
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 953 **Hearing Date:** July 7, 2015
Author: Weber
Version: June 30, 2015
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Law Enforcement: Racial Profiling*

HISTORY

Source: American Civil Liberties Union of California; California State Conference of the NAACP; Youth Justice Coalition; Asian Americans Advancing Justice – Sacramento; PICO California; Reform California; Dignity & Power Now

Prior Legislation: AB 2133 (Torrico) – died Assembly Public Safety, 2006
AB 788 (Firebaugh) – died in Assembly, 2001
SB 1102 (Murray) – Chapter 684, Statutes of 2000
SB 78 (Murray) – vetoed, 1999
AB 1264 (Murray) – vetoed, 1998

Support: Advancing Justice; Advancement Project; AIDS Project Los Angeles; Alliance for Boys and Men of Color; American Federation of State, County and Municipal Employees; API Equality-LA; Asian Law Alliance; Asian Pacific Islander Legal Outreach; Bay Area Youth Summit; Board of Rabbis of Southern California; Brown Boi Project; California Black Health Network; California Immigrant Policy Center; California Nurses Association; California Partnership; California State Council of Service Employees International; City of West Hollywood; Children’s Defense Fund—California; Community Coalition; Council on American-Islamic Relations; Courage Campaign; Dignity & Power Now; Drug Policy Alliance; Ella Baker Center for Human Rights; Empowering Pacific Islander Communities; Equal Justice Society; FACTS Education Fund and Faire Chance Project; Friends Committee of Legislation of California; The Greenlining Institute; Immigrant Legal Resource Center; Immigrant Youth Coalition; Islamic Shura Council; Interfaith Center for Worker Justice; Japanese American Citizens League; Justice for Immigrants Coalition of Inland Southern California; the K.W. Lee Center for Leadership; LA Progressive; Lawyers’ Committee for Civil Rights of the San Francisco Bay Area; Legal Services for Prisoners with Children; Los Angeles Black Worker Center; Los Angeles LGBT Center; Los Angeles Regional Reentry Project; Los Angeles Urban League; Mexican American Legal Defense and Education Fund (MALDEF); National Center for Lesbian Rights; National Lawyers Guild; National Asian Pacific American Women’s Forum; A New Path; PACT: People Acting in Community Together; PolicyLink; Progressive Christians Uniting; San Francisco Public Defender; San Diego Immigrant Rights Consortium; San Diego LGBT Community Center; South Asian Network; Priority Africa Network; Southeast Asia Resource Action Center

Opposition: California State Sheriffs' Association; Association for Los Angeles Deputy Sheriffs; California College and University Police Chiefs Association; California Correctional Supervisors Organization; California Narcotic Officers Association; California Police Chiefs Association; California Association of Highway Patrolmen; Los Angeles Police Protective League; Riverside Sheriffs Association

Assembly Floor Vote:

45 - 27

PURPOSE

The purpose of this bill is to: 1) modify the definition of "racial profiling;" 2) require local law enforcement agencies to report specified information on stops to the Attorney General's office; and, 3) establish the Racial and Identity Profiling Advisory Board (RIPA).

Existing law prohibits a law enforcement officer from engaging in racial profiling. (Penal Code § 13519.4(f).)

Existing law defines "racial profiling," as "the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped." (Penal Code § 13519.4(e).)

Existing law requires that the course of basic training for law enforcement officers include adequate instruction on racial and cultural diversity in order to foster mutual respect and cooperation between law enforcement and members of all racial and cultural groups. (Penal Code § 13519.4(b).)

Existing law requires the DOJ to present to the Governor, on or before July 1st, an annual report containing the criminal statistics of the preceding calendar year. (Penal Code § 13010(g).)

Existing law mandates that the annual report contain statistics showing all of the following:

- The amount and the types of offenses known to the public authorities;
- The personal and social characteristics of criminals and delinquents;
- The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents;
- The administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies, including those in the juvenile justice system, in dealing with minors who are the subject of a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court; and,
- The number of citizens' complaints received by law enforcement agencies, as specified. The statistics must indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

(Penal Code § 13012.)

Existing law requires state and local law enforcement agencies to report statistical data to the DOJ at those times and in the manner that the Attorney General prescribes. (Penal Code § 13020.)

This bill requires, beginning March 1, 2018, each state and local agency that employs peace officers to annually report to the Attorney General's office data on all stops, as specified, conducted by that agency's peace officers for the preceding calendar year.

This bill requires the reporting to include the following information for each stop:

- The reason for the stop;
- The result of the stop, such as no action, warning, citation, property seizure, or arrest;
- If a warning or citation was issued, the warning provided or violation cited;
- If an arrest was made, the offense charged;
- The perceived race or ethnicity, gender, and approximate age of the person stopped. The identification of these characteristics shall be based on the observation and perception of the peace officer making the stop. For auto stops, this requirement applies only to the driver unless actions taken by the officer apply in relation to a passenger, in which case his or her characteristics shall also be reported.
- Actions taken by the officer during the stop, including, but not limited to, the following:
 - Whether the officer asked for consent to search the person, and if so, whether consent was provided;
 - Whether the officer searched the person or any property, and if so, the basis for the search, and the type of contraband or evidence discovered, if any; and
 - Whether the officer seized any property and, if so, the type of property that was seized, and the basis for seizing the property.

This bill provides that if more than one peace officer performs a stop, only one officer is required to collect and report the necessary information.

This bill prohibits state and local law enforcement agencies from reporting the name, address, social security number, or other unique personal identifying information of persons stopped, searched, or subjected to a property seizure.

This bill states that, notwithstanding any other law, the data reported shall be made available to the public to the extent which release is permissible under state law, with the exception of badge number, or other unique identifying information of the officer involved.

This bill requires the Attorney General, to issue regulations for the collection and reporting of the required data by January 1, 2017. The Attorney General should consult with specified stakeholders in issuing the regulations.

This bill mandates that the regulations specify all data to be reported, and provide standards, definitions, and technical specifications to ensure uniform reporting practices. To the extent possible, the regulations should also be compatible with any similar federal data collection or reporting program.

This bill requires each state and local law enforcement agency to publicly report the data on an annual basis beginning on July 1, 2018. The report should be posted on the law enforcement agency's Web site, and in the event the agency does not have a Web site, it shall be posted on the Department of Justice (DOJ) Web site.

This bill requires retention of the reported data for at least five years.

This bill mandates that the Attorney General annually analyze the data collected and report its findings from the first analysis by January 1, 2019. Reports are to be posted on the DOJ Web site.

This bill specifies that all data and reports made under these provisions are public records, as specified, and are open to public inspection.

This bill limits the definition of a "peace officer" for purposes of this section to "members of the California Highway Patrol, a city or county law enforcement agency and California state or university educational institutions." And, the definition explicitly states that peace officer, as used in this section, do not include probation officers and officers in a custodial setting.

This bill defines "stop" for purposes of this section, 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."

This bill revises the content of the DOJ annual report on criminal statistics to report the total number of each of the following citizen complaints:

- Citizen complaints against law enforcement personnel;
- Citizen complaints alleging criminal conduct of either a felony or misdemeanor;
- Citizen complaints alleging racial or identity profiling, disaggregated by the specific type of racial or identity profiling alleged.

This bill specifies that the statistics on citizen complaints must identify their dispositions as being sustained, exonerated, not sustained, unfounded, as specified.

This bill revises legislative findings and declarations regarding racial and identity profiling.

This bill renames "racial profiling" as "racial or identity profiling" and redefines it as "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 and substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description. The activities include, but are not limited to, traffic or pedestrian stops, or actions during a stop, such as, asking questions, frisks, consensual and nonconsensual searches of a person or any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest."

This bill requires any peace officer who has a complaint of racial or identity profiling that is sustained to participate in training to correct racial and identity profiling at least every six months for two years.

This bill mandates the Attorney General establish RIPA beginning July 1, 2016, for the purpose of eliminating racial and identity profiling, and improving diversity and racial sensitivity in law enforcement.

This bill provides that RIPA shall include the following members:

- The Attorney General, or a designee;
- The President of the California Public Defenders Association, or a designee;
- The President of the California Police Chiefs Association, or a designee;
- The President of the California State Sheriffs' Association, or a designee;
- The President of the Peace Officers Research Association of California, or a designee;
- The Commissioner of the California Association of Highway Patrolmen, or a designee;
- The Chair of the California Legislative Black Caucus, or designee;
- The Chair of the California Latino Legislative Caucus, or designee;
- The Chair of the California Asian and Pacific Islander Legislative Caucus, or designee;
- The Chair of the California Lesbian, Gay, Bisexual, and Transgender Legislative Caucus, or designee;
- A university professor who specializes in policing, and racial and identity equity;
- Two representatives of civil or human rights tax-exempt organizations who specialize in civil and human rights and criminal justice;
- Two representatives of community organizations specializing in civil or human rights and criminal justice and who work with victims of racial and identity profiling;
- Two clergy members who specialize in addressing and reducing racial and identity bias toward individuals and groups or practices; and,
- Up to two other members that the Attorney General may prescribe.

This bill tasks RIPA with the following:

- Analyzing data reported, as specified;
- Analyzing law enforcement training on racial and identity profiling;
- Work in partnership with state and local law enforcement agencies to review and analyze racial and identity profiling policies and practices;
- Issuing an annual report the first of which shall be issued by January 1, 2018, and posting the reports on its Internet Web site; and,
- Holding at least three annual public meetings to discuss racial and identity profiling and potential reforms, as specified.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.” (Defendants’ February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for Legislation

According to the author:

AB 953 will help eliminate the harmful and unjust practice of racial and identity profiling, and improve the relationship between law enforcement and the communities they serve. AB 953 promotes equal protection and prevents unreasonable searches and seizures.

Peace officers risk their lives every day, and the people of California greatly appreciate their hard work and dedication to public safety. At the same time, a recent poll shows that 55% of Californians and 85% of African-Americans in California believe that “blacks and other minorities do not receive equal treatment

in the criminal justice system.”¹ Racial and identity profiling significantly contributes to this lack of confidence in our justice system.

Racial and identity profiling occurs when law enforcement personnel stop, search, seize property from, or interrogate a person without evidence of criminal activity. Studies show that profiling often occurs due to unconscious biases about particular demographic identities.²

AB 953 would prevent profiling by, among other things, clarifying and modernizing California's current prohibition against profiling to better account for the ways in which profiling occurs, establishing a uniform system for collecting and analyzing data on law enforcement-community interactions, and establishing an advisory board that investigates profiling patterns and practices and provides recommendations on how to curb its harmful impact.

2. Effect of Legislation

Law enforcement officers are prohibited from engaging in racial profiling. (Penal Code § 13519.4(f).) “Racial profiling” is currently defined as the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped. (Penal Code § 13519.4(e).)

Although racial profiling is prohibited, studies show that racial profiling by law enforcement does occur. For example, according to a report by the Oakland Police Department, African-Americans, who compose 28 percent of Oakland’s population, accounted for 62 percent of police stops from last April to November. The figures also showed that stops of African-Americans were more likely to result in felony arrests. And, while African-Americans were more likely to be searched after being stopped, police were no more likely to find contraband from searching African-Americans than members of other racial groups. (http://www.mercurynews.com/crime-courts/ci_25410009/report-blacks-comprise-62-percent-oakland-police-stops.)

Likewise, in 2010, the Los Angeles Times reported that “The U.S. Department of Justice has warned the Los Angeles Police Department that its investigations into racial profiling by officers are inadequate and that some cops still tolerate the practice.”... “The Justice Department's concerns, which were conveyed in a recent letter obtained by The Times, are a setback for the LAPD, which remains under federal oversight on the issue.” The article noted, “Profiling complaints typically occur after a traffic or pedestrian stop, when the officer is accused of targeting a person solely because of his or her race, ethnicity, religious garb or some other form of outward appearance. About 250 such cases arise each year, but more damaging is the widely held belief, especially among black and Latino men, that the practice is commonplace.” (<http://articles.latimes.com/2010/nov/14/local/la-me-lapd-bias-20101114>.)

3. Argument in Support

The American Civil Liberties Union of California states, in part:

¹ Mark Aaldassare et al., *Californians & their government*, (PPIC Jan. 2015).

² Tracey G. Gove, *Implicit Bias and Law Enforcement*, Police Chief Magazine (Oct. 2011), <http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=2499&issue_id=102011>.

... AB 953 Would Facilitate the Development of Evidenced-Based Policing by Establishing a Uniform System for Collecting and Reporting Information on Stops, Searches and Property Seizures

In *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned*, the federal DOJ explains that having a system for collecting and reporting data on law enforcement stops, searches and property seizures facilitates the development of evidenced-based solutions to profiling, and builds public confidence in law enforcement:

[I]n the long run the systemic 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 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.³

The federal DOJ's *Resource Guide* also highlights that agencies collecting such data now have computerized and radio-dispatch systems that alleviate the need for outdated written forms, and allow officers to report stops, searches and seizures in mere seconds.⁴

... AB 953 Would Facilitate the Development of Solutions that Improve Law Enforcement-Community Relations by Creating a Racial and Identity Profiling Advisory Board

In light of recommendations from the Police Executive Research Forum ("PERF") and the federal DOJ's Office of Community Oriented Policing Services ("COPS"), AB 953 would create a diverse, multi-stakeholder advisory committee, called the "Racial and Identity Profiling Advisory Board," composed of social scientists and policing experts, as well as representatives of law enforcement, civil rights groups, clergy, and the Legislature. The Advisory Board would be tasked with the duty of analyzing data, training programs, and policies and practices on profiling, and making recommendations on how to prevent profiling. According to PERF and COPS, this approach not only provides the benefit of facilitating "buy in" by law enforcement officers who collect data, but also helps enhance the credibility of research efforts, and increases the likelihood that communities view data reporting and recommended reforms as legitimate.⁵

³ *A Resource Guide on Racial Profiling Data Collection System: Promising Practices and Lessons Learned* at 5 (2000), available at <http://justice.utah.gov/Documents/Research/Race/DOJResourceGuide.pdf>.

⁴ *A Resource Guide on Racial Profiling Data Collection System: Promising Practices and Lessons Learned* at 5 (2000), available at <http://justice.utah.gov/Documents/Research/Race/DOJResourceGuide.pdf>.

- "The additional time an officer needs to clear a call is less than three seconds." *Id.* at 20.
- "It is estimated that it will take officers an additional 20 to 30 seconds to enter the data by making choices on the computer pulldown menus." *Id.* at 26.

⁵ Lori A. Fridell, *By the Numbers: A Guide for Analyzing Race Data from Vehicle Stops*, 38-41 (PERF & COPS 2004); Lori Fridell et al., *Racial Biased Policing: A Principled Response*, 102-104 (PERF & COPS 2001).

In sum, the persistence of profiling in our state violates the U.S. and California Constitutions by betraying the fundamental promise of equal protection, and infringing upon the guarantee that all people shall be free from unreasonable searches and seizures. It also misdirects limited resources away from evidenced-based policing and the efficient pursuit of individuals who actually pose a threat to public safety, thus making all Californians less safe. To improve public safety, protect the fundamental rights of all Californians, and advance police-community relations, the ACLU of California strongly supports the enactment of AB 953.

4. Argument in Opposition

According to the California State Sheriffs' Association:

The California State Sheriffs' Association (CSSA) remains opposed to Assembly Bill 953, which would hinder important police work and enact costly requirements on law enforcement agencies regarding racial profiling.

AB 953 significantly expands the definition of racial profiling such that it prevents an officer from relying on identifying characteristics in any way in terms of deciding how to conduct police work. Specifically, by prohibiting an officer from considering or relying on, to any degree, a person's 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, this bill would prevent an officer from using the fact that a person appears to be a Caucasian female in deciding how to respond to a "be on the lookout" order that indicates that a white woman is suspected to have committed a crime. If such a person were stopped because of a traffic violation, the perceived race and gender characteristics could not be considered in deciding whether to escalate enforcement activities.

Additionally, AB 953 would require every law enforcement agency to annually report to the Attorney General (AG) data on all stops. Some of the data points that must be collected at every stop include: the reason for, and result of, the stop; if an arrest was made, the offense charged; whether the subject was searched; and the perceived race or ethnicity, gender, and approximate age of the person stopped, provided that the identification of these characteristics shall be based on the observation and perception of the peace officer making the stop, and the information shall not be requested from the person stopped. In essence, and counterintuitively, the bill seeks to combat racial profiling by requiring peace officers to pay very close attention to the race of the people with whom they interact.

Respectfully, AB 953 will hamstring peace officers and prevent them from doing their jobs effectively. The bill is overly broad and will result in negative impacts on public safety and local budgets. For these reasons, CSSA must oppose AB 953.