresented employees” and “any other matter statutorily provided within the scope of representation.”⁷⁴⁷ Thus, bargaining sessions are not confidential and summaries of discussions may be disclosed to the public and stakeholders.⁷⁴⁸ Releasing this information before an agreement is negotiated or signed could aid the public in holding elected and appointed officials accountable for the police contracts they negotiate.⁷⁴⁹ The community would have notice of potential changes and could lobby their elected officials for the changes they want or want to avoid. It would provide the public the opportunity to ensure that the contracts serve the common good.⁷⁵⁰ Further transparency into the collective bargaining process may also help the community understand what happens in the negotiations and whether and how their voice can be part of the process.

b. Lobbying

Scholars have also linked union lobbying and other political activity to police accountability.⁷⁵¹ Unions must represent officers but simultaneously have an interest in protecting the reputation of the entire profession, so their position is sometimes viewed as paradoxical. For example, unions may influence legislation by supporting or opposing it.⁷⁵² Between 2012 and 2022, California police unions and their

744 See, e.g., *id.* at pp. 422–423; Rushin, *Police Union Contracts*, *supra* note 742, at p. 1199; Abraham, *Opening the Curtain on Government Unions*, *supra* note 742, at pp. 5–8 (providing links to various state statutes that limit public participation and transparency in collective bargaining negotiations); Rad et al., *Police Unionism, Accountability, and Misconduct*, *supra* note 739, at p. 190; see also San Francisco Bar Association, *Letter to the San Francisco Board of Supervisors and the San Francisco Police Commission Office*, *supra* note 742, at p. 13 (“Human Resources’ meet-and-confer process with SFPOA occurs behind closed doors.”).

745 San Francisco Bar Association, *Letter to the San Francisco Board of Supervisors and the San Francisco Police Commission Office*, *supra* note 742, at p. 15 (citing 61 Ops. Cal. Atty. Gen. 1, 2-3 (Jan. 4, 1978), which noted that the Meyers Miliias Brown Act “is silent as to whether ‘meet and confer’ sessions may be private, or must be open to the public.”). The Meyers Miliias Brown Act, which requires public employers to meet and confer with employees in good faith, does not explicitly prohibit the disclosure of communications between bargaining parties. (*Id.* at p. 16.)

746 Gov. Code, § 54957.6, subd. (a); see also San Francisco Bar Association, *Letter to the San Francisco Board of Supervisors and the San Francisco Police Commission Office*, *supra* note 742, at p. 16.

747 See San Francisco Bar Association, *Letter to the San Francisco Board of Supervisors and the San Francisco Police Commission Office*, *supra* note 742, at p. 15.

748 *Ibid.*

749 Fisk et al., *Reforming Law Enforcement Labor Relations* (Aug. 2020) Cal. L.Rev. Blog <<https://www.californialawreview.org/online/reforming-law-enforcement-labor-relations>> [as of Nov. 15, 2023].

750 *Ibid.*

751 Rad et al., *Police Unionism, Accountability, and Misconduct*, *supra* note 739, at p. 191; Bies, *Let the Sunshine In: Illuminating the Powerful Role Police Unions Play in Shielding Officer Misconduct* (2017) 28 Stan. L. & Pol’y Rev. 109, 149.

752 See Rad et al., *Police Unionism, Accountability, and Misconduct*, *supra* note 739, at p. 191. For instance, in 2018, California police unions successfully blocked a bill that would have restricted officers’ discretion to use deadly force. However, another use of force bill was introduced and passed in 2019 and implemented in 2020, the first change in the state’s use of force policy since 1872. (*Id.* at p. 191, fn. 4.) Police unions have opposed bills that are intended to increase police accountability. (See, e.g., Assem. Bill No. 1196 (2019–2020 Reg. Sess.) [banning the use of carotid artery restraint, known as a chokehold]; Sen. Bill No. 203 (2019–2020 Reg. Sess.) <https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB953> [as of Nov. 15, 2023] [establishing the Racial Identity and

affiliates contributed \$38.5 million to political campaigns – the most of any state in that ten-year period and almost four times as much as the next highest state.⁷⁵³ Even after a bill becomes law, unions may influence the law’s effect or implementation.

The histories of Assembly Bills No. 931 (2017-2018 Reg. Sess.) (AB 931) and No. 392 (2019-2020 Reg. Sess.) (AB 392) illustrate how powerful police unions are as lobbyists and influencers. The ACLU of Southern California tracked the legislative histories of these bills and obtained emails and other evidence through discovery in the case *Gente Organizada v. Pomona Police Department*, which demonstrated the effect police unions and their affiliates had on AB 392’s implementation.⁷⁵⁴

In April 2018, AB 931 was introduced to change the legal standard for police use of deadly force to limit officers’ use of force to situations when it is “necessary” rather than “reasonable.” “Necessary” is a higher standard that would potentially reduce the circumstances under which officers in California may use deadly force. Many law enforcement unions, agencies, and groups opposed the bill.⁷⁵⁵ The Peace Officers Research Association of California (PORAC), a professional federation of local, state, and federal law enforcement agencies, and other groups that staunchly support law enforcement strongly opposed AB 931 and actively campaigned against the bill.⁷⁵⁶ In August 2018, following all these efforts, the bill was pulled from the Senate Appropriations Committee, preventing legislators from voting on it.⁷⁵⁷

In the next legislative session, AB 392 was introduced and also sought to raise the standard for police use of deadly force from “reasonable” to “necessary.”⁷⁵⁸ Again, the ACLU documented that PORAC organized to oppose AB 392.⁷⁵⁹ The bill was amended, diminishing some of the changes it initially set out to make.⁷⁶⁰ In light of the amendments, many law enforcement lobbying groups changed their positions from “oppose” to “neutral,” and the bill later passed both houses of the Legislature.⁷⁶¹ The Governor signed the bill into law, affirming that the bill changed the standard for deadly force to only be used when necessary.⁷⁶² On the day the Governor approved the bill, PORAC emailed officers across the state stating the use of force standard did not change, even though the Governor explicitly stated it did.⁷⁶³ The ACLU reported that law enforcement agencies were improperly training their officers on AB 392 based on PORAC’s stance and legal analysis provided by Lexipol, a private company that sells police policies and trainings to law enforcement agencies.⁷⁶⁴ Proper training materials and characterization of the law were reportedly not issued until over a year after the law went into effect and the AB 392 training was challenged in court.⁷⁶⁵

While these two bills focus on the use of force, their histories and the implementation of AB 392 demonstrate how lobbying can affect police accountability bills, including those related to racial and identity profiling. Police union influence was tracked for AB 931 and AB 392, but tracking is not always possible. One difficulty in understanding and tracking the nature of union political influence is that there is a great deal of informal and “backdoor” lobbying and meetings that remain undocumented

Profiling Act].)

753 Datta, *Police Unions Spend Millions Lobbying to Retain Their Sway Over Big US Cities and State Governments*, (June 16, 2022) Open Secrets <<https://www.opensecrets.org/news/2022/06/police-unions-spend-millions-lobbying-to-retain-their-sway-over-big-us-cities-and-state-governments/>> [as of Nov. 15, 2023]. New York unions spent the next highest amount of \$9.3 million. (*Ibid.*)

754 ACLU of So. Cal., *Timeline of How Police Groups Undermine AB 392* (2023) <<https://www.aclusocal.org/en/gente-timeline>> [as of Nov. 15, 2023].

755 Sen. Com. on Pub. Safety, *Criminal Procedure: Use of Force by Peace Officers* (June 19, 2018) p. 2. <https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB931> [as of Nov. 15, 2023].

756 ACLU of So. Cal., *Timeline of How Police Groups Undermine AB 392*, *supra* note 754.

757 *Ibid.*

758 *Ibid.*

759 *Ibid.*

760 *Ibid.*

761 *Ibid.*

762 *Ibid.*

763 *Ibid.*

764 *Ibid.*

765 *Ibid.* Advocates challenged police training requirements in light of AB 392 in *Gente Organizada v. Pomona Police Department* (Super. Ct. L.A. County, 2020, No. 20STCV28895). (*Ibid.*)

and, therefore, largely invisible to the public.⁷⁶⁶ This leaves open the question of how else unions may influence accountability, positively or negatively, and how much union actions align with community values and priorities. These questions warrant additional research.

2. Police Unions' Effects on Agency Reforms and Accountability

As a party at the collective bargaining table, unions have a significant influence on police accountability and reform. Police unions use their influence in several ways, including supporting and seeking enforcement of protections within Peace Officer Bills of Rights that other public employees do not have and collectively bargaining for terms that affect a law enforcement agency's ability to hold officers accountable. Within bargaining agreements, unions negotiate terms affecting the questioning of officers suspected of misconduct, retention of disciplinary records, civilian oversight of discipline, complaint investigations, and arbitration for discipline decisions. Unions' relationships with police management and their role in an agency's internal culture also influence reform and accountability. Conflict may arise when the unions' duty to represent the working conditions of the officers potentially comes at the cost of transparency and accountability to the community.

a. Peace Officer Bill of Rights

In California, police unions supported the creation of the Public Safety Officers Procedural Bill of Rights (POBR), a set of statutory protections specifically for law enforcement officers.⁷⁶⁷ California's POBR is related to internal investigations that could lead to punitive actions against an officer and supersedes police union contracts.⁷⁶⁸ In other states, a POBR may be statutory or contractually negotiated by police unions into collective bargaining agreements on the local level.⁷⁶⁹

i. Union Rationale for a Bill of Rights

The Fraternal Order of Police, a national federation of police unions, argues a POBR is necessary, because law enforcement agencies sometimes subject officers to abusive or improper procedures and conduct, and officers lack procedural or administrative protections in some jurisdictions.⁷⁷⁰

Other arguments unions make to justify a POBR include the following: (1) officers need special protections, because officers are forced to answer questions or be fired;⁷⁷¹ (2) lack of due process rights leads to loss of officer confidence in the disciplinary process and loss of morale;⁷⁷² (3) treating officers unfairly may deter or prevent officers from carrying out their duties effectively and fairly;⁷⁷³ (4) the perception or reality of unfair treatment may negatively affect recruitment and retention;⁷⁷⁴ (5) effective policing depends on stable employer-employee relations, which POBR promotes;⁷⁷⁵ and (6) POBR provides more uniform fairness among and between different departments that have different protections.⁷⁷⁶

⁷⁶⁶ Rad et al., *Police Unionism, Accountability, and Misconduct*, *supra* note 739, at p. 197.

⁷⁶⁷ Barrata, *The Creation of the Peace Officer Bill of Rights & PORAC*, Peace Officers Research Association of California <[https://porac.org/2020/08/17/the-creation-of-the-peace-officer-bill-of-rights-porac/#:~:text=AB%20301%3A%20The%20Peace%20Officers'%20Bill%20of%20Rights&text=In%201973%20a%20bill%20\(AB,Policemen's%20Bill%20of%20Rights.%E2%80%9D](https://porac.org/2020/08/17/the-creation-of-the-peace-officer-bill-of-rights-porac/#:~:text=AB%20301%3A%20The%20Peace%20Officers'%20Bill%20of%20Rights&text=In%201973%20a%20bill%20(AB,Policemen's%20Bill%20of%20Rights.%E2%80%9D)> [as of Nov. 15, 2023]. California's Public Safety Officers Procedural Bill of Rights (POBR) is statutory and codified in Government Code, sections 3300-3312.

⁷⁶⁸ Cunningham et al., *Overview of Research on Collective Bargaining Rights and Law Enforcement Officer's Bills of Rights*, *supra* note 738, at p. 9 <https://craftmediabucket.s3.amazonaws.com/uploads/LEOBR_Cunningham_12_3_20.pdf> [as of Nov. 15, 2023].

⁷⁶⁹ Place, *Double Due Process: How Police Unions and Law Enforcement "Bills of Rights" Enable Police Violence and Prevent Accountability (Double Due Process)* (2018) 52 U. S. F. L.Rev. 275, 277.

⁷⁷⁰ Keenan and Walker, *An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers' Bills Of Rights (An Impediment to Police Accountability)* (2005) 14 B.U. Pub. Interest L.J. 185, 198.

⁷⁷¹ See *id.* at p. 199, fn. 87 (noting that this allegation has not been supported by empirical evidence).

⁷⁷² *Id.* at p. 199.

⁷⁷³ *Ibid.*

⁷⁷⁴ *Ibid.*

⁷⁷⁵ *Ibid.* (citing Gov. Code, § 3301 (2001); N.M. STAT. ANN. § 29-14-2 (Michie 2001)).

⁷⁷⁶ *Ibid.*

Opponents of POBR believe POBR provides special protections that are not available to other public sector employees and that officers should not have these special protections. Officers are authorized to use potentially deadly force against individuals – a responsibility unique to law enforcement.⁷⁷⁷ Therefore, the mechanism to hold police accountable for possible misconduct must also be unique.⁷⁷⁸ “When society grants police the power to use force against civilians to coerce desired behavior, and even kill, it has an unquestionably strong interest in regulating the use of that power.”⁷⁷⁹ Officers also have the ability to stop individuals on the street. Accordingly, society has a strong interest in disciplining officers who engage in racial or identity profiling or use excessive or unnecessary force. Allowing officers to profile individuals or use excessive force without being held accountable sets institutional and organizational norms that can encourage other officers to similarly follow suit. Therefore, discipline and accountability are mechanisms to shape what is considered appropriate policing and to prevent future unnecessary uses of force or profiling by that officer and deter fellow officers from engaging in similar conduct.⁷⁸⁰ In drafting Senate Bill No. 2 (2021-2022 Reg. Sess.) (SB 2), the bill allowing decertification of problematic officers, the Legislature commented “[f]or years, there have been numerous stories of bad-acting officers committing misconduct and not facing any serious consequences Allowing the police to police themselves has proven to be dangerous and leads to added distrust between communities of color and law enforcement.”⁷⁸¹ As such, establishing consequences for officers who are found to have committed misconduct can have an impact on both what is acceptable behavior within an agency and what behavior will not be tolerated by any California law enforcement agency if an officer is decertified.

ii. California’s Peace Officer Bill of Rights

California’s POBR provides the following protections and limitations on questioning police officers for misconduct.⁷⁸² Interrogations must be conducted at a reasonable hour.⁷⁸³ Preferably, officers should be interrogated when on duty or during normal waking hours.⁷⁸⁴ If the interrogation occurs when the officer is off-duty, the officer shall be compensated.⁷⁸⁵ An officer shall be interrogated by no more than two people at once and the officer will be provided the names of the interviewers.⁷⁸⁶ The officer shall be informed of the nature of the interrogation before it occurs.⁷⁸⁷ The interrogation shall also be limited to a reasonable time.⁷⁸⁸ These protections are above and beyond the protections provided to other public sector employees or individuals suspected of a crime who are facing potential losses of personal freedom.

California’s POBR also provides protections and limitations regarding discipline and personnel records. If an agency wishes to discipline an officer for misconduct, the agency must complete its investigation of the misconduct and notify the officer of the discipline within one year of discovery of the misconduct.⁷⁸⁹ An agency cannot include a comment adverse to an officer’s interests in the

777 Place, *Double Due Process*, *supra* note 769, at p. 276.

778 See Cunningham et al., *Overview of Research on Collective Bargaining Rights and Law Enforcement Officer’s Bills of Rights*, *supra* note 738, at p. 11.

779 Place, *Double Due Process*, *supra* note 769, at p. 276.

780 Keenan and Walker, *An Impediment to Police Accountability*, *supra* note 770, at p. 201.

781 Sen. Com. on Pub. Safety, *Peace Officers: Certification: Civil Rights* (April 13, 2021), pp. 6–7.

782 As noted previously, POBR is codified in Government Code, sections 3303 et seq. (See *supra* note 30.)

783 Gov. Code, § 3303, subd. (a).

784 *Ibid.*

785 *Ibid.*

786 Gov. Code, § 3303, subd. (b).

787 Gov. Code, § 3303, subd. (c).

788 Gov. Code, § 3303, subd. (d). POBR provides additional interrogation protections as well. POBR limits the language that may be used during an interrogation such that the officer is not subjected to offensive language or threatened with punitive action. (Gov. Code, § 3303, subd. (e)). POBR also limits the use of the officer’s statements in civil actions, if they are made under duress, coercion, or threat of punitive action. (Gov. Code, § 3303, subd. (f).) The interrogation may be recorded, but the officer must have access to the recording and must have the option to record with his or her own device. (Gov. Code, § 3303, subd. (g).)

789 Gov. Code, § 3304, subd. (d).

officer's personnel file without allowing the officer to review the comment.⁷⁹⁰ An officer has 30 days to respond in writing to the adverse comment, and the response must be included in the personnel file.⁷⁹¹ An agency cannot take punitive action against an officer because they are on a *Brady* list,⁷⁹² which is a list usually compiled by a prosecutor's office of officers who may have credibility issues, such as records of untruthfulness, integrity violations, or allegations of moral turpitude.⁷⁹³ While POBR was intended to protect officers, does it affect community interests by obstructing some aspects of police accountability? As discussed below, some believe POBR impedes accountability; however, whether POBR has struck the proper balance between protecting officers and furthering the community's best interests is still an open question.

iii. Issues Raised by POBR

California's POBR's mandates may affect accountability regarding: (1) accountability of police chiefs and by police chiefs; (2) officer reassignments; and (3) reformation of officer discipline procedures.

California's POBR covers chiefs and supervisors in addition to rank-and-file officers.⁷⁹⁴ POBR rights may affect the ability of police chiefs to choose and replace commanders based on policy goals and basic job performance,⁷⁹⁵ thereby affecting a chief's vision and the operation of the department. This in turn may affect a chief's relationship with other political players. Some policy obligations and pressures exist for police chiefs that do not exist for rank-and-file officers. Chiefs are often appointed by a mayor or other political figure. Chiefs may need to report to the mayor, city council, or city manager while simultaneously setting the direction of the law enforcement agency, which may not fully align with the city's direction for the agency. Public officials may call a police chief to account for basic law enforcement policy (e.g., adoption of community policing, failure to reduce crime, etc.).⁷⁹⁶ Public officials may also replace chiefs as political pressures demand.⁷⁹⁷

California's POBR prevents reassignment of officers if a sworn member of a department "would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances."⁷⁹⁸ Courts have held that departments may temporarily reassign sworn personnel to administrative duties pending the investigation of allegations of serious misconduct, such as an officer bribing a police chief of a different agency or failing to report an off-duty officer shooting.⁷⁹⁹ However, POBR's effect is still ambiguous in circumstances that involve significant allegations of misconduct below the level of the aforementioned examples. Experts believe that reassignment as a response to performance deficiencies is valuable.⁸⁰⁰ Some experts argue that departments have not, but should, reassign "problem officers" with performance problems away from sensitive assignments.⁸⁰¹ For example, departments often leave patrol officers in their patrol positions who have many civilian complaints or who too frequently use force in their assignments, even though departments could

790 Gov. Code, § 3305.

791 Gov. Code, § 3306.

792 Gov. Code, § 3305.5. Placement on a *Brady* list has serious implications. (See *Ass'n for Los Angeles Deputy Sheriffs v. Superior Ct.* (2019) 8 Cal.5th 28, 36.) A prosecutor may be wary of a *Brady* officer's account of an incident, if it is not corroborated by other evidence, thereby casting doubt on a case. (See *ibid.*) A prosecutor may also be wary of allowing an officer to testify under penalty of perjury if the officer has credibility issues, thus limiting one of the vital functions an officer plays in the prosecution of a case. (*Ibid.*)

793 *Am I Going to Get a Brady Letter?* (Feb. 2023) PORAC <<https://porac.org/article/am-i-going-to-get-a-brady-letter>> [as of Nov. 15, 2023].

794 Gov. Code, § 3301; Keenan and Walker, *An Impediment to Police Accountability*, *supra* note 770, at p. 204.

795 Keenan and Walker, *An Impediment to Police Accountability*, *supra* note 770, at p. 205.

796 *Ibid.*

797 *Ibid.*

798 Gov. Code, § 3303, subd. (j).

799 See *Quezada v. City of Los Angeles* (2014) 222 Cal.App.4th 993, 1008; *Keeve v. City and County of San Francisco* (N.D. Cal., Jan. 9, 2007) 2007 WL 81910, at *5.

800 Keenan and Walker, *An Impediment to Police Accountability*, *supra* note 770, at p. 236.

801 *Ibid.*

transfer them to assignments that have minimal contact with the public.⁸⁰² Understaffed agencies may argue against transferring such officers because such transfers would exacerbate staffing issues. However, whether POBR affects the decision not to transfer such officers is an issue that warrants further study.

POBR may limit agencies from reforming procedures for disciplining officers.⁸⁰³ Because no more than two interrogators may question an officer at once,⁸⁰⁴ POBR may constrain a civilian review board from holding a hearing with the officer or may prevent an auditor from joining and asking questions during an interview.⁸⁰⁵ Additionally, a civilian review board's disciplinary recommendation may trigger an officer's administrative appeal rights⁸⁰⁶ if the recommendation may be used for discipline or other personnel decisions.⁸⁰⁷

b. Collective Bargaining Agreements

As previously discussed, collective bargaining is a major function of police unions. While unions bargain for salary and related compensatory benefits, some may also bargain for management rights.⁸⁰⁸ Management rights, which is the right to manage tasks of the agency such as hiring, firing, and deciding what functions the agency will perform, are outside the scope of bargaining, except to the extent that they impact wages, hours, or other terms and conditions of employment.⁸⁰⁹ Unions often focus bargaining and bargaining agreement enforcement efforts on terms that may be collectively bargained for, such as protecting officers from arbitrary work assignments, fighting for fair compensation, and ensuring compliance with seniority rules.⁸¹⁰ However, some question whether unions bargain about management rights in ways that impede police accountability.⁸¹¹ While there is some evidence to this effect, this is a question that merits further examination.

Some of the rights that are being bargained may influence discipline and investigation of misconduct, which in turn affects accountability.⁸¹² Scholar Stephen Rushin identified seven categories of provisions in police contracts that limit accountability⁸¹³: (1) delays in interrogations or interviews of officers suspected of misconduct; (2) providing officers access to evidence of alleged misconduct prior to interrogation; (3) limiting consideration of disciplinary records by excluding records for future employment or destroying disciplinary records from files after a set period;⁸¹⁴ (4) limiting the length of time during which an investigation must conclude or disciplinary action can occur; (5) limiting anonymous complaints; (6) limiting civilian oversight; and (7) permitting or requiring arbitration of

802 *Ibid.* Reassignments may be subject to collective bargaining agreements. (*Ibid.*).

803 League of California Cities, *Police Reform: Legal Challenges and Solutions* (2002) p. 3 <https://www.calcities.org/docs/default-source/city-attorneys/police-reform-legal-challenges---paper.pdf?sfvrsn=58282c98_3> [as of Nov. 15, 2023].

804 Gov. Code, § 3303, subd. (b).

805 League of California Cities, *Police Reform: Legal Challenges and Solutions*, *supra* note 803, at p. 3 (citing *Berkeley Police Assn. v. City of Berkeley* (2007) 167 Cal.App.4th 385, 410).

806 Gov. Code, § 3304, subd. (b).

807 League of California Cities, *Police Reform: Legal Challenges and Solutions*, *supra* note 803, at p. 3 (citing *Caloca v. County of San Diego* (1999) 72 Cal.App.4th 1209, 1223; *Hopson v. City of Los Angeles* (1983) 139 Cal.App.3d 347).

808 Rad et al., *Police Unionism, Accountability, and Misconduct*, *supra* note 739, at p. 185.

809 See, e.g., Institute for Local Government, *A Local Official's Guide to Labor Relations Terminology*, *supra* note 741, at p. 6 (citing *Berkeley Police Assn. v. City of Berkeley* (1977) 76 Cal.App.3d 931); Jacoby, *Management Rights in 1987* (May 1987) Illinois Periodicals Online <<https://www.lib.niu.edu/1987/im870517.html>> [as of Nov. 15, 2023].

810 Fisk and Richardson, *Police Unions* (2017) 85 Geo. Wash. L.Rev. 712, 726–727 <https://scholarship.law.uci.edu/cgi/viewcontent.cgi?article=1623&context=faculty_scholarship> [as of Nov. 15, 2023].

811 Rad et al., *Police Unionism, Accountability, and Misconduct*, *supra* note 739, at p. 185 (citing Hardaway, *Time is Not on Our Side: Why Specious Claims of Collective Bargaining Rights Should Not Be Allowed to Delay Police Reform Efforts* (2019) 15 Stan. J. C.R. & C.L. 137-200 and Rushin, *Police Disciplinary Appeals* (2019) 67 Univ. Pa. L.Rev. 545–610).

812 *Ibid.*

813 Cunningham et al., Overview of Research on Collective Bargaining Rights and Law Enforcement Officer's Bills of Rights, *supra* note 738, at p. 6; see also Rad et al., *Police Unionism, Accountability, and Misconduct*, *supra* note 739, at p. 191.

814 See Rushin, *Police Union Contracts*, *supra* note 742, at pp. 1230–1232.

disputes related to disciplinary actions.⁸¹⁵ The Board will discuss each of these provisions and how they might affect the ability of communities and agencies to hold officers accountable for misconduct and racial or identity profiling. While the studies discussed below include analyses of collective bargaining agreements within California, the studies do not cover all of California’s agreements. Agreements are often specific to their jurisdictions, so communities may wish to examine the agreement that governs their law enforcement agency. The following categories of provisions may be included within the agreements.

i. Interrogations

Law enforcement agencies who suspect employees of misconduct, criminal behavior, or violations of internal policy, may conduct an internal investigation and question the employee.⁸¹⁶ As discussed in the Board’s 2023 Report, an internal affairs department administratively investigates these issues to judge the veracity of civilian complaints, collect facts, and investigate officer misconduct.⁸¹⁷ While a person suspected of a crime cannot be compelled to answer questions and may invoke their right to silence, investigators can and do compel officers to answer questions during administrative disciplinary interrogations.⁸¹⁸ An officer may be terminated for cause if they refuse to answer questions in the administrative review.⁸¹⁹ Thus, police union contracts or collective bargaining agreements often regulate disciplinary interrogations to protect officers.⁸²⁰

However, Stephen Rushin’s analysis of 657 police union contracts, 140 of which were from California municipalities,⁸²¹ suggests that contracts have insulated officers from accountability by preventing investigators from using effective interrogation techniques against officers during internal disciplinary investigations.⁸²² Some union contracts or collective bargaining agreements impose a certain time period before an officer may be interviewed, thereby delaying the interrogation.⁸²³ Rushin’s analysis revealed that of the contracts that allowed for an interrogation delay, the typical police department gives officers notice of two days or more before a department may interrogate an officer based on alleged misconduct.⁸²⁴ An officer is entitled to an attorney, like any other person suspected of a crime, if they are going to be interrogated about criminal behavior.⁸²⁵ However, Rushin surveyed 156 police leaders from across the country about the effects of a waiting period on the integrity of an investigation (without specifying that the investigation was of an officer).⁸²⁶ All those who responded to the survey agreed that interrogation delays burden investigations,⁸²⁷ stating that a 48-hour waiting period provides an opportunity to “line up an alibi,” “strategize about how to conceal the truth,” “destroy [or] hide evidence not already in police possession,” “tamper with witnesses,” or otherwise give “any

815 Cunningham et al., *Overview of Research on Collective Bargaining Rights and Law Enforcement Officer’s Bills of Rights*, *supra* note 738, at p. 6; see also Rad et al., *Police Unionism, Accountability, and Misconduct*, *supra* note 739, at p. 191.

816 Rushin and DeProspo, *Interrogating Police Officers* (2019) 87 *Geo. Wash. L.Rev.* 646, 656.

817 Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at pp. 143–144; see also Rushin and DeProspo, *Interrogating Police Officers*, *supra* note 816, at p. 656.

818 Rushin and DeProspo, *Interrogating Police Officers*, *supra* note 816, at p. 656. Compelled questioning raises Fifth Amendment concerns — especially the right to silence — when an officer is suspected of criminal conduct that may serve as the basis of internal disciplinary action and criminal prosecution. The Supreme Court has held that the government may not use an officer’s compelled statement as evidence against him or her in a criminal prosecution. (*Ibid.*)

819 *Ibid.*

820 *Id.* at p. 657.

821 *Id.* at pp. 657, 662–663, 694–696.

822 *Id.* at p. 684.

823 *Id.* at p. 672.

824 *Ibid.* The majority of contracts did not provide a delay period. However, a substantial number of police departments provide two hours or less, with many of the remaining agencies giving police officers a substantially longer delay before facing questions from internal investigators — generally between 24 and 72 hours. (*Id.* at pp. 673–674.)

825 *Id.* at p. 664.

826 *Id.* at p. 677.

827 *Id.* at p. 678.

advantage.”⁸²⁸ Others suggested “[the] first 48 hours of an investigation are critical.”⁸²⁹ Rushin argued that excessively delaying interrogations of officers after alleged misconduct allows officers to coordinate stories in a way that deflects responsibility for wrongful behavior,⁸³⁰ and thereby raises accountability concerns for communities who are harmed by such misconduct.

Some contracts or collective bargaining agreements also require internal investigators to turn over potentially incriminating evidence to an officer prior to interrogation.⁸³¹ In Rushin’s analysis, the most common types of evidence provided are a copy of a civilian complaint and the names of complainants.⁸³² Fewer jurisdictions give officers access to video or photographic evidence, such as body-worn camera footage, or locational data, such as GPS.⁸³³ Surveyed police leaders expressed concern that these protections would impair the ability of investigators to uncover the truth.⁸³⁴ One police chief described this as “showing all of your cards in a poker game.”⁸³⁵ Another claimed it allows for “tailor[ing] their lies to fit the evidence.”⁸³⁶ Some argued that the purpose of an interrogation is to “determine if the suspect is being truthful.” Thus, providing evidence in advance of an interrogation “would greatly limit this position,” and would give “time to fabricate a better lie.”⁸³⁷ One respondent worried about inadvertently publicizing the evidence, thereby calling into question the integrity of the investigation.⁸³⁸ Virtually no police chief believed these protections were useful in reducing the rate of false confessions.⁸³⁹

ii. Disciplinary Records

During the regular course of business, law enforcement agencies keep personnel files for employees that often contain discipline records and evaluations, among other materials.⁸⁴⁰ These files assist with the regular functions of the business or agencies; for example, discipline records may formulate the basis to terminate an employee or an evaluation may support a promotion.⁸⁴¹ Thus, the contents of a personnel file have influence on an individual’s employment. Many police contracts require destruction of disciplinary records from officer personnel files after a set period or prevent supervisors from considering an officer’s previous discipline history when making personnel decisions.⁸⁴² Some prevent police chiefs from fully using disciplinary records.⁸⁴³ In another study, Rushin analyzed 178 police contracts, at least 37 of which are from California municipalities,⁸⁴⁴ and found that approximately half require removal of personnel records at some point in the future.⁸⁴⁵ Rushin states that there are compelling policy reasons to remove minor mistakes from records after a period of time and evidence of wrongdoing may lose relevance or predictive value.⁸⁴⁶ For example, tardiness from five years prior

828 *Ibid.*

829 *Id.* at pp. 678–679.

830 Rushin, *Police Union Contracts*, *supra* note 742, at p. 1240.

831 Rushin and DeProspo, *Interrogating Police Officers*, *supra* note 816, at p. 674; Rushin, *Police Union Contracts*, *supra* note 742, at p. 1227, Appen. C.

832 Rushin and DeProspo, *Interrogating Police Officers*, *supra* note 816, at p. 674.

833 *Id.* at p. 675.

834 *Id.* at p. 680.

835 *Id.* at p. 679.

836 *Ibid.*

837 *Ibid.*

838 *Ibid.*

839 *Id.* at p. 680.

840 See Jesani, *The Importance of Employee Records and Files*, LinkedIn (Feb. 22, 2016) <<https://www.linkedin.com/pulse/importance-employee-records-files-neil-jesani>> [as of Nov. 15, 2023] (outlining how employers maintain and use employee records).

841 *Ibid.*

842 Rushin, *Police Union Contracts*, *supra* note 742, at p. 1228.

843 *Ibid.*

844 *Id.* at p. 1218, Appen. A.

845 *Id.* at pp. 1230–1231.

846 *Id.* at p. 1231.

likely has little to no bearing on an officer’s fitness as an officer in present day.⁸⁴⁷ However, according to Rushin, a pattern of more serious complaints over decades – even if the complaints are rarely sustained⁸⁴⁸ – is often demonstrative of an issue that requires management’s intervention.⁸⁴⁹ Rushin states that destruction of disciplinary records makes it more difficult for supervisors to identify officers engaged in a pattern of misconduct.⁸⁵⁰

iii. Civilian Oversight

Community members and advocates recognize the importance of civilian oversight of police.⁸⁵¹ Civilian review boards are common across the country to allow the community to monitor police behavior, which can empower vulnerable communities.⁸⁵² Civilian oversight builds community trust, ensures transparency, and increases community members’ willingness to report complaints against police.⁸⁵³

Despite the growing importance of civilian review boards, some unions have used the bargaining process to block or severely limit boards’ ability to oversee police discipline.⁸⁵⁴ In a study examining unionization’s effect on police misconduct, Felipe Goncalves found that departments are less likely to have a civilian oversight board if the department is unionized.⁸⁵⁵ Some keep civilians from having the final say in discipline.⁸⁵⁶ Others establish methods for disciplinary determinations that do not leave room for civilian oversight.⁸⁵⁷ Limiting an external agency from investigating misconduct places more reliance on police departments to police themselves.⁸⁵⁸

iv. Complaint Investigations

As discussed in previous Reports, community members may file complaints against officers alleging misconduct.⁸⁵⁹ Civilian complaints are a police accountability mechanism, making their collection and investigation vital.⁸⁶⁰ Union contracts may also affect the investigation of civilian complaints, which in turn affects accountability. Some contracts limit investigation of anonymous complaints;⁸⁶¹ others

847 *Ibid.*

848 Because of the highly unstructured nature of police work, it is often difficult to prove definitively that an officer engaged in misconduct, in part because investigators must typically weigh the officer’s word against a civilian’s word. While modern technological tools like body cameras may somewhat level the playing field in these investigations, these tools only provide one angle on interactions between civilians and police. (*Ibid.*) This limitation could affect whether a civilian complaint is sustained. (*Ibid.*)

849 *Ibid.*

850 *Id.* at p. 1240. Senate Bill No. 1421 (2017-2018 Reg. Sess.) (SB 1421), which passed in 2018 after Rushin’s article was published, may affect contract provisions relating to certain types of personnel records. SB 1421 requires personnel records related to the following to be made available for public inspection: (1) discharge of a firearm; (2) use of force causing death or great bodily injury; (3) sexual assault of a member of the public; and (4) incidents of dishonesty, such as perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence. (Sen. Bill No. 1421 (2017-2018 Reg. Sess.)) There likely are provisions reviewed in Rushin’s analysis that fall outside of these categories and, therefore, are not affected by SB 1421.

851 Rushin, *Police Union Contracts*, *supra* note 742, at p. 1232.

852 *Id.* at p. 1233.

853 *Id.* at p. 1235.

854 *Id.* at pp. 1233, 1234; see also Fegley, *Police Unions and Officer Privileges* (2020) 25 *The Independent Rev.* 165, 175.

855 Goncalves, *Do Police Unions Increase Misconduct?* (2021) p. 5 <https://static1.squarespace.com/static/58d9a8d71e5b6c72dc2a90f1/t/60622724b6a902732b636324/1617045285669/Goncalves_Unions.pdf> [as of Nov. 15, 2023].

856 Rushin, *Police Union Contracts*, *supra* note 742, at p. 1234.

857 *Ibid.*

858 Fegley, *Police Unions and Officer Privileges*, *supra* note 854, at p. 175.

859 Racial and Identity Profiling Advisory Board, *Annual Report (2019 Report)* (2019) p. 34 <<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2019.pdf>> [as of Nov. 15, 2023]; Racial and Identity Profiling Advisory Board, *Annual Report (2020 Report)* (2020) pp. 58–80 <<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2020.pdf>> [as of Nov. 15, 2023].

860 For a more in-depth discussion on civilian complaints, see Racial and Identity Profiling Advisory Board, *2020 Report*, *supra* note 859, at pp. 58–80.

861 Rushin, *Police Union Contracts*, *supra* note 742, at pp. 1235–1236.

may disqualify investigations after a set period of time.⁸⁶² Law enforcement departments have a finite number of resources at their disposal, so there is value in discouraging frivolous complaints and avoiding endless disciplinary investigations.⁸⁶³

However, bans on anonymous complaints may discourage some individuals from filing complaints, especially if they were victims of police brutality who fear retribution.⁸⁶⁴ This could discourage some of the most vulnerable people from seeking redress for officer misconduct and prevent management from discovering patterns of egregious conduct.⁸⁶⁵ The Board continues to encourage acceptance of anonymous complaints and, therefore, believes a union contract that limits the acceptance and investigation of these complaints hampers accountability. Scholars have found that while time period limits for investigations may have their benefits, some particularly egregious incidents of police misconduct may not come to light until years after they have occurred.⁸⁶⁶

v. Arbitration

Collective bargaining agreements also often contain arbitration clauses to adjudicate discipline appeals.⁸⁶⁷ Arbitration is a common dispute mechanism in public labor⁸⁶⁸ and is a legally binding form of dispute resolution held outside of formal courts.⁸⁶⁹ Nevertheless, using arbitration for peace officers' disciplinary appeals raises accountability concerns.⁸⁷⁰ According to policing scholars, arbitration almost exclusively reduces disciplinary penalties for officers guilty of misconduct.⁸⁷¹ Scholars have also found arbitration also allows for third parties who may not be from the community to make final disciplinary decisions that overturn police supervisors' decisions or oppose civilian oversight entities.⁸⁷² According to scholars, arbitrators can reinstate fired officers, sometimes with back pay.⁸⁷³ Police chiefs have claimed to be undermined when arbitrators return officers to duty that have multiple incidents of misconduct.⁸⁷⁴ This decreases a chief's ability to manage their force and may demonstrate to officers a loss of authority, which can affect a chief's ability to lead. According to researchers, the tendency for arbitrators to side with officers is likely, because police officers and unions often have some level of influence over the selection of arbitrators.⁸⁷⁵ Even when arbitrators side with police supervisors, their imposition of sanctions may be limited.⁸⁷⁶ For example, a memorandum of understanding between one California city and police union did not specify a limit to the amount an arbitrator may reduce discipline, but imposed limits on how much an arbitrator may increase discipline.⁸⁷⁷

As discussed in this section, law enforcement collective bargaining agreements often contain provisions that directly address discipline and misconduct investigations. Because of this, collective bargaining agreements may significantly affect an agency's ability to investigate and discipline officers, which is at the heart of police accountability. Community members who are victims of police misconduct or

862 *Ibid.*; see Fegley, *Police Unions and Officer Privileges*, *supra* note 854, at p. 177.

863 Rushin, *Police Union Contracts*, *supra* note 742, at p. 1237.

864 *Ibid.*

865 *Ibid.*

866 *Ibid.*

867 *Id.* at p. 1238.

868 *Ibid.*

869 Rad et al., *Police Unionism, Accountability, and Misconduct*, *supra* note 739, at p. 194.

870 Rushin, *Police Union Contracts*, *supra* note 742, at p. 1238.

871 *Id.* at p. 1239.

872 *Ibid.*; Disalvo, *Enhancing Accountability: Collective Bargaining and Police Reform (Enhancing Accountability)* (Jan. 2021) p. 8 <<https://media4.manhattan-institute.org/sites/default/files/enhancing-accountability-police-reform-DD.pdf>> [as of Nov. 15, 2023].

873 Disalvo, *Enhancing Accountability*, *supra* note 872, at p. 8.

874 *Ibid.*

875 Rad et al., *Police Unionism, Accountability, and Misconduct*, *supra* note 739, at p. 194 (citing Rushin, *Police Disciplinary Appeals* (2019) 67 *Univ. Pa. L.Rev.* 545-610).

876 *Ibid.*

877 *Ibid.*

racial or identity profiling want reassurance that law enforcement agencies will hold those officers accountable for their harmful behavior. Thus, examining an agency's bargaining agreement may be an important step for community members who are advocating for increased accountability.

3. Unions and Police Management

Given the role police chiefs play as managers of police departments, they must engage with the unions that represent their employees. The primary relationship between the police union and police management generally is limited to collective bargaining (if management participates in collective bargaining with the city), grievances, and arbitration.⁸⁷⁸ According to a police labor-management relations manual drafted by COPS, police managers often characterize relationships with the union as their most stressful role, while unions may characterize the management of their organizations as "impossible to work with."⁸⁷⁹ This may be partly due to the difference in priorities of chiefs and unions. Police unions tend to concentrate on wages, benefits, and working conditions; police management tends to concentrate on control and discipline issues.⁸⁸⁰ The U.S. DOJ COPS has stated, "[r]arely do police unions and police management have a shared vision of the type of department they desire. None seem to have a shared vision of how to make the community safer."⁸⁸¹ Moreover, there are not readily apparent best practices to encourage police unions and police management to work together to make the reduction of crime a part of their relationship.⁸⁸²

The complex relationship between unions and police chiefs may also be due to the inherent politics of union leaders' election to office. According to the COPS manual, to remain in a leadership position, officers need to believe that union leaders are effective, which historically meant a union leader was critical of management.⁸⁸³ The manual states that police managers who understand that are not as likely to personalize the conflict.⁸⁸⁴ Relatedly, the manual states that unions risk taking blame for a potentially unpopular police agency policy if they participate in the development of a program or policy in response to issues like racial profiling data collection or implementation of a civilian board.⁸⁸⁵ According to the COPS manual, management and unions can work together to better the agency and community served by the agency.⁸⁸⁶ Management and unions are not precluded from cooperative and productive relationships, but there are limits to the cooperation.⁸⁸⁷

Additionally, the composition of the union has a significant impact on police management.⁸⁸⁸ "When first line supervisors or middle managers are part of the collective bargaining unit, the relationship to rank-and file officers is complicated, and some would argue compromised."⁸⁸⁹ If a supervisor is responsible for reviewing the performance of a subordinate and disciplining the subordinate if

878 U.S. DOJ Office of Community Oriented Policing Services (COPS), *Police Labor-Management Relations (Vol. I): Perspectives and Practical Solutions for Implementing Change, Making Reforms, and Handling Crises for Managers and Union Leaders (Police Labor-Management Relations)* (2006) p. xvii <<https://cops.usdoj.gov/RIC/Publications/cops-p110-pub.pdf>> [as of Nov. 15, 2023].

879 *Id.* at p. xix.

880 *Id.* at p. xvii.

881 *Ibid.*

882 *Ibid.*

883 See *id.* at p. xx. According to COPS, even though union leaders may not intend to be destructive or undermine positive working relationships, to remain in office, most feel they must maintain some level of strain. If there are no issues with management, union leaders may find themselves no longer needed. (*Ibid.*) See also Walker, *The Neglect of Police Unions: Exploring One of the Most Important Areas of American Policing (The Neglect of Police Unions)* (2008) 9 Policy, Practice, and Research 95, 101 ("[R]egardless of whether a particular issue is subject to negotiations under the local contract, a police chief is ever-mindful of the possibility of a challenge to any new measure – either in the form of a threatened or actual grievance or simply passive resistance. Even a blatantly ludicrous claim by the union that a certain change is subject to negotiations can stall implementation until the matter is resolved.").

884 U.S. DOJ Office of Community Oriented Policing Services (COPS), *Police Labor-Management Relations*, *supra* note 878, at p. xx.

885 *Id.* at p. xxiii.

886 *Id.* at p. xx.

887 *Ibid.*

888 Walker, *The Neglect of Police Unions*, *supra* note 883, at p. 101.

889 *Ibid.*

necessary, it could be a conflict of interest when they are both members of a labor organization that can file a grievance against the supervisor and the department.⁸⁹⁰ If supervisors have separate bargaining unions, they can have more autonomy from the interests of the rank and file.

Unions and police management should be working towards community trust.⁸⁹¹ As law enforcement professional Booker Hodges pointed out,

We are to blame for [the public's poor view of police unions] in part because unlike other unions, we very seldom admit when one of us makes a mistake. An occasional reminder to the public regarding the legal obligation of unions to defend their members and admitting when we make a mistake could go a long way toward improving neighborhood relations A union is required to represent an officer, but in cases where someone has clearly violated our oath of office, publicly defending an officer who has clearly violated our oath of office strains neighborhood relations and erodes trust.⁸⁹²

According to legal scholar Samuel Walker, unions may improve relations with racially and ethnically diverse communities with mindful and measured defenses of officers accused of misconduct, especially excessive use of force, and by supporting policies designed to foster better community-police relations, particularly with respect to racial profiling.⁸⁹³ Unions may improve relations with civil rights leaders by supporting, or at a minimum remaining neutral to, civilian review boards.⁸⁹⁴ Unions may promote transparency by softening rigid stances against the release of disciplinary records. “Cultivating a true spirit of mutual helpfulness and fraternalism with the community served could easily encompass real connections, breaking down us versus them barriers.”⁸⁹⁵

Unions are one influence in the multidimensional police subculture.⁸⁹⁶ Culture varies between departments, as does the relative influence of a particular union.⁸⁹⁷ Subculture affects policing, including overall management practices, accountability and discipline, police officer interactions with community members, and local politics.⁸⁹⁸ Unions play some role in shaping the public posture of the rank-and-file. In some departments, union leaders may be publicly antagonistic to management initiatives or reform demands voiced by community groups.⁸⁹⁹ According to legal scholar Stephen Walker, this public opposition may encourage solidarity among officers while discouraging alternative points of view and, thereby, suppress receptivity to reforms aimed at bringing best practices.⁹⁰⁰ It may

890 *Ibid.*

891 See AFL-CIO, *Public Safety Blueprint for Change* (May 17, 2021) p. 3 <<https://aflcio.org/reports/public-safety-blueprint-change>> [as of Nov. 15, 2023] (“Effective and efficient public safety depends on securing the confidence, support and partnership of local communities, and engaging with those communities to develop and support initiatives that make for a safe and harmonious place to live for all people. Public safety agencies and communities should partner to solve problems and enhance quality of life in a manner that is fair, impartial, transparent and consistent.”).

892 *Ibid.*

893 See Walker, *The Neglect of Police Unions*, *supra* note 883, at pp. 105–106 (finding unions offend racial and ethnic minorities when unions aggressively defend officers accused of misconduct, especially excessive use of force, and unions often oppose policy changes designed to foster better community-police relations, particularly with racial profiling).

894 See *ibid.* (finding that unions aggressively oppose the creation of independent civilian oversight agencies or boards, which have been a principal demand of civil rights leaders since the 1960s).

895 McCormick, *Our Uneasiness with Police Unions: Power and Voice for the Powerful?* (2015) 35 Saint Louis U. Pub. L.Rev. 47, 62 (citing Internat. Assn. of Chiefs of Police, *IACP National Policy Summit on Community Police Relations: Advancing A Culture of Cohesion and Community Trust* (2015) p. 11).

896 Walker, *The Neglect of Police Unions*, *supra* note 883, at p.103; see McCormick, *Our Uneasiness with Police Unions: Power and Voice for the Powerful?*, *supra* note 895, at pp. 61–62.

897 Walker, *The Neglect of Police Unions*, *supra* note 883, at p. 103.

898 *Ibid.*; see also DiSalvo, *The Trouble With Police Unions*, National Affairs (2020) p. 36 <<https://www.nationalaffairs.com/publications/detail/the-trouble-with-police-unions>> [as of Nov. 15, 2023] (“[Unions] facilitate a culture that harms police work and community relations while frustrating reform efforts. Union culture, it is said, encourages good officers to defend bad officers by maintaining the ‘blue wall of silence.’”).

899 Walker, *The Neglect of Police Unions*, *supra* note 883, at p. 104.

900 *Ibid.*

also contribute to an “us vs. them” mentality.

4. Conclusion

Police unions are effective at advocating for and protecting their members, especially for salary and related compensatory benefits. However, as discussed above, some researchers have found that in addition to POBR, police unions may also negatively affect police accountability through mechanisms such as lobbying, negotiations and implementation of collective bargaining agreements, their relationship with police management, and their influence on police subculture. This poses the question of whether unions place individual officer protections above regulating individuals who have the power to use force against community members.⁹⁰¹ This section begins examining this question, but does not encompass the totality of the discussion. This issue merits further examination and the Board encourages stakeholders to further explore ways to measure the impact of unions and bargaining agreements.

5. Board Recommendation

Scholars and researchers have uncovered some potential union influences on police accountability. The question of union influence on officer behavior is one that requires more research. While POBR was intended to protect officers, does it affect community interests by obstructing some aspects of police accountability? Do certain provisions or agreements with unions or POBR change officer behavior or prevent accountability? Does the structure of a union affect practices related to uses of force or critical incidents? Analysis of RIPA data may also lend insight into these questions, if agencies are accurately reporting data to ensure researchers can make evidence-based determinations.

The RIPA Board calls upon researchers to review agency-level data and the structure of unions, POBR, and questions of collective bargaining on their impact on police behavior, specifically with regard to bias. The Board encourages examination of these questions and the data in order to provide more evidence regarding the impact of unions on law enforcement accountability.

6. The Role of Municipalities

Since unions lobby and negotiate with municipalities, municipalities also play an important role in police accountability. Public bodies representing cities and counties negotiate with unions to reach collective bargaining agreements.⁹⁰² Municipalities are required to meet and confer with union representatives if they wish to make changes to wages, hours, or other terms and conditions of employment.⁹⁰³ The public, especially those marginalized by policing practices, often do not engage in such negotiations, so they rely on their elected officials to represent their interests.⁹⁰⁴ Thus, political leaders need to balance the interests of various stakeholders as they bargain⁹⁰⁵ and, according to legal scholars, focus on enhancing accountability.⁹⁰⁶

As a party to bargaining, municipalities have the ability to place bargaining chips on the table.⁹⁰⁷

901 There is some data about the effect of unions on police misconduct and decertification, but not on how unions and POBRs are structured and how that may affect accountability. Felipe Goncalves examined how unionization affects the rate of officer decertification and civilian deaths caused by police and found that unionization did not lead to statistically significant increases in either. (See Goncalves, *Do Police Unions Increase Misconduct?*, *supra* note 855, at p. 31.) Perhaps there is an unknown effect on disciplining officers, but more research is needed on this.

902 Katz, *Beyond Transparency: Police Union Collective Bargaining and Participatory Democracy*, *supra* note 742, at p. 419.

903 *Id.* at p. 432.

904 *Id.* at p. 422.

905 *Id.* at p. 435.

906 DiSalvo, *Enhancing Accountability*, *supra* note 872, at p. 7. DiSalvo argues that reformers should remove obstacles in the process of receiving civilian complaints, investigating them, rendering a decision, determining penalties, and recording the data, and remove policies that undermine the authority of police chiefs to hold officers responsible. (*Ibid.*)

907 See Katz, *Beyond Transparency: Police Union Collective Bargaining and Participatory Democracy*, *supra* note

Municipalities should do so bearing in mind the various stakeholders municipalities represent and the long-term consequences of their decisions. Some scholars claim that union contracts may be subject to regulatory capture, which occurs when an agency meant to regulate a law enforcement agency ends up advancing the interests of the law enforcement agency and not the public’s interests.⁹⁰⁸ Legal scholars have found that police unions are politically powerful.⁹⁰⁹ According to scholar Stephen Rushin, budget-conscious cities may make management concessions, such as changes in discipline policies and procedures which will greatly affect accountability in the future.⁹¹⁰ Therefore, Rushin asserts, municipalities are less likely to see the negative effects of changing discipline procedures in the immediate future, which makes offering changes in such procedures more appealing than providing more money to increase officers’ salaries.⁹¹¹ Rushin states that those affected by police misconduct are often part of a relatively small and politically disadvantaged minority of municipal voters,⁹¹² meaning they may not be able to advocate against such changes and concessions.

According to the COPS manual on police labor and management relationships, negotiating parties should exercise great caution in mixing economic demands with those pertaining to working conditions.⁹¹³ According to COPS, “[u]nions should be able to trust police management to do no harm in their efforts to win better economic packages. Police managers should be able to trust union officials to do no harm regarding the ability of management to effectively allocate and deploy scarce resources to control crime. If that practice already exists as standard operating procedure, then far fewer issues will arise with regard to community policing, Compstat implementation,⁹¹⁴ or other change efforts.”⁹¹⁵

7. Unions as Intermediaries Between Management and Line Officers

Line officers play a critical role in the implementation of law enforcement policies and any issues that may arise with the policies, since they operate in the community and have a front row seat to how effective or detrimental a policy may be. Policies may not work as intended, even when officers are doing their best to abide by them.⁹¹⁶ Accordingly, management and policymakers may wish to consider the opinions and perspectives of line officers. Including the rank-and-file in the discussion of reform may help uncover areas of improvement, as well as give police officers a personal stake in public safety.⁹¹⁷ If officers do not have a voice, management may not find out about any problems with the policies.⁹¹⁸ Moreover, studies of the successes and failures of community policing models have found that a participatory management style correlates with more positive officer attitudes about community policing.⁹¹⁹ Legal scholars have found that “it is likely that the insights and creativity of rank-and-file

742, at p. 435 (finding that city leaders agree to wage and benefit concessions in exchange for discipline policies and procedures). Setting the policies and procedures of the police department is a managerial function of a local government. (*Ibid.*)

908 Rushin, *Police Union Contracts*, *supra* note 742, at p. 1215, fn. 117; Katz, *Beyond Transparency: Police Union Collective Bargaining and Participatory Democracy*, *supra* note 742, at p. 435.

909 Rushin, *Police Union Contracts*, *supra* note 742, at pp. 1215–1216.

910 See *id.* at p. 1216; Chase and Heinzmann, *Cops Traded Away Pay for Protection in Police Contracts*, Chicago Tribune (May 20, 2016) <<https://www.chicagotribune.com/news/breaking/ct-chicago-police-contracts-fop-20160520-story.html>> [as of Nov. 15, 2023].

911 Rushin, *Police Union Contracts*, *supra* note 742, at p. 1216.

912 *Ibid.*

913 U.S. DOJ Office of Community Oriented Policing Services (COPS), *Police Labor-Management Relations (Vol. I)*, *supra* note 878, at p. xxii.

914 Compstat is a performance management system that is used to reduce crime and achieve other police department goals. Compstat emphasizes information-sharing, responsibility and accountability, and improving effectiveness. (Bureau of Justice Assistance, *Compstat: Its Origins, Evolution, and Future Law Enforcement Agencies* (2013) p. 2 <<https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/PERF-Compstat.pdf>> [as of Nov. 15, 2023].)

915 U.S. DOJ Office of Community Oriented Policing Services (COPS), *Police Labor-Management Relations (Vol. I)*, *supra* note 878, at p. xxii.

916 Fisk and Richardson, *Police Unions*, *supra* note 810, at p. 794.

917 Cunningham et al., *Overview of Research on Collective Bargaining Rights and Law Enforcement Officer’s Bills of Rights*, *supra* note 738, at p. 12.

918 Fisk and Richardson, *Police Unions*, *supra* note 810, at p. 794.

919 *Id.* at p. 770 (citing Adams et al., *Implementing Community-Oriented Policing: Organizational Change and Street*

officers can revolutionize policing. “[L]ine personnel are a powerful and important resource . . . to improve policing [and] the relationship between police and citizens.”⁹²⁰

Additionally, legal scholars Catherine Fisk and L. Song Richardson applied a study of power dynamics to officers and found that when officers have a voice to express their views, it avoids frustration and overt undermining of policies and can favorably influence officers’ attitudes.⁹²¹ Research about power reveals that certain exercises of authority, like failing to provide a voice, can breed deep resentment among lower-level employees, resulting in resistance to employer-mandated policies and procedures.⁹²² For example, in one department, officers resented a new policy created without their input.⁹²³ While they did not overtly resist the policy, some quietly and covertly undermined the policy on the street.⁹²⁴ Conversely, in another jurisdiction that included officer input in a new policy, officers worked toward improving it despite questioning the substance of the policy.⁹²⁵ Because officers operate primarily out of sight of management, they have many opportunities to covertly resist reform-oriented policies.⁹²⁶ When resistance is subtle rather than overt, management may not be aware that the policy is not being implemented in the way it was intended.⁹²⁷

When policymakers work solely with the top command levels of police departments, they might unintentionally exacerbate rank-and-file frustrations with existing power arrangements, leading to resistance to any new policies.⁹²⁸

B. Qualified Immunity

1. Current State of Law

Qualified immunity is a defense a law enforcement officer may raise in court when an officer has or may have violated an individual’s constitutional rights. Qualified immunity shields law enforcement officers “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”⁹²⁹ The defense is usually raised when an individual sues an officer based on alleged misconduct. For example, an individual may sue an officer regarding an incident where the individual believed the officer used excessive force. If an officer asserts the qualified immunity defense, a court or jury must determine whether the defense will apply; if so, then the victim would not receive compensation for the harm inflicted by the officer.

According to the U.S. Supreme Court, “[q]ualified immunity balances two important interests — the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.”⁹³⁰ The doctrine of qualified immunity is entirely a creation of the Court and was not created by legislators; the Court decided that the defense should apply to certain federal lawsuits since there was no

Officer Attitudes (2002) 48 *Crime & Delinq.* 399, 403-404, 421).

920 *Id.* at p. 771 (quoting Kelling and Kliesmet, *Police Unions, Police Culture, and Police Abuse of Force*, in *Police Violence: Understanding and Controlling Police Abuse of Force* (Geller & Toch eds., 2005) pp. 191, 210).

921 *Id.* at p. 770.

922 *Ibid.*

923 *Id.* at p. 772.

924 *Id.* at pp. 772–773.

925 *Id.* at p. 774.

926 *Id.* at p. 775.

927 *Ibid.*

928 *Ibid.*

929 *Harlow v. Fitzgerald* (1982) 457 U.S. 800, 818.

930 *Pearson v. Callahan* (2009) 555 U.S. 223, 231.

evidence that Congress did not want the defense to apply.⁹³¹ It was applied for the first time in 1967.⁹³² The protection of qualified immunity applies regardless of whether the officer's error is based on a mistaken belief of what happened, mistake in what the law says, or a combination of both.⁹³³

Courts determine whether an officer is entitled to qualified immunity analysis through a three-part test: "(1) whether the defendant was performing discretionary functions; (2) if so, whether the law was clearly established; and (3) if so, whether there were extraordinary standards that excuse the officials' ignorance of the law."⁹³⁴ Although the individual parts build upon one another, "courts seldom give much consideration to either the first or third points."⁹³⁵ This means that courts mostly focus on whether there was a constitutional violation and whether the law was clearly established.

i. Discretionary Function

Officers' duties may be either ministerial or discretionary. A ministerial duty is a legal obligation and requires an officer to act without needing to rely on his or her own judgment.⁹³⁶ For example, an officer directing traffic has a ministerial duty to follow established traffic laws — there is little room for subjectivity.⁹³⁷ The officer does not have the option to make their own decisions about how to direct traffic and relies on the letter of the law to inform their direction.⁹³⁸ In contrast, a duty is discretionary if it requires that an officer exercise their judgment to perform the duty.⁹³⁹ Qualified immunity does not protect an officer from liability if they are performing a ministerial duty, but it may if they are performing a discretionary duty.

Challenges arise in how to distinguish discretionary functions from ministerial functions.⁹⁴⁰ The U.S. Supreme Court has stated that an individual performing a discretionary function almost inevitably

931 See Congressional Research Service, *Policing the Police: Qualified Immunity and Considerations for Congress* (Feb. 21, 2023) pp. 2–3 <<https://crsreports.congress.gov/product/pdf/LSB/LSB10492#:~:text=The%20Supreme%20Court%20developed%22qualified,the%20Ku%20Klux%20Klan%20Act>> [as of Nov. 15, 2023]; *Venegas v. County of Los Angeles* (2007) 153 Cal.App.4th 1230, 1242 ("Qualified immunity is 'without textual basis in either the Constitution or statute.' Instead, '[t]he high court looks to whether 'an official was accorded immunity from tort actions at common law when the Civil Rights Act was enacted in 1871,' and then considers whether Congress intended to incorporate that immunity into section 1983.'"). Qualified immunity as applied to section 1983 of title 42 of the United States Code is a federal form of protection, meaning it only applies in federal courts. California does not have an equivalent law, but provides immunity protection by statute. Under California's Tom Bane Civil Rights Act, individuals can file civil lawsuits against government employees if they interfere by threat, intimidation, or coercion with an individual's constitutional rights. (Civ. Code, § 52.1.) Senate Bill No. 2 (2021-2022 Reg. Sess.) (SB 2) added a provision to the Bane Act that eliminated certain immunity provisions. Specifically, the following immunity provisions no longer apply to civil actions brought under the Bane Act against peace officers, custodial officers, or directly against a public agency that employs them: Government Code section 821.6, which provides immunity to a public employee "for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause;" Government Code section 844.6, which provides limited immunity to public entities for injuries to, or caused by, a prisoner (subject to a variety of existing exceptions); and Government Code section 845.6, which provides limited immunity to public entities and public employees for injuries caused by a public employee's failure to obtain medical care for a prisoner in their custody.

932 *Venegas v. County of Los Angeles*, *supra* note 931, 153 Cal.App.4th at p 1241; see *Pierson v. Ray* (1967) 386 U.S. 547.

933 *Pearson v. Callahan*, *supra* note 930, 555 U.S. 223 at p. 231 (quoting *Groh v. Ramirez* (2004) 540 U.S. 551, 567 ("The protection of qualified immunity applies regardless of whether the government official's error is 'a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.'")).

934 Ravenell and Ross, *Qualified Immunity and Unqualified Assumptions* (2022) 112 J. Crim. Law and Criminol. 1, 6–7 <<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7712&context=jclc>> [as of Nov. 15, 2023] (citing *Harlow v. Fitzgerald*, *supra* note 929, 457 U.S. 800 at p. 818).

935 *Id.* at p. 7.

936 LSD.Law Dictionary, Definition of "Ministerial Duty" <<https://www.lsd.law/define/ministerial-duty#:~:text=Definition%3A%20A%20duty%20that%20requires,about%20how%20to%20direct%20traffic>> [as of Nov. 15, 2023].

937 *Ibid.*

938 *Ibid.*

939 USLegal Dictionary, Definition of "Discretionary Duty" <<https://definitions.uslegal.com/d/discretionary-duty/>> [as of Nov. 15, 2023].

940 Ravenell and Ross, *Qualified Immunity and Unqualified Assumptions*, *supra* note 934, at p. 8.

makes decisions influenced by their experiences, values, and emotions.⁹⁴¹ The Court has provided little guidance beyond that, leaving lower courts to disagree about what, if any, functions, should be classified as ministerial functions.⁹⁴² Researchers have found that lower courts generally avoid analyzing whether a task is a discretionary function and default to say the function is discretionary.⁹⁴³

ii. Clearly Established Law

Most qualified immunity analyses depend on the second question: is the law clearly established?⁹⁴⁴ If an officer violates a clearly established law, qualified immunity does not protect them from suit.⁹⁴⁵ The U.S. Supreme Court found that “a reasonably competent public official should know the law governing his conduct.”⁹⁴⁶ “[C]learly established” means a right is sufficiently clear to a reasonable officer that they would understand that their actions violate that right.⁹⁴⁷ In other words, an officer is not liable for their “reasonable mistakes.”⁹⁴⁸ Determining whether a right is clearly established is a case-by-case analysis.⁹⁴⁹ Under the Court’s current standard, a court should only deny a defendant qualified immunity if every government official in the defendant’s position would know the conduct was illegal.⁹⁵⁰

“[I]t has become increasingly difficult for courts to conclude that the law is clearly established.”⁹⁵¹ This is especially true for cases involving the Fourth Amendment,⁹⁵² which protects individuals from unreasonable searches and seizure by the police and which is examined in excessive force cases.⁹⁵³ In such cases, the U.S. Supreme Court notes that “‘the result depends very much on the facts of each case,’ and thus police officers are entitled to qualified immunity unless existing precedent ‘squarely governs’ the specific facts at issue.”⁹⁵⁴ For example, in *Baxter v. Bracey*, a court granted qualified immunity to officers who released a police dog on a suspect who was sitting down with his hands up, even though a previous case decided it was unconstitutional to release a police dog on someone who surrendered and was lying down.⁹⁵⁵ Because the suspect in *Baxter v. Bracy* was seated and not lying down, the court held that release of the dog did not violate clearly established law.⁹⁵⁶ The Court describes the tension of qualified immunity and probable cause, the standard that applies to law enforcement’s searches and seizures of individuals and property, as follows:

Probable cause ‘turns on the assessment of probabilities in particular factual contexts’ and cannot be ‘reduced to a neat set of legal rules.’ It is ‘incapable of precise definition or quantification into percentages.’ Given its imprecise nature, officers will often find it difficult to know how the general standard of probable cause applies in ‘the precise situation encountered.’ Thus, we have stressed the need to ‘identify a case where an officer acting under similar circumstances . . . was held to have violated the Fourth Amendment.’ . . . [A] body of relevant

941 *Harlow v. Fitzgerald*, *supra* note 929, 457 U.S. 800 at p. 816.

942 Ravenell and Ross, *Qualified Immunity and Unqualified Assumptions*, *supra* note 934, at pp. 8–9.

943 *Id.* at pp. 9, 11.

944 *Id.* at p. 13.

945 See *Harlow v. Fitzgerald*, *supra* note 929, 457 U.S. 800 at p. 819.

946 *Ibid.*

947 *Saucier v. Katz* (2001) 533 U.S. 194, 195 (citing *Anderson v. Creighton* (1987) 483 U.S. 635, 640).

948 *Venegas v. County of Los Angeles*, *supra* note 931, 153 Cal.App.4th at p. 1242 (citing *Saucier v. Katz*, *supra* note 947, at p. 205).

949 *Saucier v. Katz*, *supra* note 947, 533 U.S. at p. 194 (“[The clearly established] inquiry must be undertaken in light of the case’s specific context, not as a broad general proposition.”).

950 Ravenell and Ross, *Qualified Immunity and Unqualified Assumptions*, *supra* note 934, at p. 18.

951 *Ibid.*

952 *Ibid.*

953 U.S. Const., 4th Amend.

954 *Kisela v. Hughes* (2018) 584 U.S. _ [138 S. Ct. 1148, 1152–1153] (quoting *Mullenix v. Luna* (2015) 577 U.S. 7, 24 [136 S. Ct. 305, 309] (per curiam)).

955 Schwartz, *Shielded: How the Police Became Untouchable* (2023) p. 76 (citing *Baxter v. Bracy* (6th Cir. 2018) 751 Fed. Appx 869).

956 *Ibid.*

case law’ is usually necessary to ‘clearly establish the answer’ with respect to probable cause.⁹⁵⁷

The above underscores the difficulty in establishing the “clearly established” prong, which in turn results in qualified immunity often being granted to officers.

iii. Reasonable Officials, Reasonable Reliance, and Extraordinary Circumstances

If an officer “claims extraordinary circumstances and can prove that [they] neither knew nor should have known of the relevant legal standard,” qualified immunity applies.⁹⁵⁸ Courts’ overall aim is to determine whether it was objectively reasonable for an officer to violate the law under the circumstances.⁹⁵⁹ Typically, when officers claim “extraordinary circumstances,” they argue they relied upon the advice of counsel or a superior official.⁹⁶⁰ Courts may consider the following factors for reliance on legal advice: (1) how frequently legal advice is sought; (2) who provided the legal advice; (3) whether the advisor was informed of all the relevant facts; (4) whether the advice was tailored to the specific facts of the case; (4) whether the advice was given before or after the alleged conduct; and (5) whether the officer followed the advice given.⁹⁶¹

2. Balancing State vs. Individual Community Members’ Interests

Qualified immunity may simultaneously affect the overall public’s interests and the interests of individuals stopped by police by affecting police accountability. In discussing the effects of qualified immunity, financial liability and lawsuits are often discussed. An officer’s behavior may be affected, if they could be held liable for the behavior.

i. Effects of Financial Liability

Qualified immunity is meant to shield officers from financial liability.⁹⁶² For example, if an officer is called to rescue someone from a dangerous situation and they break down the door to do so, qualified immunity would work to protect the officer from having to pay for the broken door. According to the U.S. Supreme Court, exposure to liability damages encourages officials to carry out their duty in a lawful manner and to pay their victims when they do not.⁹⁶³ Thus, liability incentivizes officers to do their jobs appropriately, which is why immunity is qualified and not absolute. In some instances, however, individuals’ constitutional rights are violated and those who are responsible do not pay for the cost due to this defense.⁹⁶⁴ Moreover, in those instances in which a settlement is reached before a qualified immunity determination is made or the defense is either not asserted or was found inapplicable, municipalities must indemnify their officers, meaning the city would pay for any settlement or judgment, not the officers themselves.⁹⁶⁵ Qualified immunity scholar Joanna Schwartz found that

957 *District of Columbia v. Wesby*, (2018) 583 U.S. 48, 64 (internal citations omitted). This standard means that officers would need to be well versed in case law. However, research shows that officers often are not. (Ravenell and Ross, *Qualified Immunity and Unqualified Assumptions*, *supra* note 934, at pp. 19, 28; see, e.g., *Elder v. Holloway* (1994) 510 U.S. 510, 513–14 (demonstrating how police officials may be unaware of controlling appellate decisions); see also Schwartz, *Qualified Immunity’s Boldest Lie* (2015) 88 U. Chicago L.Rev. 605, 649–664.)

958 *Harlow v. Fitzgerald*, *supra* note 929, 457 U.S. 800 at p. 819.

959 Ravenell and Ross, *Qualified Immunity and Unqualified Assumptions*, *supra* note 934, at p. 23.

960 *Id.* at p. 22; see also, e.g., *Lucero v. Hart* (9th Cir. 1990) 915 F.2d 1367, 1371 (granting qualified immunity to defendant who relied on the advice of counsel under *Harlow’s* “clearly established” right analysis); *Dixon v. Wallowa Cnty.* (9th Cir. 2003) 336 F.3d 1013, 1019 (considering whether defendant relied on the advice of counsel when determining “whether a reasonable officer could have believed that his conduct was lawful”).

961 Ravenell and Ross, *Qualified Immunity and Unqualified Assumptions*, *supra* note 934, at pp. 21–22 (citing various federal cases).

962 See Schwartz, *The Case Against Qualified Immunity* (2018) 93 Notre Dame L.Rev. 1797, 1804; see also Fawbush, *Qualified Immunity: Both Sides of the Debate* (2023) FindLaw <<https://supreme.findlaw.com/supreme-court-insights/pros-vs-cons-of-qualified-immunity--both-sides-of-debate.html#Benefits>> [as of Nov. 15, 2023].

963 *Forrester v. White* (1988) 484 U.S. 219, 223.

964 Schwartz, *Police Indemnification* (2014) 89 N.Y.U. L.Rev. 885, 885

965 Lab. Code, § 2802; Schwartz, *Police Indemnification*, *supra* note 964, at p. 885; Fawbush, *Qualified Immunity: Both Sides of the Debate*, *supra* note 962.

officers employed by 81 jurisdictions, including several of California’s largest law enforcement agencies, virtually never contributed to settlements and judgments during the six-year study period.⁹⁶⁶ When municipalities pay, it often means the taxpayers pay.

On the other hand, the U.S. Supreme Court has opined that the threat of liability can operate to inhibit officers in the proper performance of their duties. When threatened with personal liability for acts taken based on their official duties, officers may act extremely cautiously.⁹⁶⁷ This excessive caution may lead to decisions that result in officers not fulfilling their duties as they should.⁹⁶⁸ The Court has explained that an officer should not have to choose between dereliction of duty — if he does not arrest someone when there is probable cause — or being forced to pay out damages in a lawsuit if he does.⁹⁶⁹ Officers must make split-second decisions in stressful circumstances; according to the International Association of Chiefs of Police, officers may be hesitant to act when the public needs it the most without qualified immunity.⁹⁷⁰ Some argue that removing qualified immunity would lead to unwarranted lawsuits in which officers’ split-second decisions are second guessed, which would lead to additional costs for cities and officers.⁹⁷¹ Additionally, the Court fears that damages actions may “‘deter[] . . . able citizens from acceptance of public office’ and ‘dampen the ardor of all but the most resolute, or the most irresponsible [public officials], in the unflinching discharge of their duties.’”⁹⁷² However, Schwartz argues,

[T]o the extent that people are deterred from becoming police officers and officers are deterred from vigorously enforcing the law, available evidence suggests the threat of civil liability is not the cause. Instead, departments’ difficulty recruiting officers has been attributed to high-profile shootings, negative publicity about the police, strained relationships with communities of color, tight budgets, low unemployment rates, and the reduction of retirement benefits Finally, assuming for the sake of argument that the threat of liability deters officers, it is far from clear that qualified immunity could mitigate those deterrent effects.”⁹⁷³

ii. Effects on Litigation

The U.S. Supreme Court has also justified qualified immunity as a protection from burdens of discovery, or the gathering of evidence, and trial in “insubstantial” cases.⁹⁷⁴ According to the Court, in addition to the financial costs, trials come with other costs – distractions from official duties, limiting discretionary actions, and deterrence of able people from law enforcement.⁹⁷⁵ The Court also believes the public has an interest in avoiding broad-reaching gathering of evidence, which may lead to interviews of multiple government officials, and “excessive disruption of government.”⁹⁷⁶ According to Joanna Schwartz, however, there are other reasons for which weak cases do not make it to court or get dismissed early on.⁹⁷⁷ People without strong evidence have trouble finding lawyers to represent them, filing complaints

966 Schwartz, *The Case Against Qualified Immunity*, *supra* note 962, at p. 1805. Based on correspondence with government officials in the course of her research, Schwartz concluded that law enforcement officers almost never pay for defense counsel — instead, counsel is provided by the municipality, the municipal insurer, or the union. (*Ibid.*)

967 *Forrester v. White*, *supra* note 963, 484 U.S. 219 at p. 223.

968 *Ibid.*

969 *Pierson v. Ray*, *supra* note 932, 386 U.S. at p. 555.

970 Fawbush, *Qualified Immunity: Both Sides of the Debate*, *supra* note 962; Internat. Assn. of Chiefs of Police, *IACP Statement on Qualified Immunity* <<https://www.theiacp.org/sites/default/files/IACP%20Statement%20on%20Qualified%20Immunity.pdf>> [as of Nov. 15, 2023].

971 Fawbush, *Qualified Immunity: Both Sides of the Debate*, *supra* note 962.

972 Schwartz, *The Case Against Qualified Immunity*, *supra* note 962, at p. 1803; *Harlow v. Fitzgerald*, *supra* note 929, 457 U.S. 800 at p. 814 (alteration in original) (quoting *Gregoire v. Biddle* (2d Cir. 1949) 177 F.2d 579, 581).

973 Schwartz, *The Case Against Qualified Immunity*, *supra* note 962, at p. 1813.

974 See, e.g., *Harlow v. Fitzgerald*, *supra* note 929, 457 U.S. 800 at pp. 815–817; *Pearson v. Callahan*, *supra* note 930, 555 U.S. 223 at p. 231 (holding that avoidance of “insubstantial” law suits is a “driving force” in qualified immunity’s creation); see also Schwartz, *The Case Against Qualified Immunity*, *supra* note 962, at p. 1808.

975 See *Harlow v. Fitzgerald*, *supra* note 929, 457 U.S. 800 at p. 816.

976 See *id.* at pp. 817–818.

977 Schwartz, *Shielded: How the Police Became Untouchable*, *supra* note 955, at pp. 83–84.

with enough facts, and proving a constitutional violation.⁹⁷⁸

The Court has explained that qualified immunity protects officers from being held liable for their actions without having notice that their behavior is unlawful.⁹⁷⁹ However, researchers have concluded that officers are not being sufficiently trained.⁹⁸⁰ A study that examined officers' familiarity with case law found that nine of the 10 departments reported that they provided federal judicial decisions to their police officials, but four named decisions rendered within the last 10 years.⁹⁸¹ Another study performed by qualified immunity scholar Joanna Schwartz came to the same conclusion: officers are not trained on the facts and holdings of court cases that could clearly establish the law.⁹⁸² But in any event, even if they were well-versed on court cases, they would need to recall the facts of individual cases at a time when they may need to make very quick decisions.⁹⁸³ It is not practical to have officers know the details of case law or think through legal arguments when making an arrest.⁹⁸⁴ Thus, officers likely are not changing their behavior based on new court cases.

Qualified immunity doctrine may also discourage individuals from bringing cases when their constitutional rights are violated.⁹⁸⁵ According to Schwartz, the law has developed such that attorneys who would represent individuals in lawsuits alleging constitutional law violations may be concerned of case dismissals on qualified immunity grounds, even with egregious facts.⁹⁸⁶ Meanwhile, Schwartz says that attorneys representing law enforcement officers would be encouraged to use qualified immunity as a defense and immediately appeal court decisions that determine qualified immunity does not apply.⁹⁸⁷ These dynamics increase the cost, complexity, and delay of lawsuits, which discourages attorneys, and by extension the individuals they represent, from filing the suits.

iii. Conclusion

Qualified immunity is an important topic in discussing police accountability. At a minimum, it requires the balance of two very important considerations: (1) whether the threat of personal liability would cause officers to act too cautiously when confronted with a split-second decision, and thereby potentially impact public safety; and (2) the public goal of deterring law enforcement behavior that violates the constitutional rights of citizens, which often arises in excessive use of force cases.

978 *Id.* at p. 84.

979 *Id.* at p. 85.

980 *Ibid.*

981 Ravenell and Ross, *Qualified Immunity and Unqualified Assumptions*, *supra* note 934, at p. 28; see also Schwartz, *Qualified Immunity's Boldest Lie*, *supra* note 957, at pp. 649–664.

982 Schwartz, *Shielded: How the Police Became Untouchable*, *supra* note 955, at p. 85; see Schwartz, *Qualified Immunity's Boldest Lie*, *supra* note 957, at pp. 649–664.

983 See Fawbush, *Qualified Immunity: Both Sides of the Debate*, *supra* note 962.

984 *Ibid.*

985 Schwartz, *The Case Against Qualified Immunity*, *supra* note 962, at p. 1818.

986 *Ibid.*; Fawbush, *Qualified Immunity: Both Sides of the Debate*, *supra* note 962 (“The current doctrine, as applied today, leads to hairsplitting — it is often impossible for plaintiffs to meet the burden. The doctrine is applied inconsistently and can greatly depend on the judge or judges involved in the case. For example, one judge has argued that ‘a court can almost always manufacture a factual distinction’ when determining whether a previous precedent precludes an officer from getting qualified immunity.”).

987 Schwartz, *The Case Against Qualified Immunity*, *supra* note 962, at p. 1818.

CIVILIAN COMPLAINTS

A. Introduction

In the past, the Board has focused on the civilian complaint process to give voice to communities' concerns about their interactions with law enforcement. Past reports have explored best practices to make the civilian complaint process more accessible, transparent, and effective from start to finish.

This year, the Board focuses on making the complaint process more comprehensive, objective, and proactive. To that end, the Board makes several recommendations to the Legislature and law enforcement agencies, in addition to analyzing civilian complaint data reported by California law enforcement agencies in 2022. First, the Board reiterates its past recommendation that the Legislature amend Penal Code section 832.5 to include a standardized definition of "civilian complaint." Next, the Board recommends that law enforcement agencies: (1) review all available video footage in complaint investigations to ensure that investigations are as thorough and impartial as possible; and (2) incorporate the principles of root cause analysis into the complaint process, to ensure that complaint investigations are meaningful as learning opportunities.

The Board hopes that, by implementing these recommendations, the Legislature and law enforcement agencies can continue to improve the public's ability to participate in a meaningful civilian complaint process and, in turn, strengthen the perceived legitimacy of the complaint process and law enforcement agencies as a whole.

B. Overview of Civilian Complaint Data

California law enforcement agencies must report the number of civilian complaints received, as well as the disposition of those complaints, to the California DOJ.⁹⁸⁸ Agencies must also report the number of complaints containing allegations of racial and identity profiling that fall into nine categories: age, physical disability, sexual orientation, race/ethnicity, mental disability, gender, religion, gender identity/expression, and nationality.

In 2022, 518 law enforcement agencies were subject to RIPA's stop data reporting requirements (hereafter RIPA agencies) and submitted civilian complaint data to DOJ. These 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, District Attorney Offices, as well as K-12 school district police departments.⁹⁸⁹

This section analyzes the complaint data submitted by RIPA agencies in 2022.

1. Number and Type of Complaints Reported by RIPA Agencies

Roughly three-quarters of RIPA reporting agencies (386, or 74.5%) reported receiving one or more civilian complaints, while the one-fourth of agencies (132, or 25.5%) reported that they did not receive any civilian complaints in 2022. Of the RIPA agencies who did receive complaints in 2022, 165 (42.7%) reported one or more civilian complaints alleging racial or identity profiling.

In total, RIPA agencies reported 10,156 complaints in 2022, across three categories: non-criminal,

⁹⁸⁸ Pursuant to Penal Code section 13012, subdivision (a)(5)(B), complaint dispositions are categorized as: "Sustained" (meaning the investigation disclosed sufficient evidence to prove the truth of the allegation in the complaint by a preponderance of evidence); "Exonerated" (meaning the investigation clearly established that the employee's actions that formed the basis of the complaint were not a violation of law or policy); "Not Sustained" (meaning the investigation failed to disclose sufficient evidence to clearly prove or disprove the complaint's allegation); and "Unfounded" (meaning the investigation clearly established that the allegation is not true).

⁹⁸⁹ For more information on the law enforcement agencies that are required to report under RIPA, see Cal. Code Regs., tit. 11, §§ 999.226–999.227 <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].

misdemeanor, and felony. The majority of complaints alleged non-criminal conduct (9,615, or 94.7%), followed by complaints for conduct that constitutes a misdemeanor offense (412, or 4.1%). Complaints alleging conduct that constitutes a felony were the least common (129, or 1.3%).

RIPA agencies also reported 1,233 complaints alleging an element, or elements, of racial or identity profiling, constituting 12.1 percent of the total complaints reported in 2022. The total number of racial and identity profiling allegations reported to the DOJ (1,395) exceeds the total number of racial and identity profiling complaints (1,233) due to reported allegations of profiling based on multiple identity group characteristics. For example, a civilian may file a complaint alleging they experienced profiling based on both their age and nationality. This example would count as a single complaint with two types of alleged identity profiling.

Figure 67 displays the number of reported allegations that fell into each of the nine identity group types.

Disposition Definitions

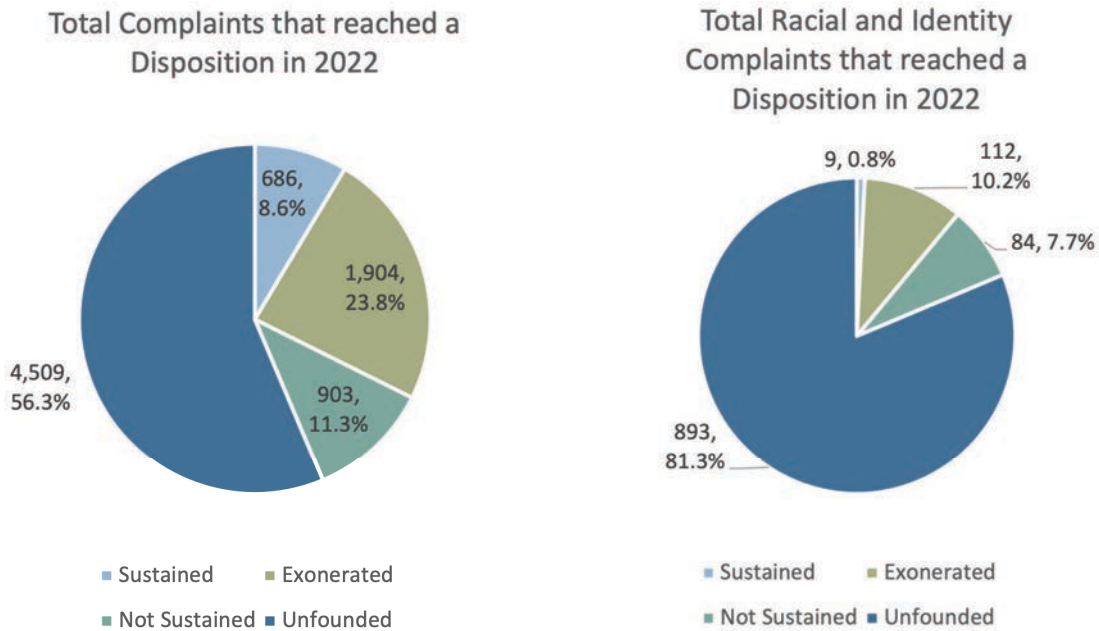
Sustained: investigation disclosed sufficient evidence to prove truth of allegation in complaint by preponderance of evidence.

Exonerated: investigation clearly established that employee's actions that formed basis of allegations in complaint were not a violation of law or agency policy.

Not sustained: investigation failed to disclose sufficient evidence to clearly prove or disprove complaint's allegation.

Unfounded: investigation clearly established that allegation is not true.

Figure 67. Total Allegations of Racial and Identity Profiling Reported in 2022

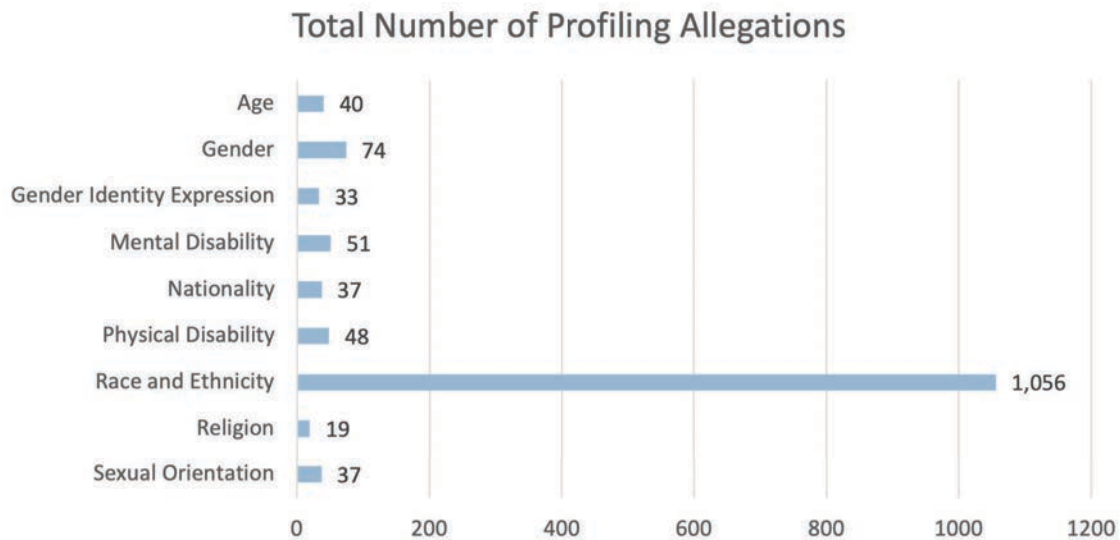


2. Dispositions of Civilian Complaints for RIPA Agencies

Of the 10,156 civilian complaints reported by RIPA agencies in 2022, 8,002 reached a disposition in the 2022 calendar year. Among the 8,002 complaints that reached a disposition in the 2022 calendar year, 696 (8.6%) were sustained, 1,904 (23.8%) were exonerated, 903 (11.3%) were not sustained, and 4,509 (56.3%) were unfounded.⁹⁹⁰

Of the 1,233 complaints alleging racial or identity profiling, 1,098 of which reached disposition in 2022. Among these, nine (0.8%) were sustained, 112 (10.2%) were exonerated, 84 (7.7%) were not sustained, and 893 (81.3%) were determined to be unfounded. Figure 68 displays the distribution of disposition types within the 2022 data for (1) all complaints that reached disposition and (2) complaints of racial and identity profiling that reached disposition.⁹⁹¹

Figure 68. Disposition Distribution of 2022 Complaints



3. Cross-Year Comparisons

Figures 69 through 74 display the total number of complaints and total number of complaints alleging racial and identity profiling submitted by all RIPA reporting agencies in Waves 1 through 3, across five years. Given that Wave 4 is composed of more than 400 agencies, aggregate cross-year comparisons are provided in the body of this section and the individual agency counts are provided in an appendix table.⁹⁹²

a. Wave 1 Agency Complaints Reported (2018-2022)

In 2022, Wave 1 agencies reported 4,554 civilian complaints. This constituted a 1 percent decrease relative to the total number of civilian complaints reported in 2021 (4,602), a 4.5 percent decrease from 2020 (4,768), a 6.5 percent decrease from 2019 (4,872), and an 11.3 percent increase from 2018 (4,091).

The majority of Wave 1 agencies (5 out of 8) experienced a decrease in the number of civilian complaints reported between 2021 and 2022. The agency that experienced the largest decrease was the San Diego Police Department (38.9%, from 203 in 2021 to 124 in 2022), whereas the San

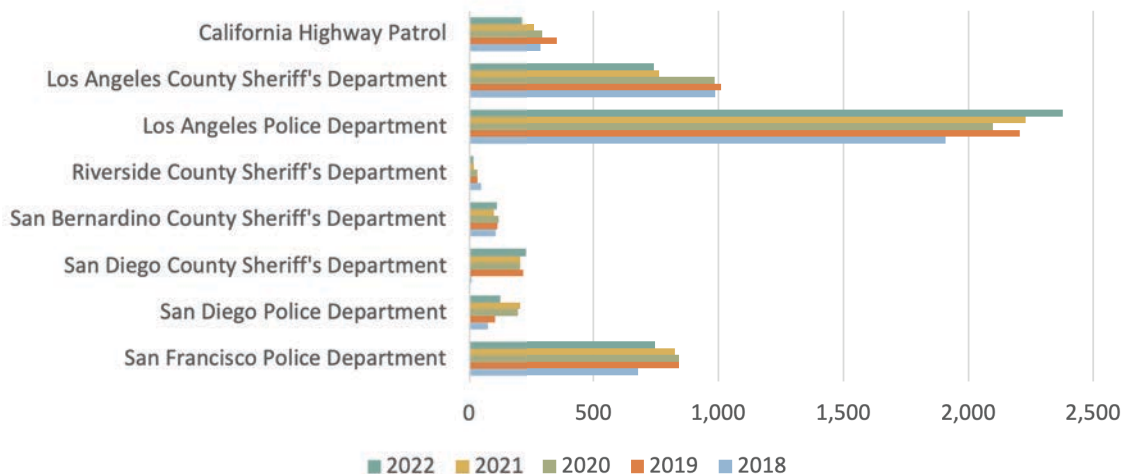
⁹⁹⁰ It is important to note that not every complaint reached a disposition during the same year it was initially reported; therefore, it is possible that some complaints that appeared in the 2022 disposition categories were first reported in 2021 or earlier.

⁹⁹¹ For an agency-level breakdown of how many profiling complaints reached each disposition type in 2022, see Appendix A, Table A.24.

⁹⁹² Appendix A, Table A.23.

Bernardino County Sheriff’s Department experienced the largest relative increase (11.2%, from 98 in 2021 to 109 in 2022) in complaints between 2021 and 2022.

Figure 69. Wave 1 Total Complaints Reported

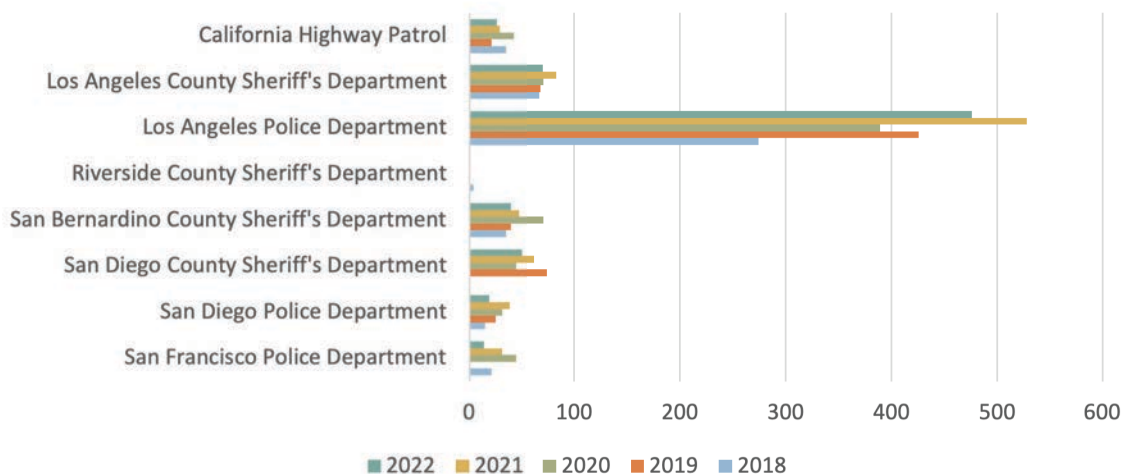


b. Wave 1 Total Racial and Identity Profiling Complaints (2018-2022)

Figure 69 displays the total number of racial and identity profiling complaints reported by Wave 1 agencies from 2018 to 2022. The total number of racial and identity profiling complaints reported was 694 in 2022, which is a 15.2 percent decrease from 2021 (818), a 0.3 percent increase from 2020 (692), a 6.3 percent increase from 2019 (653) and a 53.5 percent increase from 2018 (452).

During the 2022 calendar year, all but one Wave 1 agency (7 out of 8) experienced a decrease in the number of racial and identity profiling civilian complaints reported between 2021 to 2022. The San Francisco Police Department had the largest relative decrease (54.8%, from 31 in 2021 to 14 in 2022), whereas the Riverside County Sheriff’s Department has not reported a racial and identity profiling civilian complaint since 2018.

Figure 70. Wave 1 Total Racial and Identity Profiling Complaints Reported

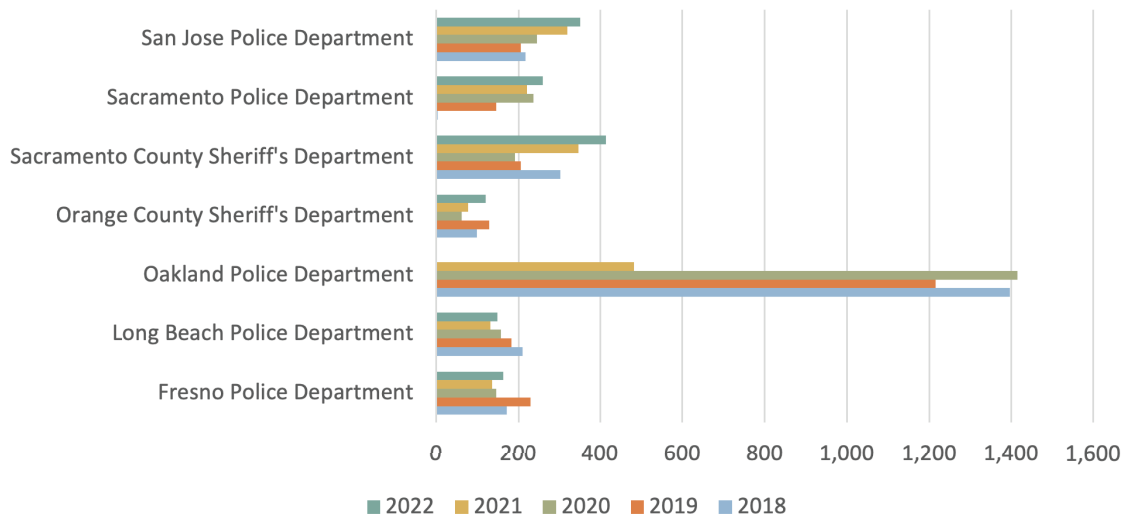


iii. Wave 2 Agency Total Complaints Reported (2018-2022)

Wave 2 agencies reported 1,458 complaints in 2022, representing a 15 percent decrease from 2021 (1,715), a 40.6 percent decrease from 2020 (2,454), a 37 percent decrease from 2019 (2,313), and a 39.2 percent decrease from 2018 (2,399).

The majority of Wave 2 agencies (6 out of 7) experienced an increase in the total number of civilian complaints reported between 2021 and 2022. The agency that experienced the largest relative increase was the Orange County Sheriff’s Department (55.8%, from 77 in 2021 to 120 in 2022). Figures 70 and 71 do not contain 2022 data for the Oakland Police Department because this agency reported to the DOJ that it was unable to report civilian complaint data within the collection timeframe due to a ransomware attack on its system.

Figure 71. Wave 2 Total Complaints Reported

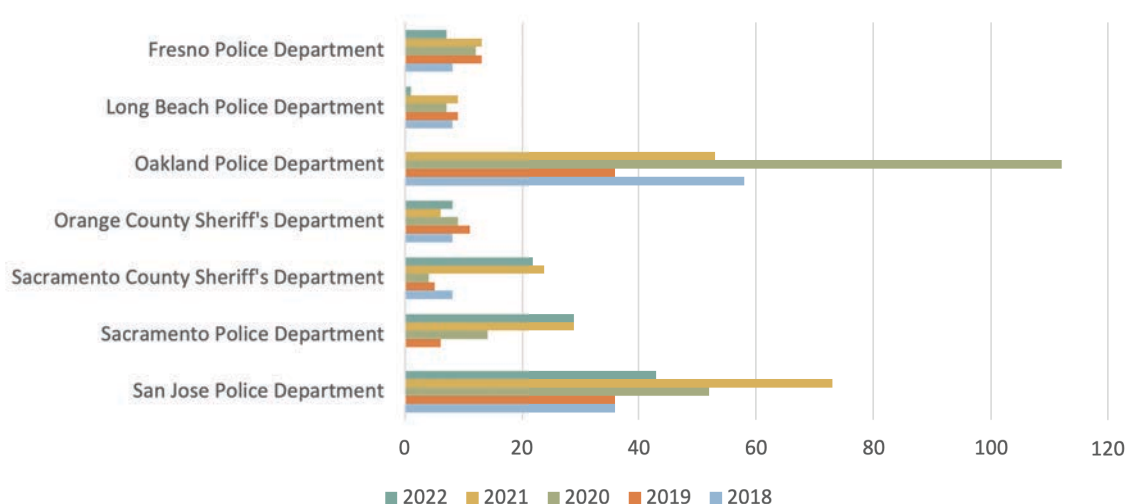


iv. Wave 2 Racial and Identity Profiling Complaints (2018-2022)

Wave 2 agencies reported a 46.9 percent decrease in racial and identity profiling complaints from 2021 to 2022 (from 207 in 2021 to 110 in 2022). This also constitutes a decrease in racial and identity profiling complaints reported by Wave 2 agencies, relative to the four years preceding 2022: a 46.9 percent decrease from 2021 (207), a 47.6 percent decrease from 2020 (210), a 5.2 percent decrease from 2019 (116), and a 12.7 percent decrease from 2018 (126).

The majority of Wave 2 agencies (4 out of 7) experienced a decrease in the number of racial and identity profiling complaints between 2021 and 2022. The Long Beach Police Department experienced the largest relative decrease (88.9%, from 9 in 2021 to 1 in 2022). The Orange County Sheriff's Department experienced the sole increase of Wave 2 agencies (33.3%, from 6 in 2021 to 8 in 2022). One agency, the Sacramento Police Department, reported the same number of racial and identity profiling complaints (29) in 2021 and 2022.

Figure 72. Wave 2 Total Racial and Identity Profiling Complaints Reported

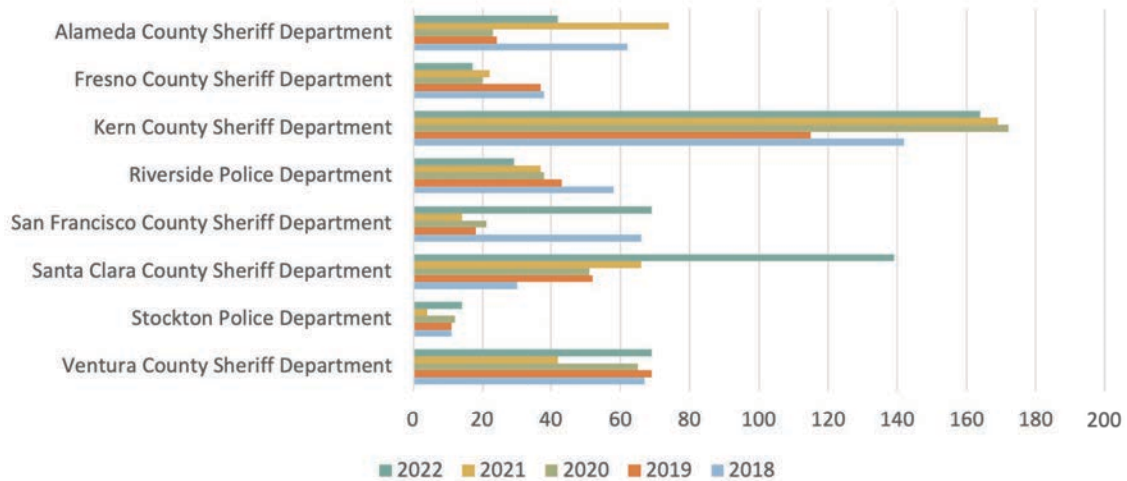


v. Wave 3 Total Complaints Reported (2018-2022)

Wave 3 agencies reported 543 complaints in 2022. This was a 26.9 percent increase from 2021 (428), a 35.1 percent increase from 2020 (402), a 47.2 percent increase from 2019 (369), and a 14.6 percent increase from 2018 (474).

Of the eight Wave 3 agencies, half experienced a decrease whereas the other four agencies experienced an increase in the total number of civilian complaints reported between 2021 and 2022. The agency that experienced the largest decrease was the Alameda County Sheriff's Department (43.2%, from 74 in 2021 to 42 in 2022). The San Francisco County Sheriff's Department experienced the largest relative increase (392.9%, from 14 in 2021 to 69 in 2022).

Figure 73. Wave 3 Total Complaints Reported

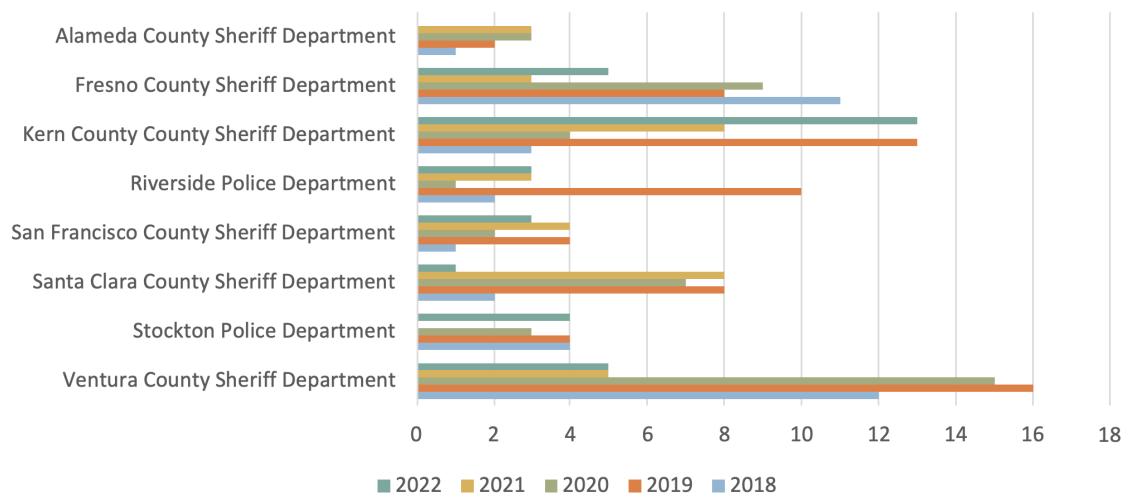


vi. Wave 3 Racial and Identity Profiling Complaints (2018-2022)

Wave 3 agencies reported the same number of racial and identity profiling complaints in 2021 and 2022 (34). This represents a 22.7 percent decrease from 2020 (44), a 58.5 percent decrease from 2019 (82), and a 5.6 percent decrease from 2018 (36).

Of the eight Wave 3 agencies, three experienced a decrease and three experienced an increase in the number of racial and identity profiling complaints between 2021 and 2022. The Alameda County Sheriff’s Department experienced the largest relative decrease (100%, from 3 in 2021 to 0 in 2022), whereas the Stockton Police Department experienced the largest relative increase (from 0 in 2021 to 4 in 2022). The Ventura County Sheriff’s Department (5) and Riverside Police Department (3) reported the same number of complaints in 2021 and 2022.

Figure 74. Wave 3 Total Racial and Identity Profiling Complaints Reported



vii. Wave 4 Total Complaints Reported (2018-2022)

Wave 4 agencies reported 3,601 complaints in 2022. This was a 7.7 percent increase from 2021 (3,343), a 12.1 percent increase from 2020 (3,211), a 0.4 percent increase from 2019 (3,587), and an 11.7 percent increase from 2018 (3,224).⁹⁹³

viii. Wave 4 Racial and Identity Profiling Complaints (2018-2022)

Wave 4 agencies reported a 7.6 percent increase in racial and identity profiling complaints from 2021 to 2022 (from 367 in 2021 to 395 in 2022). This also constitutes an increase relative to the four years preceding 2022: an 18.6 percent increase from 2020 and 2019 (333), and a 29.5 percent increase from 2018 (305).

C. Reforming the Civilian Complaint Process

1. There Is No Uniform Definition of “Civilian Complaint”

While California law enforcement agencies are required to report civilian complaint data, the law does not define what constitutes a “civilian complaint.”⁹⁹⁴ This is a significant issue because the lack of a uniform definition affords law enforcement agencies discretion to determine what community feedback is treated as a civilian complaint and, thus, which incidents are investigated, reported, and retained.

These decisions may vary from agency to agency and could potentially impact the validity of the RIPA complaint data, to the extent some agencies may report fewer complaints than others, even when the number of complaints received by the agencies is the same. For example, the classification of complaints as “inquiries,” rather than complaints to be investigated, could cause them to be handled differently by an agency and result in a lower number of reported complaints. Similarly, the classification of a complaint as “internal” or “external” can result in different reporting requirements, also skewing the number of reportable complaints and potentially subjecting complaints to different investigatory procedures.

Disparate treatment of complaints between agencies can also result in some community members being denied access to the complaints process, based solely on the location of the complaint. In other words, the same complaint may be treated as a civilian complaint in one agency, but treated as an informal inquiry in another, based on agencies’ varying definitions of “civilian complaint.”

a. Board Recommendation to the Legislature and Law Enforcement Agencies

The Board first identified the lack of a uniform definition of “civilian complaint” in its 2020 Report⁹⁹⁵ and recommended in its 2022 Report that the Legislature define “civilian complaint.”⁹⁹⁶ Since no definition of “civilian complaint” has been adopted, the Board reiterates its recommendation 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

993 The number of Wave 4 agencies exceeds 400. Accordingly, complaint counts for all Wave 4 agencies cannot be displayed within a single graphic in the body of this report. Instead, the cross-year total complaints and racial and identity complaint totals for individual Wave 4 agencies are contained within Appendix A, Table A.23.

994 See Pen. Code, § 832.5, subd. (d).

995 Racial and Identity Profiling Advisory Board, *2020 Report*, *supra* note 859, at pp. 65–67.

996 Racial and Identity Profiling Advisory Board, *2022 Report*, *supra* note 8, at p. 229.

*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.*⁹⁹⁷

The Board urges the Legislature to implement this recommendation in 2024 to provide clear guidance to law enforcement agencies regarding the meaning of “civilian complaint,” prevent disparities in the RIPA complaint data, and ensure that all community members have equal access to the complaints process.

Absent legislative action, the Board also urges local law enforcement agencies to adopt this definition in developing and updating their civilian complaint policies.

2. Complaint Investigations Should Include Review of Video Footage

In addition to standardizing the definition of civilian complaints, agencies should also work to make their complaint investigation procedures as objective as possible, to ensure that the outcome accurately reflects what occurred during a police interaction and how those events relate to departmental policy.

To that end, video footage from sources such as body-worn and dashboard cameras, CCTV cameras, police drones, and cellphones can be an important piece of evidence that should not be overlooked in the investigation of civilian complaints.⁹⁹⁸ While these recordings may not capture every fact relevant to a complaint investigation,⁹⁹⁹ they nevertheless provide objective evidence of police encounters, which can help complaint investigators impartially assess the allegations of a complaint, benefitting the community and law enforcement agencies in several ways.

First, video footage can improve the accuracy of complaint dispositions. By reviewing video footage, complaint investigators can independently observe what occurred during a police interaction, without relying solely on individuals’ recollections of events.¹⁰⁰⁰ In turn, investigators can more accurately determine whether a particular incident occurred as alleged and whether the documented actions amount to misconduct.¹⁰⁰¹ Some research supports this notion. For example, in Chicago, an analysis of 2,117 complaints over an eight-year period showed that complaints were 9.9 percent more likely to be “sustained” after body-worn camera footage was reviewed.¹⁰⁰² The number of complaints that were “not sustained” due to a lack of sufficient evidence also decreased over time.¹⁰⁰³ The decrease in

997 *Ibid.*

998 See Thurnauer, *Best Practices Guide: Internal Affairs: A Strategy for Smaller Departments* (2015) Internat. Assn. of Chiefs of Police, p. 2 <<https://www.theiacp.org/sites/default/files/2018-08/BP-InternalAffairs.pdf>> [as of Nov. 15, 2023] (noting that video records from civilians and law enforcement are important to internal investigations).

999 See Remsberg, *10 Limitations of Body Cams You Need To Know For Your Protection* (Oct. 1, 2014) Force Science <<https://www.forcescience.com/2014/10/10-limitations-of-body-cams-you-need-to-know-for-your-protection/>> [as of Nov. 15, 2023] (noting that body-worn cameras may not capture what an officer perceives to be happening — for example, camera footage may not capture where the officer is looking within the scene or tactile cues the officer perceives, such as a person’s tension in response to being restrained; alternatively, body-worn cameras may capture something that an officer did not perceive in the moment).

1000 See, e.g., Chapman, *Body-Worn Cameras: What the Evidence Tells Us* (Nov. 14, 2018) National Institute of Justice <<https://nij.ojp.gov/topics/articles/body-worn-cameras-what-evidence-tells-us>> [as of Nov. 15, 2023] (“Video footage captured during . . . officer-community interactions might provide better documentation to help confirm the nature of events and support accounts articulated by officers and community residents.”); Çubukçu et al., *The Effect of Body-Worn Cameras on the Adjudication of Citizen Complaints of Police Misconduct* (June 21, 2023) Justice Quarterly, p. 3 <<https://doi.org/10.1080/07418825.2023.2222789>> [as of Nov. 15, 2023] (noting the public’s belief that body-worn camera footage provides “‘objective’ evidence of ‘what really happens’ during police-citizen encounters”).

1001 See Çubukçu et al., *The Effect of Body-Worn Cameras on the Adjudication of Citizen Complaints of Police Misconduct*, *supra* note 1000, at p. 2 (finding support for the idea that review of body-worn camera footage can facilitate more impartial complaint investigations and reduce racial disparities in complaint dispositions).

1002 *Id.* at p. 14.

1003 *Id.* at p. 15.

“not sustained” complaints was particularly notable for Black and Latine(x) complainants, compared to White complainants, meaning that the rollout of body-worn cameras was also associated with reductions in racial disparities in the complaint process.¹⁰⁰⁴

These improvements in the accuracy of complaint dispositions can have even larger impacts on agencies and the community. For example, incorporating review of video footage into complaint investigations demonstrates transparency, which may improve the perceived legitimacy of the complaints process by both members of the community and law enforcement, since complaint dispositions are more likely to reflect what actually occurred during a police interaction.¹⁰⁰⁵ Law enforcement officers may also welcome the use of video footage because it can exonerate them if the footage shows their actions were lawful and followed agency policy.¹⁰⁰⁶

Second, reviewing video footage can help conserve police resources that would otherwise be expended through the complaint investigation process. For example, review of body-worn camera footage has been shown to lead to a quicker resolution of complaints,¹⁰⁰⁷ which can reduce the amount of time and financial resources needed to investigate complaints.¹⁰⁰⁸ Video footage may also lead to a decrease in the total number of complaints received,¹⁰⁰⁹ potentially resulting in a cost savings to the agency. For example, while body-worn cameras do not necessarily reduce the number of complaints an agency receives,¹⁰¹⁰ some agencies have experienced a reduction of complaints by nearly 20 percent following the implementation of body-worn cameras.¹⁰¹¹ This reduction may be due to a “civilizing effect” of

1004 *Ibid.*

1005 See California Peace Officers' Association, *Fact Sheet – Body Cameras* (2016) p. 1 <<https://cpoa.org/wp-content/uploads/2016/04/Body-Cameras.pdf>> [as of Nov. 15, 2023] (noting that body-worn cameras can increase transparency and improve citizen views of police legitimacy).

1006 See *id.* at p. 1 (noting that body-worn cameras can reduce the number of frivolous complaints against officers); Braga et al., *The Benefits of Body-Worn Cameras: New Findings from a Randomized Controlled Trial at the Las Vegas Metropolitan Police Department (The Benefits of Body-Worn Cameras)* (Sept. 28, 2017) U.S. DOJ National Criminal Justice Reference Service, pp. 3, 34 <<https://www.ojp.gov/pdffiles1/nij/grants/251416.pdf>> [as of Nov. 15, 2023] (noting that body-worn cameras can protect officers from civilian complaints).

1007 See Chapman, *Body-Worn Cameras: What the Evidence Tells Us*, *supra* note 1000 (“Video captured by body-worn cameras may help corroborate the facts of the encounter and result in a quicker resolution.”); see also McClure et al., *How Body Cameras Affect Community Members' Perceptions of Police* (Aug. 2017) Urban Inst., p. 3 <https://www.urban.org/sites/default/files/publication/91331/2001307-how-body-cameras-affect-community-members-perceptions-of-police_4.pdf> [as of Nov. 15, 2023] (body-worn camera footage can provide evidence to disprove or substantiate allegations against police and expedite the resolution of complaints).

1008 See Yokum et al., *Evaluating the Effects of Police Body-Worn Cameras: A Randomized Controlled Trial* (Oct. 20, 2017) The Lab @ DC, p. 2 <https://bwc.thelab.dc.gov/TheLabDC_MPD_BWC_Working_Paper_10.20.17.pdf> [as of Nov. 15, 2023] (“Camera footage could help resolve cases in a more timely, judicious manner that makes more efficient use of investigative resources.”); see also Corley, *Study: Body-Worn Camera Research Shows Drop In Police Use of Force*, NPR (Apr. 26, 2021) <<https://www.npr.org/2021/04/26/982391187/study-body-worn-camera-research-shows-drop-in-police-use-of-force>> [as of Nov. 15, 2023] (estimating a 5 to 1 cost-benefit analysis for implementing body-worn cameras, relative to reductions in the number of complaints and use-of-force investigations).

1009 See Chapman, *Body-Worn Cameras: What the Evidence Tells Us*, *supra* note 1000 (“[r]eductions in citizen complaints were noted” after the introduction of body-worn cameras); Corley, *Study: Body-Worn Camera Research Shows Drop In Police Use of Force*, *supra* note 1008 (complaints dropped by 17% following implementation of body-worn cameras); see also Çubukçu et al., *The Effect of Body-Worn Cameras on the Adjudication of Citizen Complaints of Police Misconduct*, *supra* note 1000, at pp. 6–7 (finding some prior studies have found that body-worn cameras led to fewer use-of-force incidents and fewer citizen complaints, although the data is mixed).

1010 Yokum et al., *Evaluating the Effects of Police Body-Worn Cameras: A Randomized Controlled Trial*, *supra* note 1008, at p. 3 (past studies across the U.S. and U.K. have found no consistent effect of body-worn cameras on the number of use of force incidents or complaints).

1011 See, e.g., Zamoff et al., *Who Watches the Watchmen: Evidence of the Effect of Body-Worn Cameras on New York City Policing* (forthcoming Feb. 7, 2021) J. of Law, Economics & Organization (manuscript at p. 20) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3490785> [as of Nov. 15, 2023] (civilian complaints against NYPD decreased by approximately 20 percent after the introduction of body-worn cameras, even controlling for an increase in the number of stops that resulted from the roll-out of body-worn cameras); Kessler, *Police Body Cams Are Making NYC Safer* (Nov. 15, 2021) <<https://www.gmu.edu/news/2021-12/police-body-cams-are-making-nyc-safer>> [as of Nov. 15, 2023]; Kessler, *New Study Finds NYPD Body Cameras Decrease Citizen Complaints and Arrests* (Nov. 29, 2021) <<https://www.gmu.edu/news/2021-11/new-study-finds-nypd-body-cameras-decrease-citizen-complaints-and>>

cameras, wherein officers and members of the community improve their behavior when a camera is present, potentially leading to fewer uses of force, resistive actions during arrest, and, in turn, fewer complaints against a police agency.¹⁰¹² Alternatively, the presence of cameras may deter the filing of frivolous complaints, since video footage provides objective evidence that may refute a false version of events.¹⁰¹³ But, regardless of the cause, research on the impact of body-worn cameras on civilian complaints suggests that reviewing objective video footage from various sources, including body-worn and dashboard cameras, drones, CCTV, and cellphones, may have the potential to reduce the number of complaints against an agency, even if the reduction does not rise to the level of statistical significance.¹⁰¹⁴

Lastly, reviewing video footage provides agencies an opportunity to go beyond the allegations of a complaint and identify departmental policy violations that may not have been identified by the complainant.¹⁰¹⁵ This can also improve the perceived legitimacy of the complaints process by members of the community by demonstrating an agency's commitment to identifying all misconduct or areas for improvement, rather than limiting their review to specific conduct identified by a complainant. This benefit to the community likely outweighs any concern by officers that reviewing video footage could lead to "fishing expeditions" by supervisors looking to discipline officers for any misconduct shown in video footage,¹⁰¹⁶ since agencies can establish policies or procedures to limit investigators' discretion and ensure consistency in the identification of misconduct. For example, agencies may establish a policy that any and all misconduct that becomes apparent during a complaint investigation must be addressed. Agencies can also establish matrices of the available remedies and disciplinary measures for misconduct to ensure they are consistently applied.

a. Board Recommendation to Law Enforcement Agencies

The Board therefore recommends that all law enforcement agencies review all related video footage in each complaint investigation. This recommendation is intended to expand on the Board's prior best practices for investigatory procedures to ensure that all complaint investigations are thorough and

arrests> [as of Nov. 15, 2023]; Corley, *Study: Body-Worn Camera Research Shows Drop In Police Use of Force*, *supra* note 1008 (complaints dropped by 17 percent following implementation of body-worn cameras).

1012 See McClure et al., *How Body Cameras Affect Community Members' Perceptions of Police*, *supra* note 1007, at p. 3 (noting that body-worn cameras can have a "civilizing effect" on individuals' behavior due to the presence of a camera, which can lead to fewer uses of force, resistance during arrest, and complaints); see also Braga et al., *The Benefits of Body-Worn Cameras*, *supra* note 1006, at p. 33 (some officers in the Las Vegas Metropolitan Police Department reported feeling that body-worn cameras helped prevent some interactions from escalating because of the transparency effect of video footage). But see, e.g., McClure et al., *How Body Cameras Affect Community Members' Perceptions of Police*, *supra* note 1007, at p. 6 (noting that some studies have found body-worn cameras can increase the number of assaults on officers and uses of force) and Braga et al., *The Benefits of Body-Worn Cameras*, *supra* note 1006, at p. 18 (hypothesizing that body-worn camera activations could escalate volatile situations, leading to increased uses of force, when community members are not notified that they are being recorded).

1013 See California Peace Officers' Association, *Fact Sheet – Body Cameras*, *supra* note 1005, at p. 1 (stating that implementation of body-worn cameras can lead to a reduction in frivolous complaints).

1014 See Yokum et al., *Evaluating the Effects of Police Body-Worn Cameras: A Randomized Controlled Trial*, *supra* note 1008, at p. 18 (finding the study could not conclude there was no effect of body-worn cameras on policing activity or the number of complaints).

1015 See Thurnauer, *Best Practices Guide: Internal Affairs: A Strategy for Smaller Departments*, *supra* note 998, at p. 8 (suggesting that investigators can go beyond the allegations in a complaint by "[o]btain[ing], if possible, the name of the officer(s), OR, us[ing] department resources to determine the identity of any officers potentially involved" and "[d]etermin[ing] if the alleged acts of the involved officer(s) violated any rules, regulations or policies of [the] agency"); see also Norwood, *Body Cameras Are Seen as Key to Policy Reform. But Do They Increase Accountability?*, PBS (June 25, 2020) <<https://www.pbs.org/newshour/politics/body-cameras-are-seen-as-key-to-police-reform-but-do-they-increase-accountability>> [as of Nov. 15, 2023] (body-worn camera footage provides an additional opportunity to identify problematic behavior and train officers).

1016 California Peace Officers' Association, *Fact Sheet – Body Cameras*, *supra* note 1005, at p. 2 (expressing concern that body-worn cameras could lead to "fishing expeditions" by supervisors); see also Braga et al., *The Benefits of Body-Worn Cameras*, *supra* note 1006, at pp. 3, 19, 28, 33 (indicating that officers are concerned about supervisors' ability to easily spot policy infractions or minor policy violations when reviewing body-worn camera footage).

objective. Thus, review of video footage should take place in addition to, and generally not replace, other investigatory procedures, such as witness interviews, when investigating civilian complaints.

3. Root-Cause Analysis Should Be Incorporated Into the Civilian Complaint Process

The traditional approach to civilian complaint investigations is retrospective, with a focus on individual culpability.¹⁰¹⁷ Investigators assess whether a particular officer's actions during a past event complied with departmental policy. To the extent any corrective action is taken, it is generally limited to the individual officer(s) subject to a complaint. While this approach may prevent some intentional misconduct by individual officers in the future, it may not be effective in preventing accidental or unintentional misconduct by those same or other officers.¹⁰¹⁸ This is likely because bad outcomes are rarely the result of one person's action; negative outcomes, such as police misconduct, often result from institutional weaknesses that allowed an individual's mistake or intentional misconduct to occur.¹⁰¹⁹

The traditional approach to complaint investigation is not well suited to exploring how shortcomings in a department's training or policies might have led to the conduct at issue in a complaint.¹⁰²⁰ Indeed, the traditional approach might even hinder this inquiry by focusing on individual blame. For example, in an investigation focused solely on whether an individual officer acted appropriately, the officer may be reluctant to share negative information from the event, such as their inability to recall the applicable training or policies in the moment, since it could lead to discipline.¹⁰²¹ In turn, the agency would not be

- 1017 See, e.g., Hollway et al., *Root Cause Analysis: A Tool to Promote Officer Safety and Reduce Officer Involved Shootings Over Time (Root Cause Analysis)* (Dec. 15, 2017) p. 886 <<https://www.law.upenn.edu/live/files/7459-hollway--villanova-rca-for-policing>> [as of Nov. 15, 2023] (“Existing review mechanisms are based on retrospective accountability and evaluate whether the officer . . . or some third party bears blame.”); Browning et al., *Paving the Way: Lessons Learned in Sentinel Event Reviews (Paving the Way)* (Nov. 2015) National Institute of Justice, p. 2 <<https://www.ojp.gov/pdffiles1/nij/249097.pdf>> [as of Nov. 15, 2023] (“Although most criminal justice agencies already have error-detecting procedures in place – police internal affairs reviews, for example, or prosecutors’ professional ethics boards – these often become ‘gotcha’ processes that focus on assigning individual blame.”)
- 1018 See Hollway et al., *Root Cause Analysis*, *supra* note 1017, at pp. 886–889 (“Such measures which focus on individual culpability may deter police from shootings caused by deliberate or intentional misconduct[, but] [t]hey have failed to reduce the occurrence of accidental or unintentional acts or encounters that escalate into an [officer-involved shooting] . . . only occasionally will disciplining the officer be sufficient to prevent the next OIS” in instances where the shooting was not deliberate or intentional.)
- 1019 See, e.g., Ritter, *Testing a Concept and Beyond: Can the Criminal Justice System Adopt a Nonblaming Practice?* (Dec. 1, 2015) National Institute of Justice <<https://nij.ojp.gov/topics/articles/testing-concept-and-beyond-can-criminal-justice-system-adopt-nonblaming-practice>> [as of Nov. 15, 2023] (“[W]hen a bad outcome occurs in a complex social system – like our criminal justice system – it is rarely the result of one person’s mistake. Rather, multiple errors combine and are exacerbated by underlying weaknesses in the system.”); Browning et al., *Paving the Way*, *supra* note 1017, at p. 1 (“When bad things happen in a complex system, the cause is rarely a single act, event or slip-up. More often, bad outcomes are ‘sentinel events[,]’ which “[s]ignal[] underlying weaknesses in a system or process” and are “likely the result of compound errors.”); Friend et al., *Sentinel Event Reviews in the Criminal Justice System: A Review of the Literature (Sentinel Event Reviews in the Criminal Justice System)* (Mar. 22, 2020) Criminal Justice Studies, p. 4 <<https://doi.org/10.1080/1478601X.2020.1741227>> [as of Nov. 15, 2023] (“[W]hile punitive measures will change individual behavior, it will not alter the organizational structures that result in errors in criminal justice. Instead, the key to reform is to change the system, and root cause analysis is encouraged as the best way in which to find determinants of behaviors that will be adopted and sustained by understanding the organizational roots of individual behavior.”).
- 1020 See Hollway et al., *Root Cause Analysis*, *supra* note 1017, at pp. 884, 886–887 (“[I]t is not clear that our systems for evaluating a past [officer-involved shooting] through administrative reviews, civilian oversight, or civil and criminal litigation are effective in understanding how to learn from past OIS or how to prevent the next OIS from occurring”) and p. 916 (“Because behavior is more likely to conform to culture than rules, solutions that fail to address systemic risk factors beyond the reach of an office’s rules will fall short of altering a force’s conduct.”).
- 1021 See Friend et al., *Sentinel Event Reviews in the Criminal Justice System*, *supra* note 1019, at p. 3 (existing systems to detect errors in police agencies, such as internal affairs reviews, are “designed to assign blame and therefore create motivations not to report or detect problems”); see also Browning et al., *Paving the Way*, *supra* note 1017, at p. 2 (existing error-detecting procedures “often become ‘gotcha’ processes that focus on assigning individual blame,” which can then drive reporting of errors underground).

made aware of a potential deficiency in its training and policies, and other officers may be subjected to additional complaints in the future if they encounter similar circumstances without additional guidance from the agency.

This narrow focus of traditional complaint investigations on individual events and blame can have negative consequences for both members of the community and law enforcement. Community members may be unnecessarily subjected to inappropriate interactions with law enforcement, which could be otherwise remedied through departmental training. And, for law enforcement, the possibility of being subjected to a complaint and disciplined for a department-wide shortcoming can diminish morale.

Accordingly, the Board strongly encourages law enforcement agencies to approach civilian complaints from a broader perspective, to not only address allegations of individual misconduct but also learn from past events to prevent future misconduct. Complaints should be viewed as an opportunity for law enforcement agencies to identify weaknesses within their organization, reduce negative outcomes stemming from those weaknesses in the future, and strengthen their relationship with the community. To that end, agencies should utilize information learned through complaint investigations to identify areas for improvement throughout an agency, after addressing specific allegations of individual misconduct. One way to do this is by incorporating the principles of root cause analysis into the complaint process.¹⁰²²

Root cause analysis is a problem-solving technique that aims to identify the underlying factors that contributed to an incident and take action to prevent undesirable outcomes in the future.¹⁰²³ At its core, it is a “prospective, non-blaming ‘systems approach’ to preventing error in complex human systems.”¹⁰²⁴ Root cause analysis asks why an incident occurred in the first place, analyzing environmental, informational, situational, supervisory, and individual factors that contributed or led to an incident, instead of focusing only on an individual officer’s competence or negligence in the moment.¹⁰²⁵ While many law enforcement agencies already conduct root cause analyses for certain “sentinel events,” such as officer shootings or deaths in custody, the technique is often not incorporated into the civilian complaint process, forgoing opportunities to identify and correct systemic weaknesses that may impact an agency and the community on a more regular basis.

In light of this, the Board strongly encourages law enforcement agencies to incorporate root cause analysis into their civilian complaint process. The Board hopes to provide specific recommendations in next year’s Report to help law enforcement agencies apply root cause analysis in the complaints process. In the interim, the Board offers the following discussion as guidance.

a. Root Cause Analysis Should Be Separate from Complaint Investigations

Root causes of negative events should be analyzed after, or parallel to, investigating the allegations of a complaint.¹⁰²⁶ This ensures that individual misconduct can still be subject to discipline through

1022 See Hollway et al., *Root Cause Analysis*, *supra* note 1017, at pp. 890–891 (“The standard administrative accountability mechanisms commonly used in policing today are necessary but insufficient to truly improve the safety and effectiveness of law enforcements, and root cause analysis and a culture of continuous learning from error should be added to [law enforcement agencies’] arsenal of quality improvement initiatives in policing.”); Friend et al., *Sentinel Event Reviews in the Criminal Justice System*, *supra* note 1019, at p. 4 (“[T]he key to reform is to change the system, and root cause analysis is encouraged as the best way in which to find determinants of behaviors that will be adopted and sustained by understanding the organizational roots of individual behavior.”); see also Baer, *The Mollen Commission Report: An Overview* (1995) 40 N.Y.L. Sch. L.Rev. 73 (reviewing NYPD data to suggest that root cause analysis is important to make agency-wide change).

1023 Hollway et al., *Root Cause Analysis*, *supra* note 1017, at pp. 884, 903.

1024 *Id.* at p. 884.

1025 *Id.* at pp. 887–888.

1026 See *id.* at p. 887 (“[Root cause analysis] is not a substitute for current mechanisms for accountability and remediation. Rather, it serves as a necessary complement to those retrospective mechanisms, providing a forward-looking form of event review focused on community and officer safety, seeking to prevent future undesired outcomes and gradually improving the safety of a system through targeted reforms over time.”).

complaint investigations, while also encouraging the free sharing of information in a blame-free environment as agencies explore the root causes of misconduct or organizational weaknesses in a separate process.¹⁰²⁷ Conducting root cause analysis separate from complaint investigations can also help ensure compliance with existing confidentiality and privilege laws.

b. Agencies Should Establish Guidelines for When to Conduct Root-Cause Analysis

Law enforcement agencies should establish criteria to identify when root cause analysis is warranted. Agencies may choose to evaluate complaints one by one, after the investigation is complete, or if an audit of complaint data reveals trends requiring further analysis. For example, if an audit reveals numerous complaints of racial profiling stemming from a particular station, the agency may choose to conduct root cause analysis of a grouping of related complaints.

However, agencies may need to consider the age of a complaint when deciding whether root cause analysis is appropriate, since some evidence — such as an officer’s recollection of why they acted in a particular manner — may become less reliable with the passage of time. For example, if an agency only relies on an annual audit of complaint data to determine whether root cause analysis is needed for a particular complaint, the officer may be unable to recall exactly why they acted in the manner alleged in the complaint and the agency will be hindered in its ability to identify the root cause of their behavior. Thus, agencies may need to determine the need for root cause analysis by looking at individual complaints at their inception and after reviewing agency-wide audits of complaints.

While some agencies may be inclined to rule out or delay root-cause analysis for complaints where litigation is pending,¹⁰²⁸ the Board does not believe that pending litigation should be a determining factor. In fact, root cause analysis of such incidents may greatly assist an agency in crafting and implementing reforms.

The Board also encourages agencies to establish guidelines to identify which types of complaints, or trends within complaints, warrant root cause analysis. In general, root cause analysis may be warranted when a police interaction resulted in an undesirable outcome that was likely the outcome of compound errors and systemic weaknesses within the agency.¹⁰²⁹ An event need not be “big” to warrant root cause analysis.¹⁰³⁰ Agencies should look for events that implicate more than a single actor or single cause.¹⁰³¹ Events that are widely recognized within the agency as problematic, but which occur so frequently they are commonplace, are also well suited to root cause analysis.¹⁰³² To that end, agencies should aim to conduct root cause analysis when there are repeated complaints of racial or identity profiling.

1027 See *id.* at p. 894 (distinguishing root cause analysis from administrative or internal affairs reviews because, in those reviews where the main purpose is to determine whether to discipline an officer, “it is reasonable to assume that the officer will provide as positive a depiction of the officer’s performance as possible, and limit the transfer of negative information, thereby limiting the full understanding of the event in question.”).

1028 See Browning et al., *Paving the Way*, *supra* note 1017, at pp. 3–5.

1029 See *id.* at pp. 1, 4–5.

1030 See Doyle, *Learning from Error in the Criminal Justice System: Sentinel Event Reviews* (Sept. 2014) National Institute of Justice, p. 14 <<https://www.ojp.gov/pdffiles1/nij/247141.pdf>> [as of Nov. 15, 2023] (“Many experts at the NIJ roundtable noted that there is no particular correlation between how much can be learned from an episode and its ‘bigness.’ In fact, notoriety might inhibit the innovative efforts of early adopters, and smaller events could yield the most informative accounts.”).

1031 See Browning et al., *Paving the Way*, *supra* note 1017, at p. 4.

1032 *Ibid.*

c. Agencies Should Establish Guidelines for Who Can Participate in Root Cause Analysis

A designated team should conduct root cause analysis.¹⁰³³ Experts generally recommend that the team consist of four to 10 members.¹⁰³⁴ Members of the team can include agency officials who can help make system-wide changes, as well as individuals with on-the-ground experience, such as officers.¹⁰³⁵ Agencies may also consider including members of the public, such as current or past complainants and advocates, to provide additional perspectives.¹⁰³⁶

One person on the team should be designated as the leader, who is responsible for facilitating the root cause analysis process. Specifically, the leader may be responsible for providing introductory training on root cause analysis to the other reviewers on the team, gathering documentary and witness evidence, compiling a timeline of events, and moderating discussion among team members.¹⁰³⁷ The leader must have sufficient time to lead the root cause analysis process.¹⁰³⁸ Leaders should also be well informed about the root cause analysis process, intellectually curious, have good interpersonal skills, and be someone who others perceive as trustworthy.¹⁰³⁹

A note-taker should also be designated for each root cause analysis.¹⁰⁴⁰ The note-taker should not participate in the analysis and, instead, should be responsible for keeping minutes, compiling documentation, and tracking tasks for follow-up.¹⁰⁴¹

d. Agencies Should Establish Guidelines for How to Conduct Root Cause Analysis

Agencies should also establish guidelines to standardize how root cause analysis is conducted, once it is deemed necessary. These guidelines should include the minimum expectations for each phase of root cause analysis, including the fact-finding phase, causal analysis, and the development and assessment of remedies.

Once an agency determines that a complaint warrants root cause analysis, it must begin the fact-finding phase. The goal of the fact-finding phase is to understand why the incident happened the way it did. Agencies should begin by creating a timeline or diagram of the event, reflecting the specific actions, or sub-events, that occurred from start to finish.¹⁰⁴² Each sub-event should derive directly from the

1033 Montgomery County, Pennsylvania District Attorney's Office and University of Pennsylvania Quattrone Center for the Fair Administration of Justice, *Using Root Cause Analysis to Instill a Culture of Self-Improvement* (Apr. 2015) p. 4 <<https://www.law.upenn.edu/live/files/4291-impact-report-root-cause-analysis>> [as of Nov. 15, 2023]; see also Hollway et al., *Root Cause Analysis*, *supra* note 1017, at p. 883.

1034 See, e.g., Montgomery County, Pennsylvania District Attorney's Office and University of Pennsylvania Quattrone Center for the Fair Administration of Justice, *Using Root Cause Analysis to Instill a Culture of Self-Improvement*, *supra* note 1033, at p. 4; Hollway et al., *Root Cause Analysis*, *supra* note 1017, at p. 883; Friend et al., *Sentinel Event Reviews in the Criminal Justice System*, *supra* note 1019, at p. 4.

1035 Browning et al., *Paving the Way*, *supra* note 1017, at pp. 5–6.

1036 See, e.g., Friend et al., *Sentinel Event Reviews in the Criminal Justice System*, *supra* note 1019, at p. 7 (stating that the purpose of sentinel event reviews in the criminal justice context is to “convene a review process in which all panel stakeholders, including law enforcement officers, prosecutors, judges, victims, advocates, and other relevant parties, conduct a forward-looking review of a sentinel event . . .”); Browning et al., *Paving the Way*, *supra* note 1017, at p. 5 (stating that agencies should “[c]onsider the pros and cons of including members of the community, who can ask the basic questions and help provide a larger community perspective”).

1037 See Hollway and Grunwald, *Applying Sentinel Event Reviews to Policing* (2019) 18 *Criminol. & Pub. Pol'y* 705, 716.

1038 See Browning et al., *Paving the Way*, *supra* note 1017, at p. 6.

1039 See *id.* at p. 7.

1040 *Id.* at p. 6.

1041 *Ibid.*

1042 See *id.* at p. 9 (suggesting that agencies conducting sentinel event reviews “[d]evote time to building and reviewing a timeline to fill in gaps in individual knowledge of what happened and when”); see also Hollway and Grunwald, *Applying Sentinel Event Reviews to Policing*, *supra* note 1037, at pp. 716–717 (noting that the moderator of sentinel event review of the Lex Street Massacre prepared a “detailed timeline of people, places, and actions – beginning with the crime itself and leading up to the discovery of the error,” which then helped identify potential participants in the review).

preceding one.¹⁰⁴³ This timeline or diagram should be based on the facts learned during the complaint investigation and should tell the story of the event.¹⁰⁴⁴

From there, agencies should begin the causal-analysis phase, with the goal of identifying all factors that led to or contributed to the event.¹⁰⁴⁵ This phase should include robust discussion of each event in the timeline, by all participating stakeholders, in order to identify exactly why an event occurred the way it did. If multiple causes or contributing factors are identified, the stakeholders should note each and separately analyze whether any other factors caused or contributed to them. It is important that each cause or contributing factor is distilled as much as possible, to identify the underlying factors with specificity. One way to guide this discussion is to continuously ask why something occurred, until no further factors are identified. Agencies may also consider developing a standardized set of questions to ask during each root cause analysis meeting, to facilitate the discussion and ensure that the necessary information is developed.

Once an agency identifies the ultimate causes and contributing factors, stakeholders should continue their discussion to develop remedies. Remedies should be specific and prioritized to make the greatest impact. For example, if root cause analysis indicates that a dispatcher’s description of events contributed to an officer’s perception of risk in an incident that resulted in a complaint of racial profiling, corrective actions can include additional training to help dispatchers provide relevant information to officers while minimizing potential bias. However, the discussion should not stop once remedies are devised; a procedure should be established to ensure that the remedies have their intended effect. This may consist of an additional audit of complaint data at specified intervals to evaluate the effectiveness of remedies developed through the root cause analysis process. For example, an agency may choose to look specifically at the number of racial profiling complaints regarding a particular station and the nature of the allegations to evaluate whether a revised policy is having its intended effect of discouraging a particular type of conduct.

e. Board Recommendation to Law Enforcement Agencies

Ultimately, agencies should aim to encourage a culture of continuous learning within the civilian complaint process to identify and learn from police interactions with the public, and, in turn, minimize risks to officer safety and harm to the community. To that end, the Board strongly encourages law enforcement agencies to incorporate root cause analysis into their civilian complaint process.

D. Vision for Future Reports

The Board remains committed to analyzing civilian complaint data and practices in order to make the complaint process more meaningful to members of law enforcement and the community. In the coming years, the Board hopes to look closer at trends in complaint data over time and develop further recommendations to help law enforcement agencies incorporate root cause analysis into the complaint process.

1043 Centers for Medicare & Medicaid Services QAPI, *Guidance for Performing Root Cause Analysis (RCA) with Performance Improvement Projects (PIPs)* (undated) <<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/QAPI/Downloads/GuidanceforRCA.pdf>> [as of Nov. 15, 2023].

1044 *Ibid.*

1045 *Ibid.*

POST TRAINING & RECRUITMENT

A. Introduction

The Commission on Peace Officer Standards and Training (POST) plays an important role in developing and updating guidelines and law enforcement training for all peace officers in California. For training aimed at ending racial profiling specifically, RIPA establishes “[t]he course or courses of instruction and the guidelines shall stress understanding and respect for racial, identity, and cultural differences, and development of effective, non-combative methods of carrying out law enforcement duties in a diverse racial, identity, and cultural environment.”¹⁰⁴⁶

The RIPA Board is statutorily mandated to review and analyze law enforcement training, and Penal Code section 13519.4, subdivision (h), requires POST to consult with the Board on its development of racial and identity profiling courses.¹⁰⁴⁷ Over the past seven years, the Board has conducted extensive reviews of the training and curriculum materials provided by POST. The RIPA data show that across all years of the RIPA data collection (2018-2022), disparities persist in how individuals perceived as Black, Hispanic/Latine(x), and transgender are treated.¹⁰⁴⁸ The partnership between the Board and POST, designed to strengthen training on racial and identity profiling, can make both communities and law enforcement safer by reducing disparate treatment towards individuals and communities and thereby fostering a greater trust of law enforcement within those communities.

POST Subcommittee Co-Chair Ronnie Villeda presented a short update to the POST Commission at their June 8, 2023 meeting about course reviews by the RIPA Board. Co-Chair Villeda stated it was “essential that we recognize the significance of our collective experiences and insights, as they reflect the communities disproportionately affected by racial and identity profiling.” Co-Chair Villeda encouraged POST to consider producing guidelines for the expansion of the racial and identity profiling training courses and ensure stakeholders have a clear understanding of the objectives and expectations of these courses. Additionally, Co-Chair Villeda called for POST to actively seek and adopt community and stakeholder input, asserting “the need for a well-defined process, published timelines for the review and development of curriculum updates . . . [to] ensure that the Board, the community, and subject matter experts have ample opportunity to provide their essential input. Our collective goal is to create a curriculum that is not only effective, but also responsive to the evolving needs of our society.”¹⁰⁴⁹

The protocols discussed in this section highlight the Board’s recommendations to achieve these goals. In addition, following their visit to several cities in the United States, the UN HCR Experts concluded that there is systemic racism in policing and the criminal justice system in the United States and U.S. authorities must urgently step up efforts to reform them. With respect to recruitment and training, they recommended that the United States “[e]valuate the recruitment and training of police officers to ensure appropriate education on human rights standards and non-discrimination and provide for independent and impartial periodic review of law enforcement practices to ensure compliance with constitutional and international standards.”¹⁰⁵⁰ This recommendation aligns with one of the RIPA Board’s stated goals to ensure proper and effective training to eliminate racial and identity profiling.

To this end, POST’s Executive Director, Manny Alvarez, attended the POST Subcommittee meeting on August 30, 2023, to provide updates and obtain feedback and clarification on the Board’s recommendations regarding POST-certified courses reviewed by the Board: Learning Domain 3 (Principled Policing in the Community), Chapters 2 and 4 of Learning Domain 42 (Cultural Diversity/

¹⁰⁴⁶ Pen. Code, § 13519.4, subd. (a).

¹⁰⁴⁷ Pen. Code, § 13519.4, subd. (h).

¹⁰⁴⁸ For a more detailed data analysis across all years, please see page 215.

¹⁰⁴⁹ Cal. Commission on Peace Officer Standards and Training, *POST Commission Meeting Transcript* (June 8, 2023) pp. 64–67 <https://post.ca.gov/Portals/0/post_docs/commissionmeetings/2023/2023%2006-08_POST_Commission.pdf> [as of Nov. 15, 2023].

¹⁰⁵⁰ U.N. Human Rights Council, *Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement*, *supra* note 5, at p. 30.

Discrimination, and the Museum of Tolerance’s Racial and Identity Profiling Train the Trainer Curriculum update).

During that meeting, Executive Director Alvarez advised the subcommittee that POST reviewed several of the recommendations on training highlighted by the Board in its 2023 Report and that POST would provide written responses to the recommendations directly to the POST Commission in a report presented at its September 21, 2023 meeting.¹⁰⁵¹ The POST report references seven recommendations supported by POST, 20 recommendations for which POST believes the topics are already sufficiently covered, two recommendations for which POST said they lack resources to implement, and two recommendations that POST believes are outside of the Commission’s scope of work.¹⁰⁵²

The recommendations supported by POST include:

- Create a bias training for dispatchers that must be attended by all dispatchers at least once a year. Mandate participation in bias training to be repeated, sustained and reinforced as further research supports; and perform an annual review and update of the bias training for quality assurance and effectiveness.
- Offer guidance to local law enforcement agencies regarding social media investigations or inquiries in the hiring of dispatchers.
- Publish any guidelines for racial and identity profiling-related courses on the POST website, and if there are no guidelines, undertake this process.
- Rather than its current focus on convincing officers that racial profiling is wrong, Section 2 on racial and identity profiling should be evidence-based and thus focus on the significant amount of data and research showing that racial profiling is not an effective means of policing.
- The legal section should more explicitly state that the RIPA statute recognizes that racial and identity profiling – or the “consideration of, or reliance on, to any degree” protected identity characteristics in deciding any stops or actions taken – is prohibited. To put this in context, it should also acknowledge that the law recognizes the harm caused by profiling (to individuals, communities and police-community relations) and the need for affirmative steps to prevent it from happening.
- The course definitions should discuss racism and racial profiling and how they intersect and should not characterize racial profiling as controversial.
- The courses should refer to racial and identity profiling throughout the training, rather than focusing only on racial profiling.

The Board’s January 2022 report also included recommendations regarding the historical section of Learning Domain 3 (LD 3): Principled Policing in the Community. Executive Director Alvarez advised that POST expanded the historical section of LD 3 to include greater content regarding policing in this country and include more contemporary events to ensure that cadets are aware of how historical events can impact community perspectives today. POST amended both the Testing and Selection Specifications via the regulatory process and added five pages to the student workbook. The POST Commission approved these changes at their March 22, 2023 Commission Meeting and POST reported to the Commissioners at their September 21, 2023 meeting that they had received approval for the changes from the Office of Administrative Law.¹⁰⁵³

1051 Cal. Com. on Peace Officer Stds. and Training, *POST Commission Report* (Sept. 21, 2023) pp. 2, 73–129 <<https://d3n9y02raazwpg.cloudfront.net/post/aaa74813-f049-11ed-95dd-0050569183fa-91715dad-00d7-4d9f-abfe-0f37a2520d66-1694459475.pdf>> [as of Nov. 15, 2023].

1052 *Ibid.*

1053 Cal. Com. on Peace Officer Stds. and Training, *POST Commission Meeting Transcript* (Mar. 22, 2023) pp. 65–70 <https://post.ca.gov/Portals/0/post_docs/commissionmeetings/2023/2023-03-22_Commission_Meeting_Minutes.pdf> [as of Nov. 15, 2023]; Cal. Com. on Peace Officer Stds. and Training, *POST Commission Meeting Transcript*

For the 2024 Report, the Board has made the following five recommendations for POST: (1) collaborate with the Board to develop and adopt separate guidelines for racial and identity profiling training independent of the curriculum; (2) integrate a timeline for review by the Board and the community; (3) seek community and stakeholder input earlier in the course development process and incorporate their feedback before finalizing the training; (4) build in mechanisms to evaluate effectiveness of all POST courses on racial and identity profiling with the RIPA data being used as a primary measure; and (5) emphasize accountability for discriminatory practices by peace officers and responsibility of supervisors.

In this Report, the Board examines research and potential protocols around POST's guidelines for its racial and identity profiling trainings, proposed processes for course development and updates; community engagement, measures of course effectiveness, and the inclusion of instruction regarding in the courses and curriculum. This is an important step to build on the ongoing individual course reviews by the Board.

B. Board Review of POST Training and Curriculum Updates

The Board reviewed seven POST certified courses regarding racial and identity profiling and found these courses vary a great deal in the material provided, how it is presented, and the expectations of participants and trainers, depending on whether the course is offered in the academy or to in-service officers.

1. Racial and Identity Profiling Train the Trainer Curriculum Update

As described in the 2023 RIPA Board Report, several Board members participated in numerous workshops regarding the Racial and Identity Profiling Train the Trainer course offered through the Museum of Tolerance (MOT). The course is pivotal because it prepares law enforcement officers to teach courses regarding racial profiling at their organization for both in-service officers and at their academy. Trainers must receive POST certification by taking the MOT 24-hour Train-the-Trainer course.

In 2022, MOT invited members of the RIPA Board to participate in an update to the curriculum. Board members participated in focus groups to make recommendations regarding the curriculum update, brought community members to evaluate the old course materials, and gave personal testimonials about how racial and identity profiling impacts their communities as well as law enforcement. At the end of the year, the Board members received an outline of the updated course. In its 2023 Report, the Board made numerous recommendations about ways to improve the course and include the communities' perspective in these trainings.¹⁰⁵⁴

After making these recommendations, the Board reached out to MOT in January 2023. MOT responded that they were still in the process of finalizing the course materials and that they planned to do a walk-through for the consultants involved in the development of the course. MOT informed the Board the walk-through would take place within a few weeks. The Board reached out to MOT several times to determine when they might be able to participate in this walk-through of the course, whether their feedback had been incorporated, or when community members might be able to review the new materials.

In June 2023, the Board was informed the course had been certified by POST and they would begin teaching the new course materials that month. As of the publication of this Report, the Board has followed up several times with MOT, but the Board has not received an invitation to review or participate in the updated course, updated course materials, or any communication from MOT about the status of the course. The Board hopes MOT will adopt the Board's recommendations for increased community participation and that MOT will engage the Board in the continuing development of these

(Sept. 21, 2023) pp. 109-110 <https://post.ca.gov/Portals/0/post_docs/commissionmeetings/2023/2023-09-21_Commission_Meeting_Minutes.pdf> [as of Nov. 15, 2023].

1054 Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at pp. 201–206.

critical courses.

With the MOT curriculum update, the Board subcommittee members attended the short community listening session, but did not find the process constituted a comprehensive consultation with the community. Although the subcommittee brought several subject matter experts (SMEs), including judges and scholars, the community feedback time was limited to approximately 20 minutes for 15 community members. The Board was told community members could review the course again after the training was finalized, and the Board hopes this will take place now that the training has been completed.

The Board emphasizes both POST and MOT should adopt robust practices to develop these courses, including the recommendations highlighted in this Report, such as creating a timeline for review by the Board and the community, seeking community and stakeholder input earlier in the course development process, incorporating their feedback before finalizing the training, and evaluating the effectiveness of the MOT course. The Board hopes MOT as well as POST will take advantage of this opportunity to work in partnership with community advocates both on the Board and in the community.

2. Dispatcher Training Course Update

This year, the Board reviewed the dispatcher training course outline. In 2022, POST informed the Board that it planned to update its police dispatcher training, known as the Public Safety Dispatchers' Basic Course. POST last updated the course in 2010. In order to update the course, POST hosted a number of two-day workshops with SMEs, such as training officers, law enforcement supervisors and managers, academy instructors, and members of professional organizations. During the Board's June 2022 Calls for Service Subcommittee Meeting,¹⁰⁵⁵ POST shared the focus of some updates for the training course, including how bias affects the call-taking process, radio transmissions, professional demeanor, and ethical behavior. Following this presentation, POST shared a link with the RIPA Board to help gather SMEs to attend future workshops. Board members suggested SMEs, and one of the Board's suggested experts attended the workshop updating the Community Policing/Cultural Diversity/Hate Crimes/Gang Awareness learning domain. POST completed its workshops by the end of 2022 and continued to work on the expanded course outline and a document explaining the course changes in 2023.

The updated dispatcher training, known as the Basic Dispatch Course, was presented to the POST Commission on June 8, 2023. POST added four new Learning Domains and rewrote the majority of the course, and therefore asked the Commission to repeal the existing course and adopt the new training specifications.¹⁰⁵⁶ The POST subcommittee received and discussed the course outline at its August 2023 subcommittee meeting. The Board's feedback was as follows:

- The outline is abstract and does not ensure consistency across agencies. This allows for disparities to exist between agencies. For example, the outline does not include a definition of "bias-by-proxy" nor does it include uniform questions that may assist dispatchers in understanding whether the call at hand is a bias-by-proxy call in a consistent manner across agencies.
- It would be helpful to include more detail within the topics discussed, such as the type of information that should be gathered by dispatchers, and then allow agencies discretion to respond in their respective communities. POST may wish to include more specific information in a central place like the outline or in the associated workbook.

The Board hopes POST will incorporate these suggestions into its training specifications and the draft dispatch course curriculums submitted by potential trainers.

¹⁰⁵⁵ The Calls for Service Subcommittee was disbanded in March 2023 and its work on dispatch training was adopted by the POST Subcommittee.

¹⁰⁵⁶ Cal. Com. on Peace Officer Stds. and Training, POST Commission Meeting Transcript (June 8, 2023), *supra* note 1049, at pp. 179–180

The Board has been working collaboratively and closely with POST for the past several years, and has invested significant time reviewing, providing comments, and participating in workshops and meetings related to POST trainings. However, the extent to which the Board’s recommendations have been considered or incorporated into these trainings is not clear. The Board looks forward to collaborating with POST for future trainings and developing additional protocols and procedures regarding Board feedback and recommendations.

C. Board Recommendations for POST Protocols and Procedure for Course Development and Updates

1. Adopt protocols and publish separate training guidelines independent of the curriculum

Penal Code section 13519.4, subdivision (a) requires POST to “develop and disseminate guidelines *and* training for all peace officers . . . on the racial and cultural differences among the residents of this state” (emphasis added). For the learning domains that the Board has reviewed, including LD 3 Principled Policing in the Community and LD 42 Cultural Diversity/Discrimination, POST publishes the guidelines within the curricula, and believes this meets the Penal Code requirements. In the 2023 RIPA Report, the Board recommended that POST publish specific guidelines for racial and identity profiling-related courses on the POST website, apart from publication in the curricula.¹⁰⁵⁷

By way of background, POST uses guidelines as an external facing document, to explain to local agencies the requirements under the law and aid the agencies in developing their own agency-specific policies and trainings while ensuring that they comply with the law. For example, POST defines their Hate Crimes guidelines as “the primary elements that law enforcement executives are now required to incorporate into their hate crimes policy.”¹⁰⁵⁸ The Hate Crimes guidelines include minimum legal requirements for an agency’s hate crimes policy, a model policy framework, a checklist for the agency’s policy creation, and an appendix of relevant laws. Similarly, POST published Use of Force guidelines in 2021, which require law enforcement agencies to maintain a policy that includes minimum standards for the application of deadly force, alternatives to the use of force, and intervention and reporting requirements. The guidelines incorporate best practices and are intended to support the development of effective training, agency policies and internal accountability measures.¹⁰⁵⁹

At the August 2023 POST Subcommittee meeting, Executive Director Alvarez stated that POST intended to adopt the Board’s recommendation to develop racial and identity profiling guidelines, and solicit the Board’s participation throughout this process. Director Alvarez explained that once POST hired staff for the process, it would commence developing the guidelines. The Board looks forward to working closely with POST to develop these guidelines. In the context of trainings related to racial and identity profiling, separate guidelines would provide notice to California’s law enforcement agencies of the reasons behind specific trainings and curricula, the requirements under the law, and the expected outcomes of bias-free policing required by law.

Comprehensive guidelines that can inform all of the POST trainings concerning racial and identity profiling would make these trainings consistent and comprehensive. In general, the Board maintains

¹⁰⁵⁷ Racial and Identity Profiling Advisory Board, *2020 Report*, *supra* note 859, at p. 211.

¹⁰⁵⁸ Cal. Com. on Peace Officer Stds. and Training, *POST Hate Crimes Model Policy* (Jul. 8, 2019) p. vii <https://post.ca.gov/Portals/0/post_docs/publications/Hate_Crimes.pdf> [as of Nov. 15, 2023, 2023] (“These guidelines are the primary elements that law enforcement executives are now required to incorporate into their hate crimes policy if an agency creates a new hate crimes policy or updates an existing one. The guidelines are designed for department-wide application and are intended to reflect a values-driven ‘top-down’ process. They are intended to assist with the development and delivery of training and ensure proper identification, investigation, and reporting of hate crimes within each agency’s jurisdiction.”).

¹⁰⁵⁹ See Cal. Com. on Peace Officer Stds. and Training, *POST Use of Force Standards and Guidelines* (2021) pp. 8, 20–21 <https://post.ca.gov/Portals/0/post_docs/publications/Use_Of_Force_Standards_Guidelines.pdf> [as of Nov. 15, 2023].

that effective guidelines for a racial and identity training program must include a combination of the legal requirements; bias and cultural awareness; actual profiling incident scenarios; a discussion of relevant stop data; measures of course effectiveness; community input; personal and peer accountability in the field; a clear reporting process; and an overview of the potential consequences of engaging in profiling behavior. The guidelines should emphasize that effective racial and identity profiling policies can increase safety for officers and communities.

In addition, the guidelines must clearly reflect the relevant legal standards prohibiting profiling as defined by California law, rather than broader federal standards. California law differs significantly, and Penal Code section 13519.4, subdivision (e), prohibits racial and identity profiling, which is defined as “the consideration of, or reliance on, **to any degree**, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop **or in deciding upon the scope or substance of law enforcement activities following a stop**, except that an officer may consider or rely on characteristics listed in a specific suspect description.”¹⁰⁶⁰

In addition, the Board’s past reports have highlighted some of the topics for the guidelines, including:

- A discussion of the prohibition against relying upon stereotypes and profiling in policing and the recommendation to incorporate RIPA data and other studies to demonstrate the outcomes and impact of such profiling.
- A history as required by the Penal Code: “[t]he history and role of the civil and human rights movement and struggles and their impact on law enforcement.”¹⁰⁶¹
- General expectations of officers (individual responsibility) and of the profession (collective responsibility).
- Personal accountability, the duty to intervene, and how to report officers engaging in racial and or identity profiling; these should also address citizen complaints, job discipline or loss, and allegations of serious misconduct that can lead to decertification.
- Real-life scenarios and incidents and examples of racial and identity profiling and discussion of what officers could have done differently (behavior modification and intervention strategies).
- Consequences of racial and identity profiling.
- Using the RIPA data to identify trends and patterns that may indicate racial and identity profiling at the agency or individual officer level and working to reform policies and practices to prevent profiling.
- How agencies can ensure data accuracy and integrity.
- Recommendations around effective policing strategies to reduce racial and identity profiling.
- Recommendations around partnering with academics and advocacy groups to work together toward reducing racial and identity profiling.
- Guidelines around best practices with respect to civilian complaints that have been addressed by the Board in past Reports.

Finally, POST can also refer to the comments Board members provided to POST and the Museum of Tolerance for its Train the Trainer update. The Board looks forward to collaborating closely with POST to develop a comprehensive set of topics and material for the guidelines.

2. Community/stakeholder input on how to improve trainings

As with reviewing curriculum, POST is mandated by RIPA to include the community in developing

¹⁰⁶⁰ Pen. Code, § 13519.4, subd. (e) (emphasis added).

¹⁰⁶¹ Pen. Code, § 13519.4, subd. (h)(3).

and revising trainings. As Penal Code section 13519.4, subdivision (b), states, “In developing the training, the commission shall consult with appropriate groups and individuals having an interest and expertise in the field of racial, identity, and cultural awareness and diversity.”¹⁰⁶² POST is also required to develop an expanded evidence-based curriculum to “include and examine evidence-based patterns, practices, and protocols that prevent racial and identity profiling.”¹⁰⁶³ That effort is incomplete without community engagement.

Community engagement is necessary while developing courses to “stress understanding and respect for racial, identity, and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a diverse racial, identity, and cultural environment.”¹⁰⁶⁴ In the 2023 RIPA Report, the Board recommended creating broader transparency in the POST racial and identity course curriculum development and certification process by publishing this information on POST’s webpage and engaging with a diverse group of interested stakeholders throughout the process.¹⁰⁶⁵ Additionally, the 2019 Report called for RIPA training to include “the benefits of and means to achieve effective community engagement.”¹⁰⁶⁶

The Board’s recommendations have support. Recent consent decrees between the Civil Rights Division of the U.S. DOJ and local police departments illustrate how community engagement should be central to the training development process. Additionally, the stipulated judgment between the California DOJ and Bakersfield Police Department also requires community engagement in developing and revising use of force policies.¹⁰⁶⁷ Several recent consent decrees mandate that training should be developed in partnership with those outside of law enforcement,¹⁰⁶⁸ including third party and community instructors, because “[c]ommunity members and organizations possess extensive subject and neighborhood-specific expertise that [law enforcement] should incorporate into its training curriculum.”¹⁰⁶⁹ This partnership should “include members of the community who are knowledgeable about various communities and local issues, including representatives knowledgeable on issues of race, ethnicity, national origin, gender, age, religion, sexual orientation, gender identity, and disability.”¹⁰⁷⁰ The consent decree requirements provide constructive examples for POST on community engagement, such as:

- **Centering community engagement in officer training.** The Ferguson consent decree required adopting a community-oriented policing approach,¹⁰⁷¹ including requiring that community

1062 Pen. Code, § 13519.4, subd. (b).

1063 Pen. Code, § 13519.4, subd. (h).

1064 Pen. Code, § 13519.4, subd. (a); see also Pen. Code, § 13519.4, subd. (g) (mandating expanded training as prescribed and certified by POST).

1065 Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at pp. 814–815.

1066 Racial and Identity Profiling Advisory Board, *2019 Report*, *supra* note 859, at p. 48.

1067 Stipulated Judgment, *People v. City of Bakersfield and Bakersfield Police Department* (Super. Ct. Kern County, 2021, No. BCV-21-101928) ¶¶ 62-64, 100 <<https://oag.ca.gov/system/files/attachments/press-docs/Stipulation%20and%20Order.pdf?ref=vallejosun.com>> [as of Nov. 15, 2023]. In the case of Bakersfield Police Department, the stipulated judgment mandated consultation with the community advisory working group in revision and development of use of force and related policies, bias-free policing policies, community policing, civilian complaints, and diversity in recruiting, hiring, promotion and other policies. *Ibid.*

1068 See, e.g., Consent Decree, *U.S. v. The City of Ferguson*, *supra* note 236, at ¶¶ 49–51. Training could be developed in partnership with academic institutions or consultants with the requisite expertise to assist in developing and implementing trainings. These institutions or consultants should have documented experience conducting such racial and identity profiling trainings for institutional actors and, ideally, helping design successful interventions. See also Consent Decree, *U.S. v. City of Newark* (D. N.J. 2016) 2: 16-cv-01731-MCA-MAH, ¶13 <<https://www.justice.gov/crt/file/868131/download>> [as of Nov. 15, 2023].

1069 San Francisco Police Department Community Engagement Division, *SFPD Community Policing Strategic Plan* (Oct. 2018) p. 7 <<https://www.sanfranciscopolice.org/sites/default/files/2019-12/SFPDCommunityPolicingStrategicPlan.pdf>> [as of Nov. 15, 2023].

1070 Consent Decree, *U.S. v. Police Department of Baltimore City, et al.*, *supra* note 236, at ¶ 94; see also Consent Decree, *U.S. v. The City of Ferguson*, *supra* note 236, at ¶¶ 21-23 (training should include members of the community who are knowledgeable about various communities and local issues, including representatives knowledgeable on issues of race, ethnicity, national origin, gender, age, religion, sexual orientation, gender identity, and disability) .

1071 Consent Decree, *U.S. v. The City of Ferguson*, *supra* note 236, at ¶ 18.

policing trainings contain scenario-based lessons.¹⁰⁷² The Newark consent decree also requires eight hours of structured in-service training on community policing.¹⁰⁷³

- ***Integrating the community in decision-making roles.*** The Ferguson consent decree requires community members on the Neighborhood Police Steering Committee to advise on strategies, training, and policies to improve community relations, reform the municipal code, and provide input on hiring and recruitment of officers.¹⁰⁷⁴ Similarly, the Newark consent decree requires civilian oversight in reviewing and recommending changes to the police department’s policies and practices, including those related to the use of force, stops, searches, and arrests.
- ***Adopt processes to ensure community feedback is considered.*** The Ferguson consent decree requires the police department to develop policies to receive, consider, respond to, and act upon community recommendations in a transparent and timely manner. It also requires the development of a community-policing plan to ensure that policing is oriented around community priorities and partnerships. The consent decree also requires monthly command staff meetings to discuss community priorities for policing, among other items.¹⁰⁷⁵
- ***Assess responsiveness to community recommendations and provide corrective action.*** In Ferguson, the consent decree required assessments to measure the level and impact of community engagement and community policing initiatives, to ensure community-based initiatives are being implemented effectively and appropriately. During this assessment, the city and police department are required to identify deficiencies and opportunities for improvement, documenting measures taken for corrective action.¹⁰⁷⁶ In Baltimore, the consent decree requires a published annual public report that identifies deficiencies and opportunities for improvement in initiatives for community engagement and policing, including ways the police department sought input from the community, and identifying steps the department has taken to measure officer outreach to community members.¹⁰⁷⁷ Likewise, Newark required a quarterly report that covered community policing efforts, enumerating the specific problems addressed and steps taken by the police department and the community toward their resolution. The report includes an assessment of these community outreach efforts, including identifying obstacles faced and recommendations for future improvement.¹⁰⁷⁸

Community engagement can help close existing knowledge gaps. For example, the Little Hoover Commission recommends POST widen its scope of researchers, partner with researchers to develop new curriculum that addresses knowledge gaps identified by law enforcement, and add additional public members from vulnerable communities, mental health professionals who serve vulnerable communities, and experts in adult education and scientific research.¹⁰⁷⁹ This effort to diversify the SMEs used in POST’s course revision process would be impossible without community outreach.

Additionally, law enforcement experts agree that law enforcement must not assume an understanding of a community’s wants and needs, but should engage with the community often and ask what it wants and needs from them, including outreach and inclusion of the community in the development of racial and identity courses. This works to develop building blocks of community trust and departmental transparency.¹⁰⁸⁰

1072 *Id.* at ¶¶ 52, 144, 313, 317.

1073 Consent Decree, *U.S. v. City of Newark*, *supra* note 1068, at ¶¶ 10–11.

1074 Consent Decree, *U.S. v. The City of Ferguson*, *supra* note 236, at ¶ 21.

1075 *Id.* at ¶¶ 23, 28.

1076 *Id.* at ¶ 35.

1077 Consent Decree, *U.S. v. Police Department of Baltimore City, et. al.*, *supra* note 236, at ¶ 22.

1078 Consent Decree, *U.S. v. City of Newark*, *supra* note 1068, at ¶ 18.

1079 Little Hoover Com., *Law Enforcement Training: Identifying What Works for Officers and Communities (Law Enforcement Training)* (Nov. 2021) p. 24 <<https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/265/Report265.pdf>> [as of Nov. 15, 2023].

1080 Hamm, *Nine Rules for Community Engagement* (2016) Police Perspectives: Building Trust in a Diverse Nation No. 1, p. 23 <<https://www.vera.org/downloads/publications/police-perspectives-guide-series-building-trust-diverse-nation>>

Without evaluating the effectiveness of the underlying programs, two examples of agency policies that formally incorporate community feedback and input into the creation of agency policy are LAPD's Community Safety Partnership (CSP) and the San Francisco Police Department. According to its program, CSP conducts community safety surveys at each Neighborhood Engagement Area to provide baseline data in support of the development of each Community Safety Advisory Committee (CSAC) Site Safety Plan (SSP). CSACs, which are comprised of community stakeholders, including residents, institutional partners, and community-based organizations, are required to meet monthly to address public safety concerns.¹⁰⁸¹

The written policies for the San Francisco Police Department Community Police Strategic Plan provide that: "Third party and community instructors . . . contribute to SFPD training. Community members and organizations possess extensive subject and neighborhood-specific expertise that the Department should incorporate into its training curriculum. Bringing in diverse voices from outside the Department plays a vital role in officer development and understanding of issues traditionally considered beyond the scope of officers, but which are becoming routine in their work." As part of its community engagement objective, the SFPD policy states that the agency will identify and develop responses to local issues and concerns with individuals, community-based organizations, and city services, focusing on the root causes to safety issues rather than reactive solutions.¹⁰⁸² This approach intends to integrate community voices into the training curriculum.

These formal partnerships, if followed, could be used as a model for POST as it creates policies to facilitate engagement with a diverse group of community stakeholders to review and provide feedback on existing training courses as well as those in development.

True community engagement requires giving the public a voice in how their communities are policed. Studies have shown that community members desire more sincere forms of engagement over mere interaction.¹⁰⁸³ Specifically, community members have called for increased feedback mechanisms, by which the public can formally voice their concerns to a police department.¹⁰⁸⁴ Furthermore, community members want additional mechanisms to track responsiveness to their articulated concerns.¹⁰⁸⁵ There are several examples of how robust engagement, as opposed to mere interaction, rebuilds essential trust and improves policing. For example, in Philadelphia, the Superintendent invited women's advocacy groups to review rape cases to ensure adequate investigations were being conducted. The advocacy groups could request further investigation if they believed additional work was needed. A study of this program found the department obtained more accurate reporting of sexual crimes and

[diverse-communities-cultural-understanding_1.pdf](#) [as of Nov. 15, 2023].

1081 LAPD Community Safety Partnership Bureau, *Ramona Garden Community Safety Survey* (2021) p. 2 <https://www.lapdcsp.org/_files/ugd/a060ef_29d8f88df38d4ff7ab356ad7d61fdd49.pdf> [as of Nov. 15, 2023].

1082 See San Francisco Police Department Community Engagement Division, *SFPD Community Policing Strategic Plan*, *supra* note 1069, at p. 8; see also, e.g., Chandler, *Arizona Police Department: Review and Response of the Final Report of the President's Taskforce on 21st Century Policing* (2018) p. 5 <<https://chandlerazpd.gov/wp-content/uploads/2016/06/21st-Century-Policing-CPD-Response-01-2018.pdf>> [as of Nov. 15, 2023] (noting that the Chandler Police Department sought public input for developing the 2015-2020 Strategic Plan, and seeks public input during each re-accreditation process every three years. Policies and procedures are posted on the department's website for public review and comment. Additionally, policies have been adopted as a direct result of engaging the community and soliciting input); City of Memphis, *Pillar Five*, Reimagine Policing in Memphis <<https://reimagine.memphistn.gov/21st-century-policing/pillar-five/>> [as of Nov. 15, 2023] ("The department engages the community during the training process as appropriate. This engagement comes in a variety of forms. First, the department consults specialized groups, such as groups that specialize in child abuse and disabilities, when developing training. Second, the department periodically utilizes volunteers to participate in live-action training for recruits and officers. The department also relies on outside civilian professionals and community members as instructors for specific training such as LGBTQ related issues, mental illness, crisis intervention, criminal & constitutional law, cultural diversity, and many other topics.").

1083 NYU Law Policing Project, *Beyond the Conversation: Ensuring Meaningful Police-Community Engagement* (May 2018) p. 11 <https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5b29056a758d460f539bc079/1529415022872/Policing+Project_Beyond+the+Conversation.pdf> [as of Nov. 15, 2023].

1084 *Ibid.*

1085 *Ibid.*

rebuilt the essential trust between the community and the police department.¹⁰⁸⁶

The International Association of Chiefs of Police recommend departments implement periodic community feedback surveys and work with research partners and communities most impacted by crime or police services.¹⁰⁸⁷ The IACP further recommends law enforcement agencies incorporate community feedback into employee performance evaluations, as this could identify training needs while prioritizing community-oriented police work.¹⁰⁸⁸

3. Proposed integrated timeline for Board and community review of curriculum

Under Penal Code section 13519.4, subdivision (h), POST is mandated to consult with the RIPA Board in the development and review of racial and identify profiling courses.¹⁰⁸⁹

POST provided workflows for updating workbooks for Learning Domains and a general online training overview. These workflows do not include structured or planned points to include meaningful engagement with the Board or meaningful engagement with the community. POST has represented that since POST courses are continuously updated, and POST documents are “living documents” that are updated as needed, it is difficult to pinpoint or project exact timelines for course updates. Rather than this current ad hoc practice, the Board recommends incorporating three specific times for Board interaction and feedback, community feedback, and a public sourcing of SMEs before the course development or update process is finalized.

- At least 90 days before setting the timeline for course revision, POST will consult with the RIPA Board on the specific topic of the upcoming training course development or update and provide the current version of training materials and a summary of the subject matter, so the Board can assist in a call for a diverse set of SMEs, including persons from targeted communities, persons affected by the training topic, advocates, academics, and other experts.
- At least 60 days before publication of the training and before the course is submitted to the Commission, POST shall present a draft publication to the Board with sufficient time to hold a subcommittee or Board meeting to discuss the draft, review community and SME feedback, and draft final recommendations to POST. POST will notify the Board which SMEs were included in training development and the expertise backgrounds of SMEs included in this specific training development.
- Before the public comment period closes, POST will respond in writing to the Board whether and how recommendations were incorporated in the training with sufficient time for the Board to respond in writing. This letter should also include the same review of which SME applicants were selected and those omitted, and which SME revisions were rejected.

4. Measure course effectiveness of all POST racial and identity profiling courses

In addition to integrating community engagement into training development, all POST trainings should be evaluated for effectiveness. Given the longitudinal disparities demonstrated by the RIPA data, the Board has recommended that POST measure the effectiveness of their trainings. Other entities have further supported the call to measure effectiveness based on results and behavior change — such as a reduction in racial profiling — instead of perceptible changes. In the 2023 RIPA report, the

¹⁰⁸⁶ *Id.* at p. 46.

¹⁰⁸⁷ Internat. Assn. of Chiefs of Police, *Starting with What Works* (Feb. 2017) p. 3 <<https://www.theiacp.org/sites/default/files/all/s/StartingwithWhatWorksBrochureWeb.pdf>> [as of Nov. 15, 2023].

¹⁰⁸⁸ *Ibid.*

¹⁰⁸⁹ Pen. Code, § 13519.4, subd. (h) (listing subjects).

Board recommended that as MOT and POST update their courses, measures of effectiveness must be included.¹⁰⁹⁰

Other state agencies have called for measuring effectiveness of the training as a necessary requirement. The Little Hoover Commission and the California State Auditor raised concerns that POST trainings have not changed officer behavior. The Little Hoover Commission noted while the state of California spends millions of dollars on law enforcement training annually, “there is very little evidence to demonstrate which types of training actually achieve intended goals and positively impact officer behavior in the field — and which do not.”¹⁰⁹¹ In a separate report, The Little Hoover Commission further noted “neither the course certification process nor the regular course assessments measure the effectiveness of officer training” and recommended POST “review the effectiveness and relevancy of courses for today’s community needs and identify gaps in foundational training necessary to prepare new officers.”¹⁰⁹²

The Little Hoover Commission made specific recommendations that were supported by the RIPA Board, including:

- POST should revise its process for evaluating law enforcement training to include additional course certification criteria that incorporate training outcomes.
- To encourage more rigorous analysis of officer training programs, POST should establish a process to collect and secure data for research purposes in order to improve training.
- To foster collaboration with academic researchers, POST should establish a permanent academic review board to ensure training standards are aligned with the latest scientific research findings regarding new and existing standards and training.¹⁰⁹³

The Little Hoover Commission warned that “[w]ithout more rigorous evaluation of the impacts of law enforcement training on officer behavior, California risks inadvertently prolongating use of training techniques that are useless or, even worse, erode community trust and result in other unintended consequences.”¹⁰⁹⁴ The 2023 RIPA report discussed the consequences of declining community trust at length.

Training alone is insufficient to change behavior. In a review of five major police departments, the California State Auditor found none of the departments had fully implemented best practices to mitigate the effects of officer bias.¹⁰⁹⁵

- For example, each of the departments struggled to ensure that their officers fully reflected the diversity of the community.
- Each department’s training about bias could be more frequent and include additional content.
- The local departments could do more to build and strengthen relationships with their communities.
- None had established adequate systems for proactively identifying and correcting problematic officer performance trends.¹⁰⁹⁶

1090 Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at p. 211.

1091 Little Hoover Com., *Law Enforcement Training*, *supra* note 1079, at p. 5.

1092 *Id.* at pp. 4, 6.

1093 See Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at p. 209 (citing Little Hoover Com., *Law Enforcement Training*, *supra* note 1079, at p. 7).

1094 Little Hoover Com., *Law Enforcement Training*, *supra* note 1079, at p. 7.

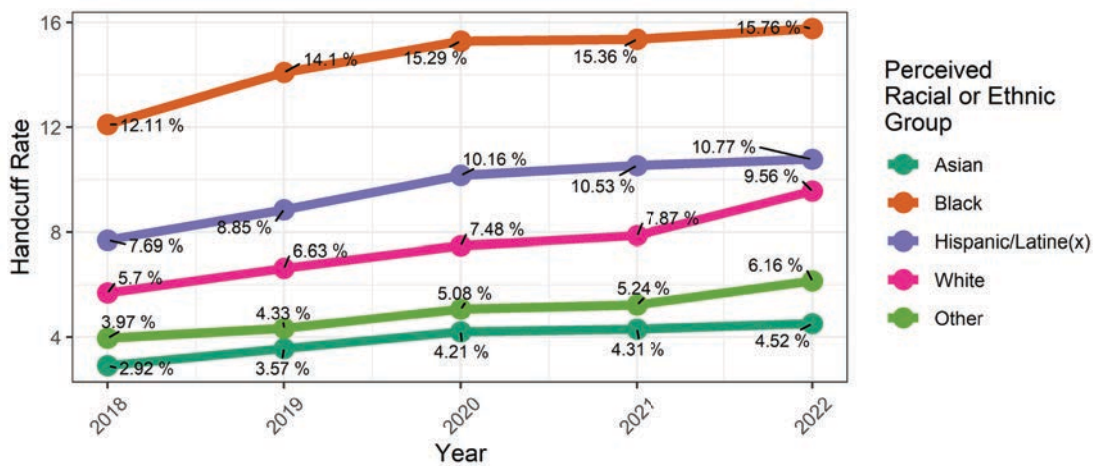
1095 See Cal. State Auditor, *Law Enforcement Departments Have Not Adequately Guarded Against Biased Conduct* (Apr. 26, 2022) p. 5 <<https://www.auditor.ca.gov/pdfs/reports/2021-105.pdf>> [as of Nov. 15, 2022]. The departments examined by the State Auditor included the Los Angeles Sheriff, the California Department of Corrections and Rehabilitation (CDCR), and the police departments of San Bernardino, San José, and Stockton.

1096 See *ibid.*

Additionally, research from the John F. Finn Institute for Public Safety showed that while trainings can elevate officers' comprehension of implicit bias, the data – the “breakdown of the ethnic disparities among the people who were arrested and had other kinds of interactions with those officers” show “no meaningful change.”¹⁰⁹⁷

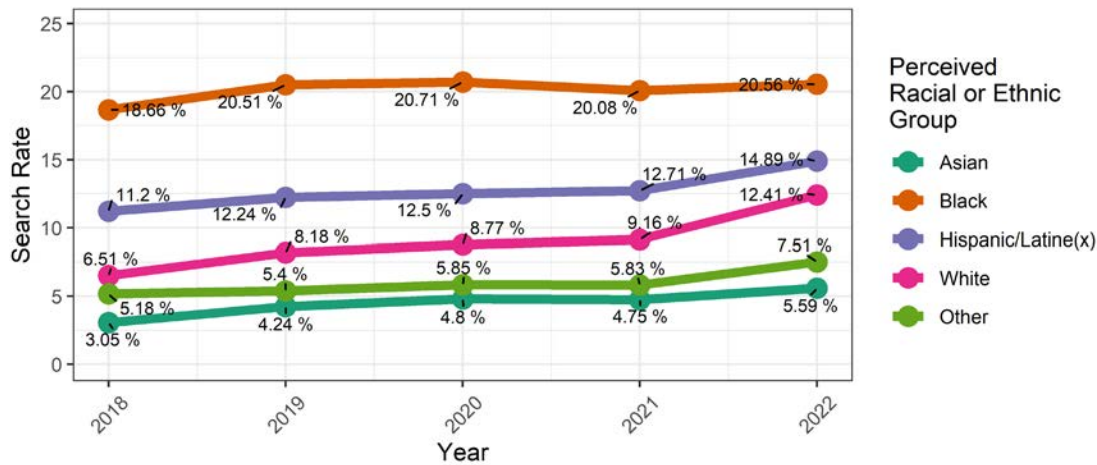
Over the past seven years, the RIPA Board has conducted extensive reviews of the training and curriculum materials provided by POST. The RIPA data show that across all years of the RIPA data collection (2018-2022), disparities persist in how individuals perceived as Black, Hispanic/Latine(x), and transgender are treated. This information in turn should dictate the training necessary to reduce and eliminate racial and identity profiling while improving officer safety in the state of California. The RIPA data reported between 2018 and 2022 indicate that in all years, individuals perceived as Black had the highest search rate (20.3%) and were handcuffed during a higher percentage of stops (14.7%) than any other racial or ethnic groups. Individuals perceived as Hispanic/Latine(x) (13%) had slightly above average search rates when examining stops reported between 2018 and 2022 and were handcuffed during a lower percentage of stops than the overall average in years 2018 and 2019, but had a higher percentage of stops than the overall average in years 2020, 2021, and 2022. In all years (2018-2022), individuals perceived as transgender men/boys and transgender women/girls were handcuffed during a higher percentage of stops than cisgender or gender non-conforming individuals.

Figure 75. Percent of Stops with an Officer Using Handcuffs by Reduced Racial or Ethnic Group and RIPA Reporting Year



1097 Kaste, *NYPD Study: Implicit Bias Training Changes Minds, Not Necessarily Behavior*, NPR (Sept. 10, 2020) <<https://www.npr.org/2020/09/10/909380525/nypd-study-implicit-bias-training-changes-minds-not-necessarily-behavior>> [as of Nov. 15, 2023] (citing Worden et al., *The Impacts of Implicit Bias Awareness Training in the NYPD* (Jul. 2020) The Internat. Assn. of Chiefs of Police/University of Cincinnati Center for Police Research and Policy & John F. Finn Institute for Public Safety).

Figure 76. Percent of Stops with Search of Person or Property by Reduced Racial or Ethnic Group and RIPA Reporting Year



These are just some of the clear areas of focus that all POST-certified training should be designed to correct in a meaningful way that changes the data outcomes. With an adequate training evaluation model and an understanding of validity considerations like maturation and selection — such as participant changes due to external experiences apart from the training, as well as how participants become part of a study — measures of effectiveness can be evaluated not simply by course outcomes or a pass rate, but also by data points that show behavioral changes or real-time intervention in officer behavior.¹⁰⁹⁸ The Board proposes POST measure the effectiveness of its courses by:

- Measuring the effectiveness of course outcomes with the goal of transformative learning leading to actual behavior changes, not just the pass rate of the course.¹⁰⁹⁹ The behavior changes would be supported by data, such as a reduction in disparities in traffic stops, and not simply perceptive changes through self-reporting surveys. Relying on official data collection and reporting documents and time-stamped documents are better indicators of behavioral changes (i.e., reason for stop written down and data trends decrease) than survey results of officer’s perception of their own behavioral changes.
- Encouraging long-term changes in police behavior by pairing training with additional practice that supports training tenets with complementary policies, supervisory oversight, managerial support, and community involvement in reform efforts.¹¹⁰⁰
- Encouraging short-term behavior correction of “split second” decisions during training by simulating the dangers of implicit bias. Some efforts include the Counter Bias Training Simulation, a curriculum from Washington State University researchers that uses video scenarios in shooting simulators to show officers the dangers created by implicit bias.¹¹⁰¹ This

1098 Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at p. 11.

1099 See Bradley and Connors, *Training Evaluation Model: Evaluating and Improving Criminal Justice Training* (Dec. 2013), Institute for Law and Justice, pp. 2, 23, 35 <<https://www.ojp.gov/pdffiles1/nij/grants/244478.pdf>> [as of Nov. 15, 2023]. “To the extent that criminal justice training programs have been evaluated, the focus has been on trainees’ attitudes toward training and on the interrelated questions of what type of and how much training to offer. Few training programs have been evaluated in terms of impact on the knowledge and behavior of program participants or impact on the organizations in which trainees work.” (*Id.* at p. 2 (citing Brand and Peak, *Assessing Police Training Curricula: Consumer Reports* (1995) 9 *The Justice Professional*, 45, 45-58).)

1100 See, e.g., Bradley and Connors, *Training Evaluation Model: Evaluating and Improving Criminal Justice Training*, *supra* note 1099, at pp. 25–28, 35, 58 (citations omitted); Racial and Identity Profiling Advisory Board, *2022 Report*, *supra* note 8, at pp. 244, 246 (citing Feigenberg et al., *Implicit Bias Training for Police* (Apr. 23, 2021) University of Chicago Crime Lab, pp. 2–3); see generally Devine et al., *Long-Term Reduction in Implicit Race Bias: A Prejudice Habit-Breaking Intervention* (2012) 48(6) *J. Experimental Soc. Psychol.* 1267, 1267–1278 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3603687/>> [as of Nov. 15 2021].

1101 See MILO, *Advanced Curriculum Solutions for Counter Bias Training* <<https://www.faac.com/milo/cognitive/cbtsim/>>

simulation is currently being used by the Sacramento Police Department, where some officers will receive simulator-based training, some will receive traditional, seminar-style implicit bias training, and some will receive neither.¹¹⁰² The control group that receives the counter bias simulation training is required to debrief to identify why they made their decisions during the simulation, and to self-reflect on how bias influences actions. The officers' actions will be reviewed and scored. Professor Lois James at Washington State University and her graduate students will review the body camera videos of officers' interactions with the public — before and after the training period — and score them for how civilly the officers treat each ethnic group. The researchers' feedback is intended to evaluate the effectiveness of implicit bias trainings on the officer's actions.¹¹⁰³

- Measuring effectiveness by outcomes related to specific behavioral change goals. These goals should be mandated in curriculums approved or certified by POST to determine if trainings are having the desired effect. Consider how to include community needs and concerns in determining how to measure effectiveness of trainings.

5. Incorporating accountability as a required topic in Racial and Identity Profiling-Related Content in POST Trainings

RIPA added a legal obligation for POST's course of instruction to include "specific obligations of peace officers in preventing, reporting, and responding to discriminatory or biased practices by fellow peace officers."¹¹⁰⁴ The Board advocated to add accountability as a topic in the 2020 Report.¹¹⁰⁵ Additionally, in the 2023 RIPA report, the Board recommended course objectives "prominently discuss and emphasize law enforcement agency expectations regarding unlawful racial or identity profiling behavior and accountability for engaging in those acts."¹¹⁰⁶ Further, the State Auditor has called for the Legislature to require officers to receive training at least biannually on "reporting obligations and how officers should respond after observing biased behavior by peers."¹¹⁰⁷

This important topic has been a subject of interest in police reform efforts for decades, following long-standing reports of retaliation against officers who reported bias and profiling.¹¹⁰⁸ Research supports incorporating accountability training. A report published by the Texas Southern University Center for Justice Research regarding the duty to intervene found that the events of recent months have spurred law enforcement agencies in cities such as Minneapolis, Minnesota, Arlington, Virginia, and Dallas, Texas to establish duty to intervene policies that govern officer conduct.¹¹⁰⁹ Police executives around the nation with good-faith intentions for officers have prioritized policies that safeguard the well-being of both communities and officers.

Accountability training supports a protection of life mandate. Professors at the School of Criminology and Criminal Justice at Arizona State University argue that accountability can be strengthened if trainings are consistent with a protection of life mandate. In short, the primary purpose of the police is

[as of Nov. 15, 2023].

1102 Kaste, *NYPD Study: Implicit Bias Training Changes Minds, Not Necessarily Behavior*, *supra* note 1097.

1103 *Ibid.*

1104 Pen. Code, § 13519.4, subd. (h)(4).

1105 Racial and Identity Profiling Advisory Board, *2020 Report*, *supra* note 859, at p. 47 ("The [agency] will ensure that, at a minimum, all officers and employees are compliant with requirements regarding bias-free policing training.").

1106 Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at p. 197.

1107 Cal. State Auditor, *Law Enforcement Departments Have Not Adequately Guarded Against Biased Conduct*, *supra* note 1095, at p. 6.

1108 See, e.g., Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department* (Jul. 1991) p. 170 <<https://archive.org/download/ChristopherCommissionLAPD/Christopher%20Commission%20LAPD.pdf>> [as of Nov. 15, 2023] (describing several instances of officers who reported other officer's use of racial epithets and biased behavior facing retaliation).

1109 Texas Southern University Center for Justice Research, *Police Reform Action Brief: Duty to Intervene* (2021) p. 5 <<https://www.centerforjusticeresearch.org/lp/duty-to-intervene#>> [as of Nov. 15, 2023].

to protect life, and all policy and training should stem from this basis.¹¹¹⁰ They argue the life protectors philosophy is an important counter to a subculture of “cops as soldiers,” which deepens the divide between police and citizens and lessens departments’ capacities for accountability.

Early intervention systems in accountability training can change behavior before escalation.

Researchers also propose employing a non-punitive early intervention system.¹¹¹¹ Early intervention systems are computerized programs designed to identify officers who may be engaged in questionable conduct. This refers to information systems that collect and analyze data on problematic police behavior, such as incidents of racial bias. Such systems can identify problematic officers, and intervention through retraining could change their behavior before it escalates into more serious forms.¹¹¹² Officer behavior may change if they know they are subject to ongoing internal reviews.

Accountability improves officer performance. Scholars recommend that accountability efforts be framed as a proactive, ongoing constructive effort to improve officer effectiveness, not as a punishment that occurs after an event.¹¹¹³ Accountability training can be geared towards improving officer performance. Finally, accountability training promotes officer safety. When officers understand the elements of individual accountability officers and apply that training in the field, it is another de-escalation tool.

The New Orleans Police Department (NOPD) created a peer intervention program entitled Ethical Policing is Courageous (EPIC), an accountability training based in social science that helps officers keep one another safe while keeping civilians safe. It is described on the police department’s website as follows:

[EPIC] is a peer intervention program developed by the NOPD, in collaboration with community partners, to promote a culture of high-quality and ethical policing. EPIC educates, empowers, and supports the officers on the streets to play a meaningful role in “policing” one another. EPIC is a peer intervention program that teaches officers how to intervene to stop a wrongful action before it occurs. At its core, EPIC is an officer survival program, a community safety program, and a job satisfaction program. EPIC represents a cultural change in policing that equips, encourages, and supports officers to intervene to prevent misconduct and ensure high-quality policing. Everyone benefits when potential misconduct or mistakes are avoided or prevented.¹¹¹⁴

Accordingly, the Board recommends POST’s training development include the topic of accountability and a discussion of how officers are accountable for each other. To that end, the Board recommends POST include the following content to ensure that every racial profiling course contains material on officer and supervisor accountability. The Board has made the following recommendations in past Board reports:

- Racial and identity profiling and accountability should be integrated into most POST courses implemented in field training and as a reminder in daily roll call meetings,¹¹¹⁵

1110 White et al., *How Can We Achieve Accountability in Policing? The (Not-So-Secret) Ingredients to Effective Police Reform* (2021) 25.2 Lewis & Clark L.Rev. 405, 410 <<https://law.lclark.edu/live/files/32098-lcb252whitefradellaflippinpdf>> [as of Nov. 15, 2023].

1111 *Id.* at p. 432.

1112 White, *Preventing Racially Biased Policing through Internal and External Controls: The Comprehensive Accountability Package*, in *Race, Ethnicity and Policing: New and Essential Readings* (2010) p. 468 <<https://www.jstor.org/stable/j.ctt9qg380>> [as of Nov. 15, 2023].

1113 See Cheung, *Police Accountability* (2005) 78 *Police J.* p. 3 <<https://journals.sagepub.com/doi/10.1350/pojo.78.1.3.65233>> [as of Nov. 15, 2023].

1114 New Orleans Police Department, *Ethical Policing is Courageous* <<http://epic.nola.gov/home/>> [as of Nov. 15, 2023].

1115 Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at p. 212.

- Provide courses on officer peer behavior and supervisor accountability and reporting and responding to biased practices by fellow officers;¹¹¹⁶ and
- Racial and identity profiling curriculum should also include information on the consequences of officers engaging in racial or identity profiling behavior or of not reporting profiling by other officers.¹¹¹⁷

POST trainings should focus on the need for both individual and collective accountability. Additionally, the training topics on accountability should contain real-world examples and interactive components so officers can understand how bias may have affected the interaction. The development of such training should include consultation with the RIPA Board.¹¹¹⁸

D. Recommendations

The Board looks forward to a strengthened relationship with POST as it continues to offer recommendations to improve the racial and identity profiling training and establish guidelines that will help inform the training, which together will make communities safer places to live for both individuals and law enforcement.

- (1) Adopt a process and publish timelines for Board and community review that will engage community and stakeholder input on how to improve trainings. (Pen. Code, § 13519.4, subd. (b).)
- (2) Allow time for meaningful feedback throughout curriculum updates and development, including community sourcing of SMEs.
- (3) Measure course effectiveness by examining RIPA data outcomes and official reports to infer behavioral changes.
- (4) Include individual officer and supervisor accountability and reporting as a required training topic in all racial and identity profiling courses.

E. Vision for Future Reports

The Board hopes to collaborate closely with POST in the next year on the topics and research to include in POST guidelines on racial and identity profiling. The Board commits to working with POST to reach an agreement on how and when they will work together to develop guidelines for the racial and identity profiling courses and curriculum.

The Board also hopes to begin review of the POST Field Training Program, which is a continuation of the racial and identity profiling classroom training.

1116 *Ibid.*

1117 *Ibid.*

1118 Pen. Code, § 13519.4, subd. (h).

REIMBURSEMENT FOR AB 953 IMPLEMENTATION

Local agencies can now apply for reimbursement for expenses related to compliance with RIPA reporting and data collection.¹¹¹⁹

When the Legislature creates a state mandated program, such as AB 953 RIPA reporting, local agencies can apply for reimbursement for those expenses.¹¹²⁰ In 2015, RIPA became law and created new reporting requirements for law enforcement agencies.¹¹²¹ In 2022, the Commission on State Mandates submitted a budget proposal to include RIPA reimbursements to agencies.¹¹²² The budget includes over \$50.5 million dollars to reimburse agencies.¹¹²³ Effective as of July 2023, agencies can submit reimbursement claims to the State Controller's office both for expenses accrued prior to the issuance of the mandate and for future expenses related to implementation.¹¹²⁴

Instructions for agencies to apply for reimbursements can be found here: https://sco.ca.gov/Files-ARD-Local/la_2023_raip375ada.pdf.

1119 Assem. Bill No. 953, *supra* note 752.

1120 Office of the State Controller, *State-Mandated Costs Claiming Instructions No. 2020-03, Racial and Identity Profiling – Program No. 375*, *supra* note 1119.

1121 Assem. Bill No. 953, *supra* note 752

1122 Office of the State Controller, *State-Mandated Costs Claiming Instructions No. 2020-03, Racial and Identity Profiling – Program No. 375*, *supra* note 1119.

1123 Legislative Analyst Office, *The 2023-24 Budget: Racial and Identity Profiling Mandate* (Feb. 2023) <<https://lao.ca.gov/Publications/Report/4715>> [as of Nov. 15, 2023].

1124 *Ibid.*

AMENDMENTS TO RIPA REGULATIONS

On October 11, 2023, the Office of Administrative Law (OAL) approved amendments to the California DOJ's RIPA regulations. The primary amendment is a new reporting requirement to report the reason for the stop that was communicated to the stopped person.¹¹²⁵ This amendment is consistent with Assembly Bill No. 2773 (2021-2022 Reg. Sess.) (AB 2773), which was signed into law in 2022 and requires officers to provide every stopped person the reason for the officer's stop and to report to the Department the communicated reason as part of officers' RIPA reporting obligations. This rulemaking focused on adding this new reporting obligation and also on clarifying existing obligations. Specifically, this rulemaking included two other changes to clarify:

- The different categories of traffic violations that officers must report (moving, non-moving, and equipment violations)¹¹²⁶; and
- The scope of the Department's obligation to disclose stop data to the public, which shall not include Unique Identifying Information, as defined in the regulations.¹¹²⁷

The current regulations related to data collection will take effect on January 1, 2024. This is also the effective date of the amendments that were approved on August 5, 2022; those amendments were described in more detail in the 2023 Report.¹¹²⁸ The provision regarding the scope of disclosure of stop data became effective upon OAL approval.

1125 Cal. Code Regs., tit. 11, § 999.226, subd. (a)(15) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].

1126 Cal. Code Regs., tit. 11, § 999.226, subd. (a)(14)(A)(1)(a)-(c) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].

1127 Cal. Code Regs., tit. 11, § 999.228, subd. (h) <<https://oag.ca.gov/system/files/media/ripa-final-text-of-proposed-regulations.pdf>> [as of Nov. 15, 2023].

1128 See Racial and Identity Profiling Advisory Board, *2023 Report*, *supra* note 55, at pp. 217–218.

RELEVANT LEGISLATION ENACTED IN 2023

This Report highlights legislation enacted in 2023 that may impact the Board’s work towards eliminating racial and identity profiling. Below is an overview of the primary changes resulting from the enacted legislation.

A. Assembly Bill 443 – Peace officers: determination of bias

Assembly Bill No. 443 (2023-2024 Reg. Sess.) requires the Commission on Peace Officers Standards and Training (POST) to establish a definition for “biased conduct” by January 1, 2026. The bill mandates that law enforcement agencies adopt POST’s definition and use it when investigating officers for bias-related complaints or incidents that involve possible indications of officer bias, and to determine if any racial profiling occurred. Additionally, the new law requires POST to develop guidance for agencies on how to conduct effective internet and social media screenings for applicants to law enforcement agencies. Presently, POST has the authority to suspend or revoke a law enforcement officer’s certification if they have engaged in serious misconduct, including demonstrating bias on the basis of race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status. However, law enforcement agencies are primarily responsible for investigating these allegations of serious misconduct and bias. This new law will help clarify for law enforcement agencies what qualifies as biased conduct.

B. Assembly Bill 645 – Vehicles: speed safety system pilot program

Assembly Bill No. 645 (2023-2024 Reg. Sess.) establishes a speed safety pilot program where a select number of cities and counties will track and measure the impact of automated speed enforcement technology. The law requires participants to engage in a public education campaign at least 30 days prior to launching the pilot to inform the public of the new laws and guidelines for implementation. Once the program is launched, the city or county shall issue warning notices during the first 60 days to drivers who receive speed violations. After the first 60 days, violators can receive civil penalties and have a right to an administrative hearing and an appeals process. The law mandates that the cities and counties establish diversion programs for individuals who are unable to pay the fines. At the close of the pilot (January 1, 2032), each participating city and county must submit an impact report to help evaluate the effectiveness of the program, including street safety and the economic impact on communities.

CONCLUSION

This year marks the Board's seventh annual report since RIPA's enactment. For the first time, the Board was able to analyze data from over 4.5 million stops from 535 reporting agencies. Consistent with prior years, the Board's analysis reveals disproportionate interactions between police officers and certain vulnerable communities relating to stops, searches, actions taken during stops, and results of stops. Building upon the analysis and expertise of its diverse members, the Board has made evidence-based recommendations to address systemic disparities and related concerns regarding pretextual stops and searches, youth interactions with law enforcement, police accountability, civilian complaints, and law enforcement training. Improving law enforcement and community interactions and eradicating racial and identify profiling requires commitment and participation from all impacted stakeholders. In pursuit of this goal, the Board looks forward to continuing its collaboration with POST, law enforcement agencies, researchers, advocates, and community members. At times, progress towards equality may feel stagnant or slow, but the Board remains hopeful that its research and recommendations will lead California to become a safer and more equitable state for everyone.