Finally, using these methodologies will make it feasible to apply these tests to all areas of California because they will not require collecting benchmarks manually or pairing the data with external data sources (i.e., creating a measurement by which to compare the data).

Benchmarks are important in the analysis of racial bias because they reflect what behavior would be in an unbiased world. For example, if the benchmark data suggest that two racial or identity groups are present at equal proportions, but one group constitutes the vast majority of stops, then this could indicate racial bias. A typical approach to establishing benchmarks for traffic stops, for example, would involve human observers standing at intersections and streets in order to record the number and percentage of drivers from different racial or ethnic groups that pass through by vehicle. These benchmarks would then be compared against the racial composition of individuals detained during traffic stops in those same areas.

This approach to establishing benchmarks is time and resource intensive. Therefore, establishing similar benchmarks for the entire state would be unrealistic and infeasible. Benchmark data based on resident population is more readily available without manual collection. However, a significant limitation of utilizing resident population data is that civilians are often stopped in geographic areas where they do not live and, thus, are not accounted for in the population data their stops are being compared against. Additionally, the Board has been tasked with examining bias as it pertains not only to race and ethnicity, but also to other identity groups as well, some of which may not be represented in datasets that some studies have used as benchmark data in the past.

These limitations do not mean that rigorous studies cannot employ benchmarking comparison data. They are merely stated as insight into why the two methods discussed in the sections that follow are being considered. The following sections discuss each of the approaches in greater detail.

A. Pre-Stop Analysis: Veil of Darkness Technique

As noted above, one way to analyze pre-stop decisions is by using the veil of darkness technique. Two researchers, Grogger and Ridgeway, developed this approach and first applied it to stop data from Oakland, CA in a RAND Corporation study published in 2006.[46] The veil of darkness technique is less susceptible to issues surrounding external or manually-collected benchmarking data because it takes advantage of daylight savings changes to establish a benchmark.

Changes in daylight theoretically affect visibility and the ability to perceive attributes of an individual, such as their race or other identity information. The veil of darkness technique examines stops that occur during the inter-twilight period. This period, roughly between 5:00 p.m. and 9:00 p.m., is where it is light out during parts of the year where daylight savings are in effect, but dark during standard time. The veil of darkness technique uses changes in daylight

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[46] Grogger and Ridgeway. *Testing for Racial Profiling in Traffic Stops from Behind a Veil of Darkness.* (2012) 109(1) Journal of the American Statistical Association, pp. 878-887.

savings and the coincident changes in visibility to evaluate bias against racial and other identity groups.[47]

The core assumption of the veil of darkness method is, if law enforcement is targeting drivers of a specific identity group, evidence of profiling would be most apparent during the daylight when a driver's identity is presumably more visible than at night. The veil of darkness method compares the proportion of stopped individuals that an identity group composes during daylight to the group's proportion at night when law enforcement cannot observe their identity group membership as easily. Since schedules do not often change immediately before or after the time change, the populations that will be present during the same period are unlikely to change. If no bias is demonstrated, then the proportions of identity groups stopped before and after the shift in daylight shifts should be very similar. This test is intended to be a measure of bias in the decisions that officers make to initiate stops of civilians.

For the veil of darkness test, establishing benchmarks is not necessary since the driving population immediately before and after daylight savings is likely to be the same.[48] The benchmark comes from the race-blinding effect of darkness, since it is more difficult to perceive racial identities at night. Rates of nighttime stops will then be compared to those of daylight stops, where race or identity group is more easily perceived and bias is more likely to be evident, to determine if significant differences between who is stopped under the two conditions exists.

Application to RIPA Stop Data

To analyze the RIPA stop data, the analysis would consider stops made in the inter-twilight period, typically sometime between 5:00 p.m. at the earliest and 9:00 p.m. at the latest. To apply the simplest version of this test, the only information that is necessary is the location, time and date of the stop, and the stopped individual's race, gender, or other identity grouping. The statistical methods often used in the veil of darkness tests, like logistic regression, are available to not only estimate the discrepancies between the two, but also report the statistical uncertainty around those estimates.

Additional Considerations and Limitations

The change in daylight savings is intended to serve as a proxy for the visibility of a civilian's race. Depending on ambient lighting, this may not be a completely faithful proxy in urban areas.[49] Researchers have considered ambient lighting, like proximity to streetlights, and additional contextual information to help evaluate the relative risk of being stopped.[50] However, a similar undertaking would be infeasible on a statewide scale. Additionally, this approach would be limited to the inter-twilight period and is intended for analysis of vehicle stops. Further, while the method is open to modifications to account for new considerations, in its proposed

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[47] Taniguchi et al., A Test of Racial Disproportionality in Traffic Stops Conducted by the Raleigh Police Department. (2016) RTI International.; Worden et al. *Testing for Racial Profiling with the Veil-of-Darkness Method.* (2012) 15(1) Police Quarterly, pp. 92-111.

[48] RIPA stop data will have unique considerations to bear in mind. The first is that pedestrian and vehicle stops are reported as one in the data. However, it may be possible to identify some vehicle stops if the reason for the stop is a vehicle-related infraction.

[49] Horrace and Rohlin, *How Dark is Dark? Bright Lights, Big City, Racial Profiling* (2016). 98(2) Review of Economics and Statistics, pp. 226-232.

[50] Kalinowski et al., Endogenous Driving Behavior in Veil of Darkness Tests for Racial Profiling (2017).

application other relevant features like tinted windows or make or model of car, which may serve as proxy for race, cannot be accounted for because no data on these issues will be available with RIPA stop data. If the Department becomes aware of methodologies that address these limitations or better measure pre-stop decisions using these stop data, it may elect to include analyses using those methods in the future.

B. Post-Stop Analysis: Outcome Tests

The outcome test, by contrast to the veil of darkness test, helps identify potential bias in decisions made after the stop is made. Outcome tests compare the discrepancies between the percentages of successful searches conducted on stopped individuals. These percentages are also referred to as "hit rates." For discretionary searches based upon consent, reasonable suspicion, or probable cause, equal hit rates across identity groups may signify a lack of bias, whereas differences may imply differential standards in conducting a search.[51]

Like the veil of darkness approach, the outcome test does not require a benchmark in order to work. This is because the comparisons being drawn are between hit rates of identity groups who are searched. The method holds that, under unbiased conditions, the hit rates of individuals would be more or less the same. If the hit rates are more or less the same, officers are using a common threshold of suspicion for each racial and identity group. When the hit rates are significantly different between identity groups, this may suggest that officers are not applying the same standard to justify a search of one group compared others. For instance, a high hit rate would suggest that officers require a large amount of information that suggests to them they will find evidence or contraband, should they choose to conduct a search. Meanwhile, a low hit rate would suggest that officers require less information to justify a search. Evidence for bias exists when we can infer a low threshold to search some identity groups and higher ones for others.

This test requires researchers to identify all stops, as well as those that lead to searches, and of those searches the number of those which lead to discoveries of contraband or evidence, and their locations. With this information in hand, it is possible to use inferential statistics to determine if these differences between hit rates are due to random chance or appear more systematic, thus, evidencing possible biased practices.

Application to RIPA Stop Data

To analyze the RIPA data, comparisons between different racial and identity groups per location could be evaluated. Conventionally, comparisons are made between the majority group and the various minority groups, such as making comparisons between white and black civilians. Comparisons of how often identity groups are searched and how often those searches result in evidence or contraband being found can be made. The types of evidence and contraband that successful searches yield may also be explored using the data that will be available. Inferential statistical tests are available to estimate statistically significant differences.

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[51] Knowles et al., *Racial Bias in Motor Vehicle Searches: Theory and Evidence* (2001) 109(1) Journal of Political Economy, pp. 203-229.; Persico and Todd, *The Hit Rates Test for Racial Bias in Motor-Vehicle Searches* (2008) 25(1) Justice Quarterly, pp. 37-53.

Additional Considerations and Limitations

One disadvantage of using outcome methodology is the "inframarginality," problem, which has the potential to lead to the incorrect attribution of bias. This problem, as illustrated by Pierson, Simoiu, and Overgoor, can be demonstrated by imagining two identity groups (Group One and Group Two), each with two subgroups (A and B) that have different probabilities of carrying contraband, either low (A) or high (B).[52] Imagine that Group One A has a 5% chance of holding contraband and Group One B has a 50% chance of holding contraband. Group Two A has 5% chance and Group Two B has a 75% chance of holding contraband. Suppose officers choose to search individuals if they have at least a 10% chance of finding contraband. Even though officers are applying a neutral baseline, they would end up having a lower success rate for Group One than Group Two, which could provide evidence of bias even though they are applying a search threshold without bias. For this reason, it is important to integrate enough information, such as location to hedge against this, where possible.[53] Department research staff will make use of the location data, to the extent possible, in order to counter this limitation. Additional tests can be pursued, as needed, in future reports.

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[52] Pierson et al., A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States (2017).
[53] Anwar and Hanming, An Alternative Test of Racial Prejudice in Motor Vehicle
Searches: Theory and Evidence. (2006) 96(1) American Economic Review, pp. 127-151.; Engel, A Critique of the "Outcome Test" in Racial Profiling Research (2008) 25(1) Justice Quarterly, pp. 1-36.

RACIAL AND IDENTITY PROFILING POLICIES AND ACCOUNTABILITY

One of the Board's most significant duties is to review and analyze "racial and identity profiling policies and practices across geographic areas in California, working in partnership with state and local law enforcement agencies."[54] With this goal in mind, last year the Board surveyed all California law enforcement agencies subject to stop data reporting. The survey sought information on their current policies and practices relevant to racial and identity profiling, efforts to enhance law enforcement-community relations and reduce biases in policing, and policies and methods for receiving civilian complaints. Based on the survey responses, the Board observed that while most agencies did have a specific policy or portion of a policy that addressed racial and identity profiling, there was little consistency in what was included in those policies across those 114 responding agencies out of 425 total agencies.[55]

In an effort to address the observed inconsistencies, the Board has researched existing evidence-based best practices for policies devoted to preventing racial and identity profiling in policing, and compiled best practices or standards that all California law enforcement agencies should review and, if appropriate, adopt in order to help prevent and identify racial and identity profiling if and where it exists. The Board acknowledges that to understand how a law enforcement agency is working to identify and prevent bias and profiling, it will need to examine policies that specifically aim to prevent profiling and biased policing as well as policies that govern prompt and appropriate remediation if potential problems are identified. It is also necessary to analyze the degree to which principles of equitable treatment in the provision of policing services are integrated throughout an agency's policies, culture, and practices more broadly.

Below, the Board provides best practice recommendations for some of the many policies that are related to the prevention of racial and identity profiling. These recommendations do not represent the full panoply of recommendations or best practices that an agency could and should consider adopting; rather, they aim to provide a foundation the Board hopes and plans to continue expanding upon in future reports. The Board again wishes to emphasize that law enforcement agencies should feel free to adopt additional best practices beyond what are listed here.

I. BEST PRACTICE RECOMMENDATIONS

The following best practice recommendations are drawn from a range of relevant law enforcement, academic, governmental, and non-profit organizations that have expertise in this area. For additional information on the Board's approach to identifying best practices, please see the introduction.

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[54] Pen. Code §13519.4, subds. (j)(3) & (A)-(E).

[55] Please note that of the 425 law enforcement agencies in the State that were sent the survey, 114 agencies participated, and thus the responses may not be representative of all agencies in the State.

A. Agencies Should Have a Clear Policy Devoted to the Prevention of Racial and Identity Profiling

Foundational to any bias-free policing policy should be the inclusion of a clear written policy and procedure regarding an agency's commitment to identifying and eliminating racial and identity profiling if and where it exists. Agencies should consider partnering with various stakeholders and representatives of the community in developing this policy. Some of the principles that agencies may wish to include in the policy are listed below.

- Agencies should create a separate policy dedicated to bias-free policing that expressly prohibits racial and identity profiling. The policy should explicitly and strongly express the agency's core values and expectations when it comes to bias-free policing.[56]
- Sworn and non-sworn personnel should be directed to interact with all members of the public in a professional, impartial, fair, respectful, and nondiscriminatory manner.[57]
- All persons (i.e., both members of the public and agency personnel) should be treated equally without regard to protected characteristics. California state civil rights laws should be used as a guide for the characteristics that should be included within the policy. These characteristics include, but are not limited to, race, color, ancestry, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, mental disability, and physical disability.[58]
- Officers should be prohibited from using proxies for protected characteristics, including language ability, geographic location, mode of transportation, or manner of dress, among others.[59]
- The policy should clearly articulate when the consideration of race, ethnicity, disability and other protected characteristics is inappropriate in carrying out duties and when it is legitimate policing to consider them (e.g., when a specific suspect description includes race or other protected characteristics).[60]

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[56] IACP Law Enforcement Policy Center, Unbiased Policing.; PERF, Operational Strategies to Build Police-Community Trust and Reduce Crime in Minority Communities (2018).; *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 2: 16-cv-01731-MCA-MAH.; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

[57] IACP Law Enforcement Policy Center, Standards of Conduct.; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[58] IACP Law Enforcement Policy Center, Police-Citizen Contacts.; PERF, Strengthening Relationships Between Police and Immigration Communities in a Complex Political Environment (2018). *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. City of Seattle* (2012) 12-CV-1282.

[59] IACP Law Enforcement Policy Center, Unbiased Policing.; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

[60] IACP Law Enforcement Policy Center, Unbiased Policing.; Pen. Code, § 13519.4, subd. (e); PERF, Constitutional Policing as A Cornerstone of Community Policing (2015).; *U.S. v. City of Cleveland* (2015).

B. Policies Covering the Prevention of Racial and Identity Profiling Should Be Easily Accessible and Well-Integrated into the Agency's Culture

- The policy should be accessible in many formats such as online, in person at the agency, at other governmental and non-governmental locations, and from an agency personnel, if requested.[61]
- Agencies should develop and use a language assistance plan and policy that includes protocols for interpretation (including Braille and American Sign Language) that is tailored to particular settings (e.g., interviews in jails or where person is otherwise in custody, interactions at police stations, interactions with officers at stops, etc.).[62]
- Bias-free policing principles should be integrated into management, policies and procedures, job descriptions, recruitment, training, personnel evaluations, resource deployment, tactics, and accountability systems.[63]
- The policy should include cross references to other relevant policies from the agency (such as civilian complaints, stops, use of force, training, etc.) and, where possible, provide links to the text of those policies.[64]

C. Policies Covering the Prevention of Racial and Identity Profiling Should Have Concrete Definitions to Ensure Its Principles Are Consistently Applied

- The policy should include a robust list of definitions of key terms, protected classes and characteristics, including but not limited to: [65]
  - racial or identity profiling
  - bias-free policing
  - race
  - color
  - ethnicity
  - national origin
  - ancestry
  - age
  - religion
  - gender identity or expression
  - sexual orientation
  - mental disability
  - physical disability

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[61] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

[62] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[63] IACP Law Enforcement Policy Center, Unbiased Policing.; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.; *U.S. v. City of New Orleans* (2013) 2: 12-cv-01924-SM-JCW.

[64] *U.S. v. City of Seattle* (2012) 12-CV-1282.

[65] Pen. Code, § 13519.4, subd. (e); The protected classes and characteristics identified here are derived from various California civil rights laws. These include the Unruh Civil Rights Act, Civil Code section 51 et seq., the Ralph Act, Civil Code section 51.7, the California Fair Employment and Housing Act, Government Code section 12920 et seq., Penal Code section 13519.4, and Government Code sections 12525.5 and 11135, among others.

- "Racial or identity profiling" should be defined in the policy in accordance with California Penal Code 13519.4, subdivision (e), as follows:
  - *"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. The activities include, but are not limited to, traffic or pedestrian stops, or actions during a stop, such as asking questions, frisks, consensual and non-consensual searches of a person or any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest."* [66]

D. Policies Covering the Prevention of Racial and Identity Profiling Should Include a Component on the Limited Circumstances in Which Characteristics of an Individual may be Considered

The policy should state that:

- Officers may take into account protected characteristics of an individual in establishing reasonable suspicion or probable cause, only when the characteristic is part of a specific suspect description based on trustworthy and relevant information that links a specific person to a particular unlawful incident.[67]
- Officers must be able to articulate specific facts that support their use of personal characteristics in establishing reasonable suspicion or probable cause.[68]
- Officers may consider relevant personal characteristics of an individual when determining whether to identify services designed for individuals with those characteristics (e.g., behavioral crisis, homelessness, drug use, etc.).[69]

E. Policies Covering the Prevention of Racial and Identity Profiling Should Include a Component on Communication with the Community

The policy should state that:

- All personnel should treat all members of the public with courtesy, professionalism, and respect. Personnel should not use harassing, intimidating, derogatory, or prejudiced

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[66] Again, the list of protected characteristics included in this provision should serve as the floor not the ceiling, and agencies should always feel free to include additional protected or personal characteristics to include.

[67] IACP Law Enforcement Policy Center, Unbiased Policing.; PERF, Operational Strategies to Build Police-Community Trust and Reduce Crime in Minority Communities (2018).; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.; Pen. Code, § 13519.4, subd. (e).

[68] IACP Law Enforcement Policy Center, Executing Search Warrants.; *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP.; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[69] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP.

language, particularly when related to an individual's actual or perceived protected characteristics.[70]

- Officers should listen to the member of the public's questions or concerns without interruption and directly address the questions the person may have regarding the stop, including an explanation of options for traffic citation disposition if relevant.[71]
- When conducting stops, officers should introduce themselves to the person being stopped and provide an explanation for the stop as soon as soon as reasonable and practicable (ideally before asking the driver for his or her license and registration).[72]

F. Policies Covering the Prevention of Racial and Identity Profiling Should Include a Component on Training

- All agency personnel, including dispatchers and non-sworn personnel, should be educated on biases (both implicit and overt) and expected to manage them.[73]
- All officers should be provided with training that is adequate in quality, quantity, scope, and type on investigatory stops, searches, and arrests.[74]
- The training should be created in consultation with law enforcement experts and various stakeholders, provided on a regular basis, and consistently evaluated and updated.[75]

G. Policies Covering the Prevention of Racial and Identity Profiling Should Include a Component on Data Collection and Analysis

- Agencies should consider analyzing the data they have collected, including data collected and reported to the Department regarding stops and civilian complaints.[76]
- Data should be reviewed to identify exceptional and deficient conduct, trends, unexplained disparities, compliance with policy, and training needs and opportunities.[77]
- Data should be reviewed when relevant for investigating complaints of bias.[78]

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[70]IACP Law Enforcement Policy Center, Police-Citizen Contacts.; PERF, Promising Practices for Using Community Policing to Prevent Violent Extremism (2016).; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

[71] IACP Law Enforcement Policy Center, Police-Citizen Contacts.; PERF, Advice from Police Chiefs and Community Leaders On Building Trust (2016).; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[72] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

[73] *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[74] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[75] PERF, Promising Practices for Using Community Policing to Prevent Violent Extremism (2016).; *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 2: 16-cv-01731-MCA-MAH.

[76] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

[77] IACP Law Enforcement Policy Center, Early Warning System.; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[78] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

H. Policies Covering the Prevention of Racial and Identity Profiling Should Include a Component That Requires Accountability and Adherence to the Policy

- All agency personnel, including dispatchers and non-sworn personnel, are responsible for knowing and complying with the policy. Personnel who engage in, ignore, or condone bias-based policing should be subject to discipline.[79]
- The policy should include information on the procedure for making a complaint against agency personnel and handling a bias-based policing allegation.[80]
- Officers must report instances of biased policing that they witness or are otherwise aware of. The policy should emphasize that all personnel share the responsibility of preventing bias-based policing in the agency.[81]
- The policy should prohibit retaliation against any person, law enforcement or civilian, who alleges biased policing.[82]

Supervisory Review

Supervising, directing, overseeing, and reviewing the daily activities of police officers, is essential in ensuring that the tenets of bias-free policing are integrated fully into the law enforcement agency and its culture. Below are some recommended best practices for inclusion in policies regarding supervisory review, as well as some systems and technologies that can serve as necessary tools in the supervision and accountability process:

Supervisors should:

- Establish and enforce the expectation that officers will police in a manner that is consistent with the U.S. and California Constitutions and federal and state laws, as well as internal policies.[83]
- Provide leadership, counseling, direction, and support to officers as needed.[84]
- Lead efforts to engage individuals and groups and ensure that officers are working actively to engage the community and increase public trust.[85]
- Review documentation, including video from body-worn cameras as appropriate, of investigatory stops, detentions, searches, and arrests for completeness, accuracy, and adherence to law and department policy.[86]

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[79] *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[80] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. The County of Los Angeles and The Los Angeles County Sheriff's Department* (2015).

[81] IACP Law Enforcement Policy Center, Unbiased Policing.; *U.S. v. The County of Los Angeles and The Los Angeles County Sheriff's Department* (2015).

[82] IACP Law Enforcement Policy Center, Retaliatory Conduct by Employees.; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[83] PERF, Constitutional Policing as A Cornerstone of Community Policing (2015).; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP.

[84] IACP Law Enforcement Policy Center, Employee Mental Health.; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[85] PERF, Advice from Police Chiefs and Community Leaders On Building Trust (2016).; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

[86] PERF, Police Accountability – Findings and National Implications of an Assessment of the San Diego Police Department (2015).; *U.S. v. City of New Orleans* (2013) 2: 12-cv-01924-SM-JCW.

- Take corrective action, require training, or refer for discipline where appropriate.[87]
- Identify training and professional development needs and opportunities.[88]
- Highlight areas where officers are engaging appropriately and effectively and use those examples during roll call and other training opportunities.[89]
- Consider the use of early identification, warning, or risk management systems to contribute to effective and efficient supervisory review.[90]

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[87] *U.S. v. City of New Orleans* (2013) 2: 12-cv-01924-SM-JCW.; *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP.

[88] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[89] IACP Law Enforcement Policy Center, Early Warning System.; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP.

[90] IACP Law Enforcement Policy Center, Early Warning System; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; Early identification, warning, or risk management systems are flexible management tools that promote supervisory awareness and proactive identification of potentially problematic behavior among officers, and facilitate the delivery of individualized interventions to correct identified problematic or potentially problematic officer behavior and to prevent patterns of misconduct from emerging.

CIVILIAN COMPLAINT POLICIES AND PROCEDURES

California recognizes that having a robust process for handling civilian complaints is an important step toward building trust between law enforcement and the community.[91] Specifically, California law requires that "[e]ach department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public."[92] Analysis of civilian complaint policies and procedures, especially with regard to racial and identity profiling, is an integral piece of the Board's annual report.

To comply with this mandate, it is important that every law enforcement agency in the state review its civilian complaint policies to ensure that it has accessible and well-formulated contemporary complaint policies and procedures. In order to assure the public that an agency is effectively addressing the concerns of community members, law enforcement agencies should have reliable, transparent mechanisms by which to receive, investigate, and resolve complaints about alleged peace officer misconduct, particularly those involving racial or identity profiling. Both anecdotal and quantitative data received through civilian complaints will help law enforcement agencies identify and redress areas needing improvement.

Written and thorough civilian complaint procedures can provide a myriad of benefits to a law enforcement agency and the community at large. First, communities that feel they have been subjected to racial or identity profiling need to feel there is a fair, accessible mechanism by which their grievances can be addressed. By creating robust civilian complaint procedures, law enforcement agencies can help fortify trust with their communities.

Second, having civilian complaint procedures that are easily accessed by the community will also provide law enforcement with the opportunity to receive feedback and help root out and address potentially problematic practices within their ranks. If analysis of the complaints shows that there is an officer who is the subject of multiple sustained complaints, then they can be identified for training and intervention. Trends in complaints can be tracked to help shape policy within an agency. Indeed, law enforcement agencies across the country have found that civilian complaint data is important management information. Even when complaints are not sustained, they can provide extremely useful information about performance that can be utilized to examine agency and individual officer performance, as well as to obtain an understanding about the perceptions and concerns of the community.

Third, being receptive to civilian complaints allows law enforcement to strengthen their relationship with their communities. Distrust and resentment can evolve among communities that feel marginalized or targeted by law enforcement. To heal these divides, it is imperative that law enforcement agencies demonstrate from investigation to resolution that civilian complaints are heard, taken seriously, and pursued with professionalism and thoroughness.

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[91] Pen. Code, § 13012, subd. (c).
[92] Pen. Code, § 832.5, subd. (a)(1).

This section of the report discusses the importance of effective complaint procedures in cultivating community trust, and includes: 1) a statewide analysis of the 2017 complaint data submitted to the Department; 2) an agency-level snapshot of the 2017 complaint data submitted to the Department; and 3) provides several recommendations and best practices for agencies to consider in regards to their complaint procedures.

I. OVERVIEW OF CIVILIAN COMPLAINT DATA REPORTED TO THE DEPARTMENT

Since 1981, state and local law enforcement agencies that employ peace officers have been submitted the number of non-criminal complaints and complaints alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category to the Department on an annual basis.

RIPA expanded the type of information regarding civilian complaints that is submitted to the Department. Starting on January 1, 2016, complaint information collected pursuant to Penal Code section 13012 must include the numbers of complaints alleging racial or identity profiling, including the specific type(s) of profiling alleged: based on race, color, ethnicity, national origin, religion, gender identity or expression, sexual orientation, or mental or physical disability.[93] It should be noted that civilians may file a complaint alleging profiling based on more than one identity type.

Additionally, agencies must include the numbers of complaints that reached the dispositions of "sustained," "exonerated," "not sustained," and "unfounded." RIPA also requires the Department to disaggregate the data by individual law enforcement agency.[94]

In December 2015, the Department released an information bulletin encouraging departments to "…explicitly inquire on their civilian complaint forms whether the complainant alleges racial or identity profiling and if so, the specific types(s) of racial or identity profiling alleged."[95] However, law enforcement agencies may use their own discretion when developing policies and procedures for collecting information regarding complaints made against peace officers.[96]

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[93] Pen. Code, § 13012, subd. (a)(5)(C).
[94] Pen. Code, § 13012, subd. (a)(5)(C).
[95] Cal. Dept. of Justice, "Information Bulletin No. DLE-2015-06" (2015) Available at:
https://www.google.com/url?q=https://oag.ca.gov/sites/all/files/agweb/pdfs/law_enforcement/dle-2015-06.pdf&sa=U&ved=0ahUKEwj84rrLwo7fAhXJHzQIHROaBeMQFggEMAA&client=internal-uds-cse&cx=001779225245372747843:drcxy6yordo&usg=AOvVaw2B2XMA1uTLypx5NtRUpkOR
[96] See e.g., Pen. Code, § 832.5.

Due to the discretion law enforcement agencies are given when implementing civilian complaint programs, differences in approaches between agencies could affect the number of complaints observed in the data. Therefore, care should be taken when attempting to make comparisons across agencies. For example, observed differences could be due to a latent difference in the way the officers of the departments interact with civilians as well as other factors If Agency One makes its complaint forms available in English, Spanish, and Chinese but Agency Two's form is available only in English, then Agency One's complaint form may open up the complaint process to a wider population than Agency Two's form does. In this case, differences in the number of complaints may be partially explained by the presence of a language barrier at Agency Two, but not Agency One.

Other factors, such as agency policies or staffing resources within the units assigned to processing and investigating complaints, may also affect the disposition of complaints after they are reported. The Board hopes that agencies will work to implement the Board's best practice recommendations for handling civilian complaints to increase the ability to compare complaints and complaint systems across the state.

A. Future Civilian Complaint Data Collection Changes

The Board made a series of recommendations in the 2018 report, including:

Further changes to the data collection of civilian complaints may be necessary in the future to unlock the full potential of collecting this type of data… One possibility is that data reporting could be altered to address the issue of complaints reaching disposition in different years than the year in which they are first reported. As the data is currently collected, complaints that reach a disposition (sustained, exonerated, not sustained, unfounded) during a reporting year are not always complaints that were originally reported during that reporting year… Being able to differentiate complaints that stem from the reporting year from complaints that stem from previous years is preferable because these data will likely be presented with year-specific contextual and comparison data. Therefore, it may be useful to collect the data in a way that separates dispositions into two categories; number of complaints reported during the current reporting year, and number of complaints reported during a previous reporting year.[97]

> ## Key Terms
>
> ***Reported***: the number of civilian complaints reported for the statistical year
>
> ***Sustained***: the investigation disclosed sufficient evidence to prove the truth of allegation in the complaint by preponderance of evidence
>
> ***Exonerated***: the investigation clearly established that the actions of the personnel that formed the basis of the complaint are not a violation of law or agency policy
>
> ***Not sustained***: the investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation in the complaint
>
> ***Unfounded***: the investigation clearly established that the allegation is not true
>
> ***Pending***: the number of complaints reported in the current year that are still pending

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[97] Racial and Identity Profiling Advisory Board. Racial and Identity Profiling Advisory Board Annual Report 2018. (2018) pp. 34-35. Available at https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2018.pdf

The Department took the recommendations made by the Board into consideration and revised the data collection form used to collect civilian complaint information from agencies across the state. All reporting agencies will begin using this new data collection form to submit civilian complaint information to the Department for the calendar year 2019, to be reported to the Department in 2020.

The Department will release an information bulletin to law enforcement agencies to notify them of the new data collection requirements and will provide a copy of the revised data collection form to assist agencies in their collection of this data.

The civilian complaint data collection form that will be used to collect data, starting on January 1, 2019, has three significant revisions from the existing form. First, there will now be specific counts of dispositions of complaints that were initially reported during the statistical year (i.e., complaints that were reported and resolved in the same calendar year will be counted separately from complaints that have not been reported and resolved in the same calendar year). Likewise, complaints that were originally reported in years prior to the statistical year in which they reached dispositions will have separate counts so that they can be distinguished from the more recent complaints.

Second, the Department will report complaints made in local detention facilities separately from other complaints. By doing this, it will be possible to analyze complaints stemming from custodial settings separately from those stemming from non-custodial settings. This will not impact the ability to analyze all complaints as a whole, regardless of setting.

Finally, non-criminal, misdemeanor and felony categories will be further disaggregated by offense level for disposition and profiling category totals. By doing this, it will be possible to see the distribution of different offense levels for not only total complaints and complaints made in local detention facilities, but also specifically for complaints alleging profiling based on race/color/ethnicity/national origin, age, religion, gender identity or expression, sexual orientation, mental disability, and physical disability. This will allow the Board and members of the public to explore potential differences in the number of profiling complaints within each of the three offense levels amongst different identity types.

These three changes in data collection are designed to make the civilian complaint information more user-friendly and more accessible to the public. The changes do not alter any of the categories of information on previous collection forms. No data that was previously available on the previous data collection form has been omitted or sacrificed for any of these changes. Additionally, these changes do not require additional information to be collected by the reporting agencies. Rather, they just require a greater level of detail when reporting the data to the Department moving forward.

B. Overview of Data Examined

The civilian complaint data discussed in this section is limited to only data reported to the Department by agencies that are also subject to the stop data reporting requirements under

RIPA.[98] This includes all city and county law enforcement agencies that employ peace officers, except those in a custodial setting, the California Highway Patrol, and the law enforcement agencies of the University of California, California State Universities, California Community Colleges, and K-12 school districts. In total, 453 agencies subject to RIPA's stop data reporting submitted information regarding the civilian complaints they received for the calendar year 2017. Data for the full set of agencies that reported civilian complaint information in 2017, including agencies not subject to RIPA's stop data collection requirements (e.g., District Attorney's Offices, Probation Departments, Coroner's Offices, and the California Employee Development Department) is available on the Department's OpenJustice Data Portal.[99]

Civilian Complaints for Stop Data Reporters Statewide

The 453 agencies subject to RIPA reported 9,459 civilian complaints in 2017. The most common complaints alleged conduct that was noncriminal in nature ($n = 8,682$, 91.8%)[100], followed by complaints for conduct that constitutes a misdemeanor offense ($n = 513$, 8.4%); felony complaints were the least common ($n = 264$, 2.8%). Of the complaints that reached a disposition in the 2017 calendar year, 807 (10.2%) were sustained, 1,701 (21.4%) were not sustained, 1,897 (23.9%) were exonerated, and 3,537 (44.5%) were determined to be unfounded. As was noted in the above, not all complaints reach a disposition during the same year in which they were first reported. Therefore, it is likely that some of the complaints that reached disposition in 2017 were originally lodged in 2016 or years prior.

Seventy-nine (17.4%) agencies indicated they did not have any civilian complaints to report during the year of 2017. By contrast, 374 agencies did report that they received one or more civilian complaints. Of those 374 agencies that reported civilian complaints, 141 agencies reported one or more civilian complaints alleging racial or identity profiling. Specifically, those 141 agencies received 865 complaints alleging racial or identity profiling.

Of the racial and identity complaints that reached a disposition in 2017, 10 (1.5%) were sustained, 77 (11.7%) were not sustained, 96 (14.6%) were exonerated, and 476 (72.2%) were determined to be unfounded.
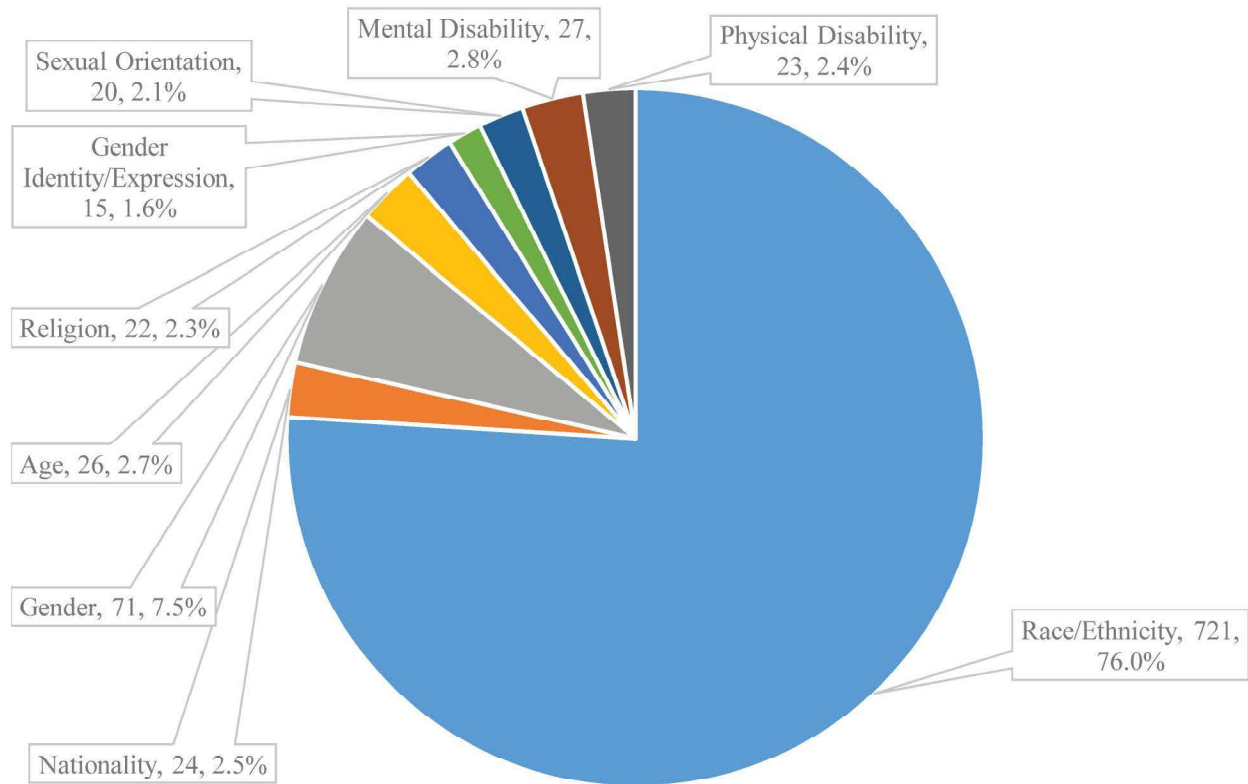
Figure 3 breaks down profiling complaints by specific type of profiling, including race or ethnicity, nationality, physical or mental disability, sexual orientation, gender identity or expression, religion, age, and gender. It should be noted that civilians may file a complaint alleging profiling based on more than one identity type. This means that one complaint alleging multiple types of profiling may be counted multiple times across identity groups. For example, a person may file a complaint stating that they believe that they were profiled based on their nationality and religion. Therefore, numbers in Figure 3 should not be interpreted to mean the discrete number of complaints, because this would serve to over-count the number of individual complaints received by the reporting agencies.

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[98] As noted above, only eight of these 453 agencies have begun collecting stop data as of July 1, 2018. The remainder will begin collecting stop data on a staggered schedule, based upon number of sworn-personnel. Please see the report section on stop data for detailed information regarding RIPA's stop data collection program.

[99] Cal. Dept. of Justice, OpenJustice Data Portal. Available at: https://openjustice.doj.ca.gov/data

[100] "n" refers to the sample size.

Figure 3: Profiling Complaints Reported by Type, 2017

Pie chart data:
- Race/Ethnicity, 721, 76.0%
- Gender, 71, 7.5%
- Mental Disability, 27, 2.8%
- Age, 26, 2.7%
- Nationality, 24, 2.5%
- Physical Disability, 23, 2.4%
- Religion, 22, 2.3%
- Sexual Orientation, 20, 2.1%
- Gender Identity/Expression, 15, 1.6%

Agency-Level Data Snapshot

California's largest agencies (Wave 1), which employ more than 999 peace officers (excluding custodial officers) reported the information provided in Table 4 below, including the total number of complaints reported as well as the number of complaints reported alleging racial or identity profiling. The number of sworn personnel each agency employed in 2017 is also provided as additional information by which readers may better understand the size of each agency. Number of calls for service, which the Board collected in a survey for its 2018 report, are not available[101] for this year's report since the Board did not issue another survey. For the previous statistical year, 2016, agencies covered in Tables 4 through 6 reported receiving between 310,000 to 2,400,000 calls for service.

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[101] As reported to the Department, California Highway Patrol officers made 3,800,000 "public contacts" in 2017. However, this information was not requested from, nor provided by, any other department for context. "Public contacts" is also a different and more expansive metric than "calls for service", which was provided in the Board's 2018 report (Available at https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2018.pdf.)

Table 4: Wave 1 Agency Complaints and Sworn Personnel

Agency	Complaints Reported	Profiling Complaints Reported	Sworn Personnel
California Highway Patrol	308	24	7,401
Los Angeles County Sheriff's Department	828	31	9,413
Los Angeles Police Department	1,729	215	9,988
Riverside County Sheriff's Department	78	7	1,831
San Bernardino County Sheriff's Department	106	39	1,957
San Diego County Sheriff's Department	6	1	2,601
San Diego Police Department	97	13	1,752
San Francisco Police Department	527	41	2,332

Table 5 displays the same information as Table 4 for California's medium–large agencies, with between 334 and 999 non-custodial sworn personnel. These agencies begin collecting stop data January 1, 2019, and are referred to as Wave 2.

Table 5: Wave 2 Agency Complaints and Sworn Personnel

Agency	Complaints Reported	Profiling Complaints Reported	Sworn Personnel
Fresno Police Department	188	7	786
Long Beach Police Department	168	12	799
Oakland Police Department	1,248	54	744
Orange County Sheriff's Department	116	9	1,843
Sacramento County Sheriff's Department	325	10	1,279
San Jose Police Department	208	33	940

Agencies with 333 non-custodial sworn personnel belong to Wave 3. This wave of reporters begins stop data collection on January 1, 2021. Complaint and sworn personnel information for these agencies can be found in Table 6 below.

Table 6: Ave 3 Agency Complaints and Sworn Personnel

Agency	Complaints Reported	Profiling Complaints Reported	Sworn Personnel
Alameda County Sheriff's Department	42	3	998
Anaheim Police Department	70	16	419
Bakersfield Police Department	62	3	364
Fresno County Sheriff's Department	21	2	412
Kern County Sheriff's Department	100	9	812
Riverside Police Department	36	3	350
Sacramento Police Department	18	0	644
Santa Clara County Sheriff's Department	73	6	1,264
Stockton Police Department	10	0	441
Ventura County Sheriff's Department	123	11	767

Tables 4 through 6 are intended to provide a high-level glimpse at some information available for the larger agencies who employ 333 or more non-custodial sworn personnel, which will all begin collecting stop data by 2021. For a complete look at the data, the dataset containing agencies of all sizes and an extended catalogue of data elements beyond what is available in the tables above can be found at https://oag.ca.gov/ab953/ Board.

II. BEST PRACTICE RECOMMENDATIONS

The following best practice recommendations are drawn from a range of relevant law enforcement, academic, governmental, and non-profit organizations that have expertise in this area. For additional information on the Board's approach to identifying best practices, please see the section devoted to best practices in the introduction.

A. Agencies Should Have Civilian Complaint Policies and Procedures That Contain Basic Principles

- Agencies should have an accessible, fair, and transparent complaint process. The process should be set forth in writing and made widely and permanently available within the agency and to the public.[102]
- All complaints should be accepted, whether in person, in writing, over the telephone, anonymously, or on behalf of another individual.[103]

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[102] PERF, Police Accountability – Findings and National Implications of an Assessment of the San Diego Police Department (2015).; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.
[103] PERF, Police Accountability – Findings and National Implications of an Assessment of the San Diego Police Department (2015).; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

- Agencies should develop an easily understandable and usable complaint form that individuals may use when filing a complaint regarding alleged personnel misconduct. This form should be available online as well as in writing at a variety of governmental and community-centered locations and should be made available in multiple languages. The form should not contain any language that could reasonably be construed as discouraging the filing of a complaint.[104]
- Agencies should document and investigate all complaints of alleged personnel misconduct, in a thorough, unbiased, timely manner. The standards for review should be clearly delineated in policies, trainings, and procedures featuring detailed examples to ensure proper application.[105]
- All complainants, subject personnel, and witnesses should be treated objectively and fairly.[106]
- The complaint policy should encourage individuals to come forward rather than discourage or intimidate complainants. Retaliation against any person who reports alleged misconduct or cooperates with an investigation should be expressly prohibited.[107]
- All sworn and non-sworn law enforcement personnel should be sufficiently trained on the complaint policy, procedure, and requirements.[108]

B. Policies on Civilian Complaints Should Be Easily Accessible and Well Communicated to the Community

- Complaint procedures and forms should be made available in multiple languages and at a location within the agency's office that is easily accessible to the public.[109] In addition, the procedures and complaint forms should be available online and in writing at a variety of governmental and community-centered public locations.[110]
- Agency personnel should have complaint forms in their patrol vehicles so that complaints can be addressed immediately in the field. Agencies may consider distributing business cards with the personnel's name, rank, and contact information to assist the public in

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[104]IACP Law Enforcement Policy Center, Investigation of Employee Misconduct.; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 2: 16-cv-01731-MCA-MAH.

[105] IACP Law Enforcement Policy Center, Investigation of Employee Misconduct.; *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 2: 16-cv-01731-MCA-MAH.; *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP.

[106] *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[107] IACP Law Enforcement Policy Center, Retaliatory Conduct by Employees.; *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 2: 16-cv-01731-MCA-MAH.; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[108] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP.

[109] California state law requires local agencies that receive state funding to provide language access service to limited English proficient (LEP) populations. Agencies should assess which languages are most appropriate for their community and create a translation plan to ensure the forms are available in multiple languages including those for individuals with disabilities (e.g., Braille or American Sign Language). For additional information on the legal requirements for language access, please see the recommendations around translation and interpretation services made in the "civilian complaint policies and procedures" section of the Board's 2018 report available at https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2018.pdf.

[110] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

lodging complaints. They may also consider requiring supervisors to respond to the field to take complaints.[111]

- The agency should contact the complainant as soon as possible with a verification that the complaint has been received and that it is being reviewed. [112]
- Reports of complaint statistics should be made available to the public on a regular basis. [113]

C. Any Policy on Civilian Complaints Should Contain Details on the Intake, Filing, and Tracking Process

- Agencies should establish written policies and procedures for accepting, processing and investigating complaints, ensuring fairness to the subject personnel and complainants. [114]
- All complaints and their dispositions should be appropriately documented and tracked, preferably electronically.[115]
- All agency personnel, including dispatcher and non-sworn personnel, should be trained to properly handle complaint intake, including how to provide complaint material and information, the consequences for failing to properly take complaints, and strategies for turning the complaint process into positive police-civilian interaction.[116]
- An agency's complaint procedures should be explained to the complainant and the complainant should be advised where and with whom the complaint may be filed.[117]
- All complaints should be given a unique number for tracking purposes.[118]

D. Policies on Civilian Complaints Should Contain Details on the Investigation Process

- Agencies should clearly detail the investigation procedure for complaints to ensure all complaints are appropriately and objectively reviewed.[119]
- Any investigation should be completed by someone of higher rank than the person who is the subject of the investigation.[120]
- All investigations should adhere to written timelines from the date the complaint was filed.[121]

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[111] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[112] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

[113] *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[114] IACP Law Enforcement Policy Center, Investigation of Employee Misconduct.; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB at 87-95. *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP.

[115] *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 2: 16-cv-01731-MCA-MAH.; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

[116] *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP.

[117] IACP Law Enforcement Policy Center, Investigation of Employee Misconduct.; *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 2: 16-cv-01731-MCA-MAH.

[118] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

[119] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP.

[120] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP.

[121] IACP Law Enforcement Policy Center, Investigation of Employee Misconduct.; *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP.

- Agencies should promptly identify, collect, and consider all relevant evidence, including audio or video recordings. [122]
- Agencies should not seek personal information that is not necessary to process the complaint, and which may discourage submission (e.g., social security number, driver's license information, etc.).[123]
- Agencies should take all reasonable steps to locate and interview all witnesses, including civilian witnesses. Interviews should be conducted in a timely, respectful, and unbiased manner. All agent and witness statements should be objectively evaluated.[124]
- If the complainant cannot identify the subject officer's name, all reasonable efforts to identify the officer should be made.[125]
- Agencies should accept all complaints regardless of when the alleged incident occurred. Depending upon the age and severity of the allegations, the agency may or may not need to take action, but should at minimum accept the complaint and conduct an initial review.[126]
- Agencies should adhere to a stated time limit on how quickly the investigation process is commenced after receiving a complaint and deadlines to ensure timely resolution.[127]
- Agencies should clearly define investigation disposition categories and make this information available to the public.[128]
- The agency should regularly assess the effectiveness of the complaint process and determine if there is a need for a re-evaluation of existing policies, procedures, or trainings.[129]
- Agencies should consider the appropriateness of independent oversight models such as a civilian review Board or independent auditor.[130]
- Agencies should document all investigation findings and keep all complaints available for internal analysis and audits for at least five years.[131]
- Agencies should consider conducting regular, targeted, and random integrity audits.[132]

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[122] IACP Law Enforcement Policy Center, Investigation of Employee Misconduct.; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

[123] IACP Law Enforcement Policy Center, Investigation of Employee Misconduct.; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

[124] IACP Law Enforcement Policy Center, Investigation of Employee Misconduct.; *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 2: 16-cv-01731-MCA-MAH.; *U.S. v. City of New Orleans* (2013) 2: 12-cv-01924-SM-JCW.

[125] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. City of New Orleans* (2013) 2: 12-cv-01924-SM-JCW.

[126] *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 2: 16-cv-01731-MCA-MAH.; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[127] *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 2: 16-cv-01731-MCA-MAH.; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

[128] *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 2: 16-cv-01731-MCA-MAH.

[129] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[130] *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 2: 16-cv-01731-MCA-MAH.; *U.S. v. City of New Orleans* (2013) 2: 12-cv-01924-SM-JCW.

[131] IACP Law Enforcement Policy Center, Resource Investigation of Employee Misconduct.; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

[132] *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 2: 16-cv-01731-MCA-MAH.; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

TRAINING RELATED TO RACIAL AND IDENTITY PROFILING

The Board is charged with working on training related to racial and identity profiling, including analyzing trainings developed by POST. POST courses include training designed to meet the requirements of the racial and cultural differences training outlined in Penal Code section 13519.4.[133] POST is a state agency established to provide minimum testing, hiring, and training standards for peace officers in California.[134] While participation in POST is voluntary, the vast majority of California law enforcement agencies participate in the POST program, and are therefore eligible to receive the services that POST offers. Across California, there are 39 POST-certified basic law enforcement training academies that present the Regular Basic Course training to officers.[135]

In its 2018 report, the Board analyzed POST's training and provided recommendations for the expanded training that officers must take every five years. Specifically, the Board analyzed the POST courses, Racial and Cultural Differences, Bias-Based Policing: Remaining Fair and Impartial, and Principled Policing: Implicit Bias and Procedural Justice. The Board found that several of the trainings did not meet all of the curriculum requirements under Penal Code section 13519.4.[136] The Bias-Based Policing training has since been removed for this reason and POST is in the process of being replaced with a training that does meet the requirements. The Board will work closely with POST on the creation and implementation of this new training.

The Board has conducted research on existing evidence-based best practices for trainings devoted to preventing racial and identity profiling in policing and compiled a list of recommendations. The Board recommends that POST consider including these practices in POST's "expanded training/refresher course" under Section 13519.4.[137] These training recommendations apply, but are not limited to, POST trainings. They are intended to promote the standardization of the practices for how law enforcement can properly and proactively address racial and identity profiling in policing and build and maintain community trust and confidence.

I. OVERVIEW OF THE BOARD'S COLLABORATION WITH POST IN 2019

The Board and POST have maintained their collaborative relationship in an effort to fulfill the important requirements set forth in Penal Code section 13519.4.[138] The Board and POST met and the Board provided initial feedback on POST's ongoing assessment and improvement of its procedural justice/principled policing training for law enforcement. The Board and a POST representative have discussed the following projects and ideas: 1) an 8-hour principled policing basic course to be piloted in January 2019; 2) an update and review of the existing 8-hour Principled Policing Course; 3) exploring the potential of including in trainings the Curriculum Augmentation Videos (CAV) created by nationally recognized experts; 4) exploring the potential to use virtual reality or augmented reality as a training tool; 5) the potential of auditing courses to

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[133] Pen. Code, § 13519.4.
[134] Pen. Code, § 13500-13553.
[135] Cal. POST, Course Catalogue (2018). Available at: https://catalog.post.ca.gov/Default.aspx
[136] Pen. Code, § 13519.4.
[137] Pen. Code, § 13519.4, subds. (a)-(h).
[138] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

ensure curriculum and facilitation continuity statewide; and 6) researching online learning platforms to deliver the principled policing training in a cost-effective manner.

Several members of the Board attended and participated in Principled Policing trainings and one member attended a three-day POST training development workshop.

II. BEST PRACTICE RECOMMENDATIONS

The following best practice recommendations are drawn from a range of relevant academic, governmental, and non-profit organizations that have expertise in this area. For additional information on the Board's approach to identifying best practices, please see the introduction.

A. Trainings on Racial and Identity Profiling Should Incorporate Basic Principles

The training should:

- Begin with providing all trainees with relevant definitions and scientific research, including a sufficient understanding and definitions of implicit and explicit bias and stereotyping. The training should also emphasize that a great deal of human behavior and brain processing occurs without conscious perception and that all members of society frequently act on their biases. The training should present scientific peer-reviewed research on bias and how it can influence on behavior.[139]
- 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).[140]
- Provide all agency personnel with the knowledge and skills to identify bias and minimize its impact upon law enforcement activities and interactions with members of the public.[141]
- Reflect the agency's commitment to procedural justice, bias-free policing, and community policing.[142]
- Instill in all officers the expectation they will police diligently and have an understanding of and commitment to the rights of all individuals they encounter. This includes reinforcing that protecting civil rights is a central part of the police mission and is essential to effective policing. All personnel should be made aware of the requirements of

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[139] Hart, Subjective Decisionmaking and Unconscious Discrimination (2005) 56 Ala. L. Rev., p. 741.; Greenwald and Krieger, Implicit Bias: Scientific Foundations (2006) 94 Calif. L. Rev. 945-946; Greenwald and Mahzarin, Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes (1995), 102(1) Psych. Review, p. 4-6.; SPARQ (2016) Principled Policing: Training to Build Police-Community Relations.

[140] U.S. v. Alamance County Sheriff Terry Johnson (2016) 2: 16-cv-01731-MCA-MAH.; U.S. v. City of Newark (2016) 2: 16-cv-01731-MCA-MAH.

[141] U.S. v. Police Department of Baltimore City, et. al. (2017) 1:17-cv-00099-JKB.; U.S. v. The City of Ferguson (2016) 4:16-cv-000180-CP.

[142] U.S. v. Alamance County Sheriff Terry Johnson (2016) 2: 16-cv-01731-MCA-MAH at 1-2; U.S. v. City of Newark (2016) 2: 16-cv-01731-MCA-MAH.

the United States and California Constitutions and relevant federal, state, and local laws related to equal protection and unlawful discrimination.[143]

- Provide all trainees with a sufficient understanding and definition of implicit and explicit bias and stereotyping emphasizing that all members of society frequently act on their biases. The training should present scientific peer-reviewed research on bias and its influence on behavior.[144]

- Provide officers with information regarding the existence of and how to access all health and wellness programs, physical fitness programs, stress management tools, confidential crisis counseling, or other support services available to address the heavy burdens placed on today's police officers. Research suggests that stress and having to make quick decisions under pressure can often lead to people relying on stereotypes.[145] In addition, training should discuss methods, strategies, and techniques to reduce a reliance on unguided discretion in making stops.[146]

- Utilize adult learning approaches, including experimental learning and realistic scenario-based training to provide officers with opportunities to develop skills in realistic settings; this includes learning by doing, and refining their understanding of policies, expectations, or concepts by applying them to the types of situations they may come across in their day-to-day work.[147]

- Include an assessment of whether officers comprehend the material taught.[148]

- Complete and consistent training records for all trainings should be maintained for all agency personnel. Agency-wide training analysis should be regularly completed and trainings should be consistently reviewed and updated.[149]

- Agencies should consider integrating a feedback loop or "check-ins" among trainees in between trainings to allow officers to reflect on and apply what they learned in the trainings to their daily lives.[150]

B. Training on Racial and Identity Profiling Should Be Well Organized and Delivered Regularly

- Training should be relatively short and frequently provided (for example, agencies should consider offering a series of two-hour trainings several times a year rather than an eight-hour training every four or five years).[151]

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[143] *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 2: 16-cv-01731-MCA-MAH.; *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

[144] Fridell, A Comprehensive Program to Produce Fair and Impartial Policing (2017).; *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP.

[145] *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 2: 16-cv-01731-MCA-MAH.; Dovidio and Gaertner Aversive Racism and Selection Decisions: 1989 and 1999 (2000) 11 Psych. Science, p. 319-323.; Levinson and Young, Different Shades of Bias: Skin Tone, Implicit Racial Bias, and Judgments of Ambiguous Evidence (2010) 112, 307 West Virg. L.Rev., 326-231.

[146] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB; Fridell, A Comprehensive Program to Produce Fair and Impartial Policing (2017).; Kang et al., *Implicit Bias in the Courtroom*, (2012) 59 UCLA L. rev. 1124, 1142.

[147] *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP.

[148] *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[149] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB; *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP.

[150] *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[151] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

- 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.[152]
- Consider expanding training options to include courses on topics such as power imbalance, statistics, and methods for effective supervision.[153]
- Trainings should be evaluated for their impact on police-community relations.[154]

C. Training on Racial and Identity Profiling Should Address Communication and Community Relationships

The training should:

- Address the benefits of and means to achieve effective community engagement, including how to establish formal partnerships and actively engage community organizations and diverse groups within the community to form positive relationships. This could include examples of successful partnerships and engagement.[155]
- Cover cultural competency, cultural awareness, and sensitivity, including the impact of historical trauma on police-community interactions and locally relevant incidents and history.[156]
- Include effective communications skills, including how to recognize and overcome communication obstacles.[157]

D. Training on Racial and Identity Profiling Should Include the Tenets of Procedural Justice

The training should:

- Emphasize the core tenets of procedural justice (an approach to policing that emphasizes the importance of treating everyone equally and with respect).[158]
  - Community members should be given a voice and be allowed to tell their story and respectfully interact.
  - The law must be applied equally to all members of the community.
  - Officers must show respect and demonstrate trustworthiness.
- Emphasize the importance of how people are treated during the course of an interaction as well as the outcome of that interaction.[159]

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[152] *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP.; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[153] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP.; Fridell, A Comprehensive Program to Produce Fair and Impartial Policing (2017).

[154] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; Fridell, Lorie. *A Comprehensive Program to Produce Fair and Impartial Policing* (2017); *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[155] Fridell, A Comprehensive Program to Produce Fair and Impartial Policing (2017).

[156] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; Fridell, A Comprehensive Program to Produce Fair and Impartial Policing (2017).

[157] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

[158] Fridell, A Comprehensive Program to Produce Fair and Impartial Policing (2017).; PERF, Legitimacy and Procedural Justice: A New Element of Police Leadership (2014).; SPARQ, Principled Policing: Training to Build Police-Community Relations (2016).

[159] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.

- Cover various threats to procedural justice, including officer stress, time pressure, and poor health, as well as poor historical relations between police and communities.[160]
- Cover various procedural, behavioral, and psychological strategies to reduce threats to procedural justice and improve police-community relations.[161]
- Feature police and community perspectives.[162]

E. Training on Racial and Identity Profiling Should Cover Implicit Bias

The training should:

- Define implicit bias as "thoughts or feelings about people that we are unaware of and can influence our own and others' actions."[163]
- Define stereotyping.[164]
- Discuss how bias manifests in everyone, even well-intentioned people.[165]
- Cover the varied sources of implicit bias.[166]
- Present a series of empirical studies on bias in an easily understandable manner.[167]
- Discuss how bias might manifest in work and decision-making.[168]
- Highlight positive strategies for mitigating bias and improving police-community relations.[169]
- Discuss how to identify officers who may be manifesting bias and how to respond. Include self-evaluation strategies for identifying bias in oneself.[170]
- Discuss how to talk openly about bias with individuals and groups.[171]

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[160] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB; *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP; SPARQ, Principled Policing: Training to Build Police-Community Relations (2016).

[161] *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 2: 16-cv-01731-MCA-MAH.; Fridell, A Comprehensive Program to Produce Fair and Impartial Policing (2017).; SPARQ. (2016) Principled Policing: Training to build Police-Community Relations.;

[162] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB; SPARQ, Principled Policing: Training to Build Police-Community Relations (2016).

[163] Dovidio et al., Why Can't We Just Get Along, Interpersonal Biases and Interracial Distrust (2002) 8 Cultural Diversity & Ethnic Minority Psychol. p. 88, 94. Greenwald and Krieger, Implicit Bias: Scientific Foundations, (2006) 94 Calif. L. Rev. 945, 946, 951.; Greenwald and Mahzarin, Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes (1995) 102(1), Psych. Rev. p. 4-6; Hart, Subjective Decisionmaking and Unconscious Discrimination (2005) 56 Ala. L. Rev. 741.; SPARQ, Principled Policing: Training to Build Police-Community Relations (2016).

[164] SPARQ, Principled Policing: Training to Build Police-Community Relations (2016).

[165] *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 2: 16-cv-01731-MCA-MAH.; *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP.; Fridell, A Comprehensive Program to Produce Fair and Impartial Policing (2017).

[166] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; SPARQ, Principled Policing: Training to Build Police-Community Relations (2016).

[167] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.; SPARQ, Principled Policing: Training to Build Police-Community Relations (2016).

[168] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; Fridell, A Comprehensive Program to Produce Fair and Impartial Policing (2017).

[169] *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.; SPARQ, Principled Policing: Training to Build Police-Community Relations (2016).

[170] *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB.; Fridell, A Comprehensive Program to Produce Fair and Impartial Policing (2017).; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

[171] Fridell, A Comprehensive Program to Produce Fair and Impartial Policing (2017).; *U.S. v. City of Newark* (2016) 2: 16-cv-01731-MCA-MAH.

- Include experiential learning techniques to apply the training to real-life scenarios.[172]

III. VISION FOR FUTURE REPORTS

In the coming years, the Board hopes to more comprehensively analyze POST's trainings relating to bias and racial and identity profiling and continue to work with the organization on ensuring that its trainings feature the above evidence-based best practices as much as possible.

Given that effective policing requires not only appropriate training but also suitable recruitment, performance assessment, and promotion practices, the Board also plans to cover these topics in next year's report. Specific areas that may be covered by the Board include:

- Methods and techniques to attract, retain, and reward diverse, representative, and highly qualified officers capable of carrying out the complicated policing mission successfully.[173]
- How to incorporate requirements regarding bias-free policing and equal protection into an agency's hiring, promotion, and performance assessment processes.
- The potential detrimental impact on police work, culture and policy-community relationships if an agency fails in its responsibility to hire qualified personnel.
- How to better design hiring and promotion policies to ensure high officer morale, which will foster positive interactions with the community, especially in the area of procedural justice and identifying bias.

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[172] *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 2: 16-cv-01731-MCA-MAH.; *U.S. v. The City of Ferguson* (2016) 4:16-cv-000180-CP.; SPARQ, Principled Policing: Training to Build Police-Community Relations (2016).

[173] Pettigrew and Tropp, A Meta-Analytic Test of Intergroup Contact Theory (2006) 90 J. Personality & Soc. Psychol. 751; Pettigrew and Tropp, How Does Intergroup Contact Reduce Prejudice? Meta-Analytic Tests of Three Mediators (2008) 38 Eur. J. of Soc. Psychol. 922.; Schmader et al., A Metacognitive Perspective on the Cognitive Deficits Experienced in Intellectually Threatening Environments (2009) 35 Personality & Soc. Psychol. Bull. 584, 585-95.

CALLS FOR SERVICE AND BIAS BY PROXY

In June of 2018, the Board formed a new subcommittee focused on calls for service, the creation of which was sparked by a letter sent to the Board by two state senators expressing their concern regarding racially biased calls for service and what is sometimes called "bias by proxy." Bias by proxy can be defined as "when an individual calls the police and makes false or ill-informed claims of misconduct about persons they dislike or are biased against."[174] Specifically, the senators posed the following questions for the Board to consider:

- How can our public safety systems, from dispatchers to patrol officers, better identify calls for service based on racial bias?
- How can police respond to protect the rights and dignity of innocent black people targeted in these incidents?
- How can training and policies help officers identify and resolve such a situation quickly and respectfully?
- What role do police play in following up with a caller to address possible racism that prompted an unnecessary and unjust call, and how much departmental and public resources are expended in responding to calls motivated by racial bias?

In 2017, approximately 28.1 million Californians made a call to the emergency telephone service 911.[175] These calls are generally initiated by the public, relayed through 911, and divulged to the public safety personnel via a dispatcher. Once an officer is assigned a call by the dispatcher, they must respond and typically issue some type of resolution back to the dispatcher indicating the action taken to address the call. An officer never knows what type of call they will receive from the dispatcher and must be prepared to react appropriately and fairly in all situations with very little notice. Calls for service are the most common way in which law enforcement officers initiate contact with the public; analyzing these interactions can thus be useful in understanding the law enforcement-community relationship.

In this report, the Board has focused on calls for service through the lens of bias by proxy. The Board will continue to analyze this important topic in future reports. The Board reviewed the varied ways in which these calls can be examined and leveraged in pursuit of the ultimate goal of addressing and eliminating racial and identity profiling in policing.

While it is a crime to make a false 911 report,[176] it is the unfortunate truth that some calls made by the public are motivated by racial or identity bias, whether implicit or explicit. Given procedural requirements, dispatchers and officers usually must respond to these calls, causing what is often known as bias or profiling by proxy. When the police act on a request for service rooted in racial bias or stereotyping, they risk perpetuating the caller's bias and damaging the relationship between the community and the police and, in some instances, posing particular harms to all parties involved.

Concerns about the detrimental impact of biased calls for service are not new. Nonetheless, an increasing number of high-profile instances of profiling by proxy in recent years caught on

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[174] Fridell, A Comprehensive Program to Produce Fair and Impartial Policing (2017) p. 90.
[175] Cal. Gov. Office of Emergency Services, *CA 9-1-1 Emergency Communications Branch* <http://www.caloes.ca.gov/cal-oes-divisions/public-safety-communications/ca-9-1-1-emergency-communications-branch> [as of Dec. 17, 2018].
[176] Pen. Code § 148.5.

camera and widely viewed have brought into the national spotlight questions regarding basic fairness and racial and identity discrimination when it comes to calls for service. Some of the many incidents that garnered national attention include when two black men were arrested after an employee of Starbucks in Philadelphia called 911 and reported that the men had not ordered anything; when a black graduate student was interrogated by the police after her dorm neighbor called because she was napping in the common area; and when members of a black sorority were questioned by a state trooper while performing community service picking up litter on a Pennsylvania highway.[177]

Similar high-profile incidents have occurred in California. This includes one incident that occurred in Rialto, California, where a neighbor called the police on three black filmmakers renting an Airbnb.[178] The neighbor justified her reaction by stating that the filmmakers were suspicious-looking because they did not wave to her. Another incident occurred in Oakland, California, where a white woman called the police on black men barbecuing in the park's designated barbecue area because they were using charcoal grill in a non-charcoal grilling spot.[179] An additional incident occurred in San Francisco, California where a woman called the police on an eight-year old black girl for selling water without a permit.[180] While these incidents, among others, have shed necessary light on the persisting issues and, in some cases, incited the re-evaluation of businesses' policies and the need for additional employee training, they have also highlighted how easily a system designed to ensure the public's safety can become a proxy for discrimination and bias when misused.

I. BIAS BY PROXY

The Vera Institute of Justice warns that bias by proxy, defined above, may arise when "officers rely on the emergency dispatcher's recitation of what a biased caller claims to have happened instead of making an independent and professional assessment of the caller's claims."[181] Racially motivated calls for service may stem from explicit racial profiling or implicit bias. Conflict theories assert that "when members of one community (usually the majority) feel their interests are being infringed, they will wield power to exercise control over the 'other.'"[182]

The Board does not want to discourage anyone from calling 911 in an emergency, but rather raises this issue because biased or misleading information provided to 911 can lead to fatal consequences. In conducting a literature review on the issue of bias and calls for service, the Board found relatively little empirical evidence on this topic. The Board has noted this gap in the literature and plans to dive deeper into the various manners in which this data can be accurately collected and analyzed, particularly assessing ways in which the data collected by RIPA can be leveraged toward this goal.

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[177] Wootson, *You Know Why the Lady Called the Police: Black People Face 911 Calls for Innocuous Acts,* Washington Post (May 30, 2018) p. 1.

[178] Taylor, *Even in Oakland, Calling the Cops on Black People Just Living Their Lives,* S.F. Chronicle (May 17, 2018) p. 1.

[179] Guzman, *Video Shows Woman Calling Police Over Barbecue at Lake Merritt,* S.F. Gate (May 10, 2018) p. 1.

[180] Ting, *New Viral Video Shows SF Woman Dubbed "Permit Betty" Calling Authorities on Street Vendor,* S.F. Chronicle (Jul. 14, 2018) p. 1.

[181] Thurau and Stewart, Avoiding 'Profiling by Proxy' (2015) Vera Institute of Justice.

[182] Lum, Does the "Race of Places" Influence Police Officer Decision Making? (2009) p. 4-5.

While data specifically on bias by proxy is not currently collected, agencies can begin to address this issue through recruitment, hiring, and training. [183] For example, as part of its hiring process, the Kalamazoo Police Department interview has included a hypothetical scenario that requires an applicant to discuss bias.[184] The hypothetical is a white woman calls about a suspicious black man in a car.[185] The applicant is asked to explain how they would respond to such a call.[186] The Chief does not have a "right answer" but rather wants to see the applicant's thought process.[187] Posing a hypothetical that focuses on profiling by proxy is crucial in all parts of the hiring process, including dispatchers.

Non-profit organizations, Fair and Impartial Policing[188], Vera Institute of Justice,[189] and ACLU[190] offer the following suggestions for how to best address the issue:

- Train officers and dispatchers to be aware of the potential for biased-based motivations behind calls for service.[191]
  - Officers should exhibit critical decision making, drawing on their training to assess whether there is criminal conduct.
- Police officers and dispatchers should undergo anti-bias training.[192]
- Dispatchers should be trained on how to relay information without including biased assumptions and to collect enough information necessary to verify criminal activity.[193]
- For bias-motivated calls, dispatchers should be allowed to use discretion to inform caller that an officer will not respond to call without legitimate basis of criminal conduct.[194]
  - If dispatchers must assign an officer, they should be allowed to inform officers of their concerns with the call for service.
  - Agencies should develop policies and other materials that assist dispatchers in identifying biased calls and establish operating procedures for how biased calls should be forwarded to police.[195]

PERF suggests that nationwide changes to emergency communications technology will assist in identifying implicit bias by proxy.[196] New technology will allow callers to include videos, photographs, live video feed, and other relevant media to dispatchers, and dispatchers will be able to forward this information to responding officers. PERF is hopeful that allowing officers the opportunity to review relevant information before arriving on the scene will better inform their response to any given call for service and, by extension, reduce bias by proxy incidents. However, readers should be cautioned that the perceived benefits of such an updated system is

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[183] *Ibid* n. 1 at 50.
[184] *Supra.*
[185] *Supra.*
[186] *Supra.*
[187] *Supra.*
[188] Fridell, A Comprehensive Program to Produce Fair and Impartial Policing (2017).
[189] Thurau and Stewart, Avoiding 'Profiling by Proxy' (2015) Vera Institute of Justice.
[190] Takei, How Police Can Stop Being Weaponized by Bias-Motivated 911 Calls, (2018) American Civil Liberties Union.
[191] Thurau and Stewart, Avoiding 'Profiling by Proxy' (2015) Vera Institute of Justice.
[192] *Ibid.*
[193] Fridell, A Comprehensive Program to Produce Fair and Impartial Policing (2017).
[194] Pen. Code § 148.5.
[195] Fridell, A Comprehensive Program to Produce Fair and Impartial Policing (2017).
[196] PERF, Critical Issues in Policing Series: The Revolution in Emergency Communications (2017).

speculative at this point and would require updated agency policies and empirical research to evaluate outcomes.

II. VISION FOR FUTURE REPORTS

For future reports, the Board plans to evaluate how to address the gap in data and empirical evidence on bias by proxy. Further, the Board plans to address what kind of training, policies, and procedures may exist for dispatchers with respect to racially motivated calls for service. The Board also hopes to review what kind of training, policies, and procedures may exist for responding officers with respect to racially motivated calls for service. Additionally, the Board plans to review how officers are trained to handle emergencies that may require the assistance of a Critical Intervention Team, such as mental health issues, when responding to calls for service.

USE OF FORCE

Use of force incidents occur during or after stops or attempted stops and are among the information officers are required to include in RIPA stop data reports. Because of its inherent relationship to police stop and search practices, the Board decided to include a review and discussion of use of force issues in this year's report.

Assembly Bill 71 (AB 71), effective January 1, 2016, requires law enforcement agencies in California to report use of force interactions between an officer and a civilian that involve a shooting or that results in death or serious bodily injury, as defined by Government Code section 12525.2.[197] This groundbreaking legislation is the first of its kind, making California the only state to have mandated the reporting of these types of officer uses of force. This section of the Report analyzes the data collected in 2017 and reported to the Department in 2018. Due to the fact that the scope of the incidents that are reported in accordance with AB 71 is narrowly defined, these results should not be used to generalize other types of uses of force employed by law enforcement.

I. URSUS USE OF FORCE DATA

A. Overview of Use of Force Data Reported to the Department

The Department consulted with law enforcement agencies and stakeholders to determine what information to collect regarding use of force incidents, and issued a law enforcement bulletin in December 2015 to assist LEAs with this reporting requirement.[198]

> **Incidents must be reported to the Department under AB 71 only when:**
>
> 1. There is a *discharge of a firearm* by a peace officer; or
> 2. There is a *discharge of a firearm* by a civilian; or
> 3. There is a use of force by peace officer against civilian that results in *serious bodily injury or death*; or
> 4. There is a use of force by civilian against peace officer that results in *serious bodily injury or death*.

Agencies began collecting data on January 1, 2016. Law enforcement agencies enter and submit the required use of force data to the Department through the use of an online reporting platform named URSUS. All agencies employing peace officers are required to submit these data on an annual basis. The Department publishes a report and two datasets to its OpenJustice public data portal each year; one dataset contains incident-level information on all cases reported to the Department, and the other contains person-level information on individuals involved in these use of force incidents.

Readers can find both datasets, as well as supporting documentation that outlines the information contained within the datasets, at https://openjustice.doj.ca.gov/data under the "URSUS

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[197] Gov. Code § 12525.2.
[198] See Division of Law Enforcement Information Bulletin No. 16-12-CJIS, "Use of Force Incident Reporting," published December 2015, available at https://oag.ca.gov/sites/all/files/agweb/pdfs/law_enforcement/16-12-cjis-use-force-incident-reporting-ursus.pdf.

- Use of Force" section. The Department also publishes a yearly report on this data that can be found at
https://openjustice.doj.ca.gov/resources/publications
under the "URSUS - Use of Force Incident Reporting" section. Number of calls for service, which the Board collected in a survey for its 2018 report, are not available[199] for this year's report since the Board did not issue another survey. For the previous statistical year, 2016, Wave 1-3 agencies reported receiving between 310,000 to 2,400,000 calls for service.

Known Limitations of Use of Force Data

It is important to understand that although all incidents in the URSUS datasets involve use of force, not all uses of force are represented in the data. Only use of force incidents between an officer and civilian that involve the discharge of a firearm or result in serious bodily injury or death are reportable under AB 71.[200] Incidents are reportable if either party of an incident, law enforcement or civilian, sustains a serious bodily injury or dies from a use of force, or if either party discharges a firearm. Use of force incidents that do not meet either of these criteria will thus not be captured in the data set. Therefore, the sample of cases presented in the section below is not representative of all use of force incidents,

> **Key Terms**
>
> ***Serious Bodily Injury:*** a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ
>
> ***Discharge of a firearm:*** Includes any discharge of a firearm during an interaction between a civilian and an officer, regardless of whether any person was injured. A firearm is defined as a weapon that fires a shot by the force of an explosion, e.g., a handgun, rifle, shotgun, and other such device commonly referred to as a firearm. Not included in this definition are electronic control devices; stun guns; BB, pellet, air, or gas-powered guns; or weapons that discharge rubber bullets or bean bags.

or law enforcement-civilian encounters, that occur in California. Additionally, not every reporting agency submitted its use of force data for the 2017 calendar year to the Department by the reporting deadline.

Another limitation in analyzing use of force data submitted to the Department in the context of RIPA is that the information collected for each use of force incident differs from the information collected for each stop under RIPA. Groups from the RIPA data and the URSUS data cannot directly compared because the information is collected and categorized in different ways. Each dataset provides useful information, but they are not comparable. URSUS data analysis is more limited in the number of identity groups that may be examined than the stop data analysis will be in the coming years. Only race, gender, age, and observed behavior indicating a civilian may have a mental disability are available in the URSUS data. RIPA, however, requires that an officer report the perceived race or ethnicity, gender, LGBT status, and age of the stopped person, as well as whether the person has limited or no English fluency and whether they have a perceived or known disability. Officers are not permitted to ask the person stopped or refer to a driver's license to obtain this information.

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[199] As reported to the Department, California Highway Patrol officers made 3,800,000 "public contacts" in 2017. However, this information was not requested from, nor provided by, any other department for context. "Public contacts" is also a different and more expansive metric than "calls for service", which was provided in the 2018 report.
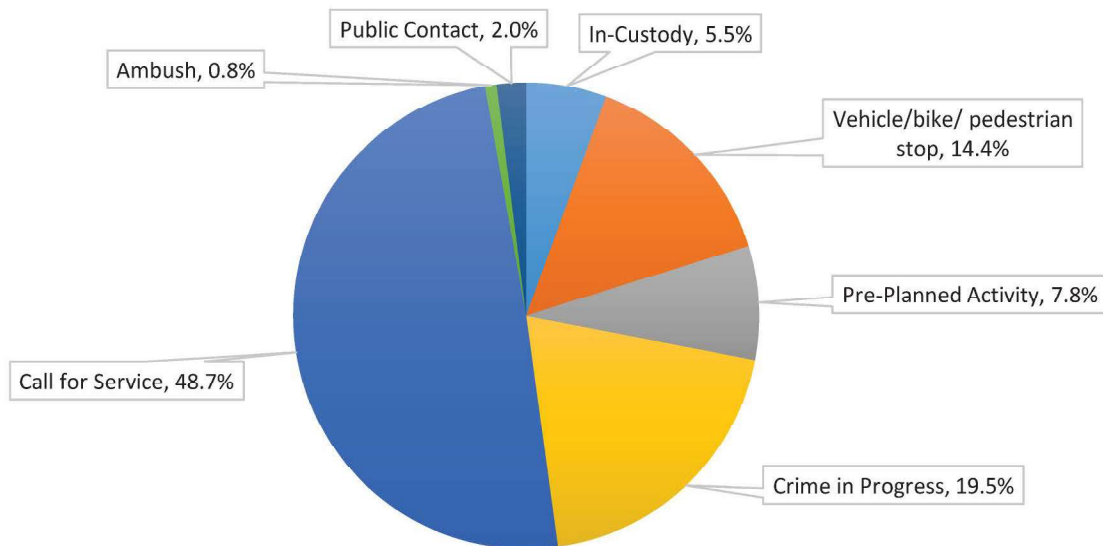
[200] Gov. Code § 12525.2.

While RIPA data regarding the subject of a stop is based on officers' perceptions, with the exception of perceived mental disabilities, URSUS data regarding subjects is not limited to officer perception regarding the subject. For URSUS reporting, officers are permitted to reference identification documents, search databases, and obtain self-report or third-party information in identifying a civilian's race and ethnicity, gender, and age range.

Descriptive Observations

B. Incident information

From January 1 to December 31, 2017, law enforcement agencies that employ peace officers throughout the state reported a total of 707 use of force incidents that met AB 71 criteria (i.e., they involved either the discharge of a firearm or incidents that resulted in serious bodily injury or death). Of these reported incidents, 344 (48.7%) occurred when law enforcement received a call for service, 138 (19.5%) occurred while either a crime was in progress or while officers were investigating suspicious persons or circumstances, and 102 (14.4%) resulted from a vehicle or pedestrian stop. The least common reason for contact, with six (0.8%) incidents, was an ambush without warning. Most of the incidents ($n = 505$, 71.4%) resulted in the arrest of a civilian. Figure 4 visually displays this information.

Figure 4: Reason for Initial Contact

Public Contact, 2.0% — In-Custody, 5.5% — Ambush, 0.8% — Vehicle/bike/ pedestrian stop, 14.4% — Pre-Planned Activity, 7.8% — Call for Service, 48.7% — Crime in Progress, 19.5%

In 2017, thirty-nine incidents (5.5%), occurred after the civilian had been placed in a custodial setting. The most common stage in the custodial process for use of force incidents to occur was while the civilian had been booked and was awaiting trial, representing 38.5 percent of the cases

that occurred in a custodial setting. The remaining cases that took place in a custody setting occurred during the following stages: 1) awaiting booking (17.9%); 2) booked – no charges filed (5.1%); 3) other (12.8%); 4) out to court (12.8%) and; 5) sentenced (12.8%).

In most instances ($n = 674$, 95.3%), one civilian was involved in the use of force incident; the highest number of civilians in a single use of force incident was three. The number of law enforcement officers involved in these incidents ranged from one ($n = 288$, 40.7%), which was the most common number of officers to be involved, to seventeen ($n = 1$, 0.1%). Roughly ninety-five percent (94.8%) of use of force incidents involved between one and five law enforcement officers, with an average of 2.31 officers ($SD = 1.85$).

C. Civilian Information

A total of 741 civilians were involved in the 707 reportable use of force incidents in 2017. Of these civilians, most ($n = 390$, 52.6%) were seriously injured during the incident, with 172 (23.2%) having died (see Table 2 of Appendix E for breakdown by civilian race or ethnicity), 51 (6.9%) receiving a less serious injury or injuries, 120 (16.2%) not having sustained any injury, and 8 (1.1%) having an unknown injury status due to the civilians having fled from law enforcement (see Table 10 of Appendix E). Of the 741 civilians, 516 (69.6%) were reported to have assaulted an involved officer or officers (see Table 12 of Appendix E). Most civilians ($n = 487$, 65.7%) were taken into custody after the use of force incident (see Table 11 of Appendix E). Of those arrested, 15 (3.1%) were taken for an involuntary psychiatric hold under Welfare and Institutions Code 5150.

Civilian Race or Ethnicity

The race or ethnicity of all civilians, except for those who fled and evaded law enforcement ($n = 8$, 1.1%), is captured in the URSUS use of force data. It should be noted that the URSUS data collection system allows for law enforcement agencies to classify individuals as belonging to more than one racial or ethnic group, but that these individuals ($n = 3$, 0.4%) have been coded into one group for civilians that are multiple races or ethnicities for all the analyses presented in this report. In 2017, civilians who were Hispanic ($n = 325$, 43.9%), white ($n = 224$, 30.2%) and black ($n = 143$, 19.3%) collectively accounted for more than ninety percent (93.4%) of the cases in the dataset (see Table 1 of Appendix E). This being said, Asian

> **Key Terms**
>
> **Lethal Force:** Discharge of firearm (hit); discharge of firearm (miss); knife, blade, or stabbing instrument
> **Less Lethal Force:** Blunt or impact weapon; chemical spray (e.g. OC/CS); electronic control device; impact projectile; other dangerous weapon; civilian vehicle contact; officer vehicle contact; animal; K-9 contact
> **Physical Force:** Carotid restraint control hold; other control hold/takedown; other physical contact (use of hands, fists, feet, etc.)
> **Threat of Firearm:** Threat of using a firearm against another person