



# **ADDRESSING RACIAL DISPARITIES IN TRAFFIC STOPS**

**March 23, 2023**

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## BACKGROUND ON RACIAL DISPARITIES IN TRAFFIC STOPS

Traffic stops are the most common police interaction between police officers and the public.<sup>1</sup> A [study](#) published by the Stanford University Open Policing Project found that more than 20 million motorists every year (50,000 daily) are stopped by police for minor traffic violations.<sup>2</sup> According to the New York University School of Law Policing Project, “[p]olice officers in the United States conduct tens of millions of vehicle and pedestrian stops each year, making the stop a key element of modern law enforcement and the most common interaction that members of the public have with officers.”<sup>3</sup>

The term “traffic stop” has been used to describe simple traffic stops, but also stops in which a traffic violation, while a legal justification for the stop, is a “pretext” for another purpose such as crime-suppression or investigation of a specific crime. A simple traffic stop occurs when an officer stops a motorist for a traffic violation solely to issue a ticket for that violation. A crime-suppression stop occurs when an officer stops a motorist for a traffic violation with the actual purpose of suppressing crime, without substantial evidence of criminality, but the hope of developing such evidence through a search or questioning or with the intent of “sending a message.” Such a stop can be called “pretextual” because the legal justification for the stop is not the actual motivating reason for the stop. Some pretextual stops are initiated by an officer who suspects a more serious crime, using their legal right to stop a person who has committed a traffic violation as a means to investigate the more serious crime. Such a pretextual stop may be supported by substantial evidence known to the officer, or it may be supported by no evidence, but differs from a crime-suppression stop because the officer has a specific crime in mind. A stop supported by reasonable suspicion differs from either of these sorts of pretextual stops when the reasonable suspicion is a sufficient legal justification for the stop. Because law enforcement officers have significant discretion in who they stop, scholars and activists alike have argued that traffic stops, often justified as proactive policing, give police officers permission to engage in racial profiling because of their discretionary nature. When the targets of traffic stops are selected by some means other than simple observation of traffic infractions, implicit and explicit bias are more likely to result in disparities based on race and socioeconomic status.

Although a lack of accurate data collection by law enforcement agencies on traffic stops continues to pose a challenge, numerous studies, research, and investigations reveal

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<sup>1</sup> Stanford Open Policing Project, <https://openpolicing.stanford.edu/findings/>

<sup>2</sup> Emma Pierson, Camelia Simoiu, Jan Overgoor, Sam Corbett-Davies, Daniel Jenson, Amy Shoemaker, Vignesh Ramachandran, Phoebe Barghouty, Cheryl Phillips, Ravi Shroff and Sharad Goel, “[A large-scale analysis of racial disparities in police stops across the United States](#),” *Nature Human Behavior*, July 2020.

<sup>3</sup>Marie Pryor, Philip Atiba Goff, Farhang Heydari, and Barry Friedman, “[Collecting, Analyzing, and Responding to Stop Data](#),” *NYU School of Law Policing Project*, 2020.

rampant racial disparities in traffic stops across various jurisdictions. In October 2021, the Public Policy Institute of California released one such study. Using data from 2019, collected from approximately 4 million stops by California's 15 largest law enforcement agencies, the [study](#)<sup>4</sup> found that for the agency data analyzed, the likelihood of a Black driver being searched is more than twice that of a White driver, with a search rate of 20.5 percent for Black drivers and a search rate of 8.2 percent for White drivers.<sup>5</sup> In addition, the study found that although police were less likely to find contraband such as drugs or guns in their searches of Black drivers, the Black motorists were still twice as likely to be arrested after a traffic stop.<sup>6</sup>

The data from this study is consistent with a study by the Los Angeles Police Department's Office of the Inspector General (LAPD OIG). The LAPD OIG analyzed data on 712,408 individuals stopped by Los Angeles Police Department (LAPD) officers during the year 2019, focusing on officer-initiated stops as opposed to stops resulting from a call for service. From the review, the LAPD OIG concluded that 77% of the officer-initiated stops were based on suspected traffic violations, including moving violations and equipment or licensing/registration violations.<sup>7</sup> With regard to identifying racial disparities, the data indicated that people perceived to be Black were overrepresented in the number of stops initiated by officers, with White and Asian people being underrepresented.<sup>8</sup> While the LAPD OIG report identifies possible reasons for the disparities other than race, the report notes that post-stop data showed racial disparities persisted, including the following:

- "Racial disparities in post-stop activities were more pronounced in traffic stops, particularly stops for traffic violations that were conducted by non-traffic units and those conducted in high crime areas.
- Searches of Black and Hispanic people were more likely to incorporate a search of both a person and their property than searches of White people, which were more likely to include only a search of their person.
- For the top five types of violations, all of which were traffic violations, racial disparities in the rate of post-stop activity persisted even when looking at stops for the same type of violation."<sup>9</sup>

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<sup>4</sup> Magnus Lofstrom, Joseph Hayes, Brandon Martin, and Deepak Premkumar with research support from Alexandria Gumbs. "[Racial Disparities in Law Enforcement Stops](#)." *Public Policy Institute of California*, October 2021.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Mark Smith, "[Los Angeles Police Commission Review of Stops Conducted by the Los Angeles Police Department in 2019](#)," October 27, 2020.

<sup>8</sup> The data reviewed by the LAPD OIG was stop data collected as required by the California Racial Identity and Profiling Act. See [Los Angeles Police Commission Review of Stops Conducted by the Los Angeles Police Department in 2019](#) at pages 1 and 2.

<sup>9</sup> Ibid at page 4.

The LAPD OIG data analysis found that the overall rate of arrests arising out of traffic stops was approximately 2% and for traffic stops during which a search was conducted the overall arrest rate was about 13%.<sup>10</sup> The rate of arrests for those searched was *lower* in stops by crime suppression units and in high-crime areas.<sup>11</sup>

With only 2% of overall officer-initiated traffic stops yielding evidence of criminal activity any benefit to public safety should be weighed against the distrust sowed in the community, and particularly communities with higher populations of Black residents, given the racial disparities evidenced in the stop data. In recognition of this, the LAPD OIG recommended that the LAPD “work to limit discretionary post-stop activities that are not directly related to officer safety or to the purpose of the stop, and that it set policies to ensure that a person’s consent for a search is both voluntary and fully documented.”<sup>12</sup> As discussed in detail later in this report, the LAPD has now adopted such policies.

An earlier review by the Office of Inspector General of traffic stops conducted from April through September of 2018 by the now defunct Los Angeles County Sheriff’s Department’s Santa Clarita Valley Domestic Highway Enforcement Team (DHET) similarly found racial disparities in the rate of motorists stopped, and that the discovery of criminality after a stop was infrequent.<sup>13</sup>

In this 2019 report, the Office of Inspector General found that DHET used “criminal profiles” to carry out pretextual traffic stops,<sup>14</sup> including factors such as driving an expensive car, driving a car that needs repairs, driving with an out-of-state license plate, driving a rental car, acting too calmly or nervously, and having a car filled with air fresheners.<sup>15</sup>

This analysis of the DHET’s traffic-stop data showed that Latinos were stopped at a disproportionate rate. Approximately 68% of the persons stopped by DHET were Latino.<sup>16</sup> In comparing this to data from the California Highway Patrol (CHP) for all citations the CHP issued in the same timeframe and freeway corridor, the Office of Inspector General determined that 43% of the citations CHP issued were to Latino motorists.<sup>17</sup> The Office of Inspector General review of DHET data, also showed that

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<sup>10</sup> Ibid at page 4.

<sup>11</sup> Ibid at page 4.

<sup>12</sup> Ibid. at page 6.

<sup>13</sup> Office of Inspector General Report titled, [The Los Angeles County Sheriff’s Department’s Santa Clarita Valley Domestic Highway Enforcement Team](#), April 2019.

<sup>14</sup> Ibid. at page 7.

<sup>15</sup> Ibid at page 8.

<sup>16</sup> Ibid at page 14.

<sup>17</sup> Ibid.

Latinos were held in backseat detention and searched at significantly higher rates compared to other races. Latinos made up 88% of the occupants held in backseat detentions<sup>18</sup> and 82% of the consent searches performed on vehicles.<sup>19</sup> The consent searches recovered contraband in 6.2% of all vehicles.<sup>20</sup> Overall, 2.7% of total stops resulted in an arrest.<sup>21</sup>

In November 2021, the Los Angeles Times published<sup>22</sup> the results of its investigation into the Los Angeles County Sheriff's Department's use of minor stops to search bicyclists. An examination of the racial background of those who were subjected to such traffic stops revealed that Latinos were affected disproportionately. The investigation by the Times found "deputies search 85% of bike riders they stop even though they have no reason to suspect they'll find something illegal." Most notably, the Times found that during searches conducted subsequent to such stops illegal items were found a mere 8% of the time and weapons were seized in less than .5% of all searches.

The Office of Inspector General reviewed and verified the data reported on by the Times. The review revealed that the Sheriff's Department routinely engages in crime suppression stops related to bicyclists. Of the reviewed stops 70% involved Latinos, while Latinos made up 51% of the total population in the respective areas.<sup>23</sup> Latinos were held in backseat detention at a higher rate than other races, at 77% compared to Whites, which was the next highest at 58%. Latino and Black bike riders were searched at the highest rates, 88% and 80% respectively. However, Latino and Black bike riders yielded the least number of illegal items at 7.1% and 9.6% respectively. "Overall, 21% of bicyclists were either arrested or issued a citation to appear in court for an alleged crime." Despite the low yield, the Sheriff's Department continues to engage in crime suppression stops, without restriction, even when the cumulative effect fosters a policing environment that leads to racial profiling and bias against communities of color.<sup>24</sup>

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<sup>18</sup> Ibid at page 18.

<sup>19</sup> Ibid at page 15.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid. at page 1.

<sup>22</sup> Alene Tchekmedyan, Ben Poston and Julia Barajas, "[L.A. Sheriff deputies use minor stops to search bicyclists, with Latinos hit hardest](#)," *The Los Angeles Times*, November 4, 2021.

<sup>23</sup> Alene Tchekmedyan and Ben Poston, "[Why do L.A. sheriff's deputies stop and search so many bicyclists? Insiders cite culture and training](#)," *The Los Angeles Times*, December 24, 2021.

<sup>24</sup> As reported by the LA Times, Sheriff Villanueva stated the following in regard to bike stops: "If we decide that we're not going to touch anybody on a bike, well, you get people — you saw the crime rate, the homicide rate 44% (increase) — you have any idea how those people go and kill people? Does it happen magically? No, there's bad guys, gangsters, on bikes, in cars, armed to the teeth, out looking for a target. They're going to rob them or they're going to shoot them...The people that do that unfortunately are overwhelmingly Latinos, African Americans, that is a demographic of that group. The fact that we are actually focusing on them does not mean we're disproportionately or have any racist motive to address that. It's the grim reality of it." Id.

Tragically, some traffic stops have ended with officer-involved shootings or fatal uses of force when the police believed that the driver was uncooperative even though the driver was unarmed. The beating of Tyre Nichols by five Memphis police officers is the most recent incident to receive national attention. On January 7<sup>th</sup> of this year, Memphis officers conducted a traffic stop of Mr. Nichols on the suspicion of reckless driving that ended with Mr. Nichols being repeatedly tasered and beaten by five police officers, resulting in his death three days later.<sup>25</sup> The five officers were charged with murder and other crimes, including kidnapping.<sup>26</sup> Recent shootings by police officers after traffic stops have received national attention as well. On April 11, 2021, [Daunte Wright](#),<sup>27</sup> an unarmed 20-year-old Black man was shot and killed in Brooklyn Center, Minnesota after he was pulled over for having expired registration tags. Officer Kimberly Potter who had intended to use a taser on Mr. Wright but instead fired her gun, was convicted of first and second-degree manslaughter and was sentenced to two years in prison.<sup>28</sup> On April 4, 2015, [Walter Scott](#), an unarmed 50-year-old Black man was shot and killed in North Charleston, South Carolina, after being stopped for a broken taillight. After the traffic stop, Mr. Scott got out of his car and began to run. The police officer gave chase and shot Mr. Scott in the back as he continued running. In 2017, that officer, Michael Slager, plead guilty to second-degree murder and was sentenced to 20 years in prison.<sup>29</sup> On April 4, 2022, [Patrick Lyoya](#), an unarmed 26-year-old Black man, was shot and killed in Grand Rapids, Michigan, after being stopped because the license plate did not match the car Mr. Lyoya was driving.<sup>30</sup> According to videos released by the Grand Rapids Police Department, after he was stopped Mr. Lyoya stepped out of his car, pulled away from Officer Christopher Schurr, and ran away. Officer Schurr gave chase and during a physical struggle on the ground shot Mr. Lyoya in the back of the head. Officer Schurr has been charged with second-degree murder for the shooting.<sup>31</sup>

An investigation by the New York Times released in October 2021, found that over the last five years, “police officers have killed more than 400 drivers or passengers who

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<sup>25</sup> Noah Goldberg, [“What you need to know about the Tyre Nichols killing and police videos,”](#) The Los Angeles Times, January 27, 2023.

<sup>26</sup> Ibid.

<sup>27</sup> The New York Times, [“What to Know About the Death of Daunte Wright,”](#) *The New York Times*, February 21, 2022.

<sup>28</sup> Ibid.

<sup>29</sup> Mark Berman, [“Former South Carolina police officer who shot Walter Scott sentenced to 20 years,”](#) *The Washington Post*, December 7, 2017.

<sup>30</sup> Mitch Smith, [“Videos Show Police Officer Fatally Shooting Black Man in Michigan,”](#) *The New York Times*, April 12, 2022.

<sup>31</sup> Peter Nickeas and Ray Sanchez, [“Grand Rapids officer charged with second-degree murder in shooting of Patrick Lyoya, prosecutor says,”](#) CNN, June 10, 2022.

were not wielding a gun or a knife, or under pursuit for a violent crime – a rate of more than one a week.”<sup>32</sup> More than three quarters of the motorists killed were trying to flee.<sup>33</sup>

While most individual traffic stops that do not end in a significant use of force do not receive media attention, those that do, regardless of whether there is a police use of force, foster community distrust of law enforcement because of the perception, or reality, that race played a factor in the reason for the traffic stop or the subsequent police conduct.

One such incident occurred on December 31, 2022. On January 6, 2023, the Los Angeles Sheriff’s Department released body worn camera video<sup>34</sup> of that incident. The bodycam video shows Darral Scott (known professionally as rapper Feezy Lebron) sitting in his parked BMW sedan with a deputy leaning into the driver’s side through the open door with Mr. Lebron seated in the driver’s seat. The video is from the body-worn camera of a second deputy, not the deputy who was initially at the door. As this second deputy approaches the driver’s side of the BMW, Mr. Lebron’s hands are in the air and he can be heard inquiring of the deputy at the door as to why he is being ordered out.<sup>35</sup> When the second deputy nears the driver’s side door, Mr. Lebron’s hands appear to be raised. The second deputy asks, “What are you doing?” as he approaches and pulls out a can of pepper spray telling the other deputy that he is going to spray Mr. Lebron and then tells Mr. Lebron he is going to spray him if he does not exit the car. Mr. Lebron is heard asking the deputies “get out for what?” Within 20 seconds of saying “hi” to Mr. Lebron and asking him what he is doing, the second deputy exchanges the cannister of pepper spray for his gun, points it at Mr. Lebron and threatens him, “If you take off in this car, I’m going to shoot you. I’m going to make it super easy on you. You put this car in drive, you’re getting one right to the chest. I don’t care what you got. I don’t care if you got bullshit on you, but guess what bro, now you gotta deal with it. But if you pull some bullshit, you’re gonna take one to the chest.” To which Mr. Lebron asks “You’re gonna shoot me?” The deputy replies “Absolutely. Absolutely. If you don’t listen, you’re done.” Mr. Lebron asks if he is under arrest and while still pointing the gun at him tells him, “You are most definitely 1050% detained.” With the Mr. Lebron continuing to ask, “for what” he is being detained, the deputy repeats multiple times, “It has already been explained to you.” The deputy continues pointing the gun and telling Mr. Lebron if

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<sup>32</sup> Kirkpatrick, David, Steve Eder, Kim Barker and Julie Tate, [“Why Many Police Traffic Stops Turn Deadly,”](#) *The New York Times*, October 31, 2021.

<sup>33</sup> Ibid.

<sup>34</sup> Vivian Chow, [“Body cam footage shows viral traffic stop involving rapper in South Los Angeles,”](#) KTLA 5, January 7, 2023.

<sup>35</sup> When a body-worn camera is activated, it captures the minute prior to activation without sound. The body-worn camera of the video shown was therefore activated when the second deputy arrived at the vehicle, which coincides with the start of the sound recording.



he doesn't comply that he will be arrested, go to jail, and his car will be impounded. The deputy pointed the gun at Mr. Lebron for approximately one and a half minutes.

After Mr. Lebron was handcuffed, the deputy is heard asking Mr. Lebron if he is on probation or parole to which Mr. Lebron states he is not. The deputy tells Mr. Lebron that he does not need consent to search. The deputy goes on to state "Unfortunately for you, you shouldn't smoke so much weed in your car. Then we wouldn't have to search you," to which Mr. Lebron states "I didn't smoke no weed in my fucking car and it not illegal." The deputy then asks, "You have anger issues or what?"

In a [statement](#) put forth by Sheriff Robert G. Luna, the Sheriff stated the contact resulted in a citation for a missing license plate and that Mr. Lebron was detained but not arrested. According to the statement, the Sheriff's Department has initiated an investigation into the deputies' actions and language.

[Mr. Lebron has filed a \\$10 million claim against the Sheriff's Department.](#)<sup>36</sup>

Another such incident, from 2017, was the subject of an article published by ABC7 Los Angeles "[Data analysis shows racial disparity in police stops in recent years by Los Angeles law enforcement](#)" on September 8, 2020.<sup>37</sup> Aja Brown, who was the Compton Mayor from 2013 to 2021, was at a stoplight in Compton in June 2019, with her husband and one-year-old daughter in the vehicle when Sheriff's Department deputies pulled her over. The mayor told ABC7 the sheriff's deputies told her they needed to search her vehicle for drugs. She stated in an interview "They searched illegally my center console, the back seat of the car and there was a deputy shining a light on my daughter's face and I believe he was trying to incite my husband." The deputies found no drugs or other contraband in her vehicle. She stated "At some point, the watch commander was contacted and they figured out I was the mayor and they tried to alter their approach. But it was just too late."

In response to the data and incidents that have received national and local attention, throughout the country, police chiefs, city councils, prosecutors, and legislatures are passing laws or creating policies to limit or ban the enforcement of minor and low-level traffic stops by police officers to reduce minor traffic stops and crime suppression or pretextual stops in an effort to stop racial profiling and racial disparities in policing. Such

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<sup>36</sup> Salvador Hernandez, "[Rapper Feezy Lebron files \\$10-million claim after New Year's Eve confrontation with L.A. County Deputies](#)," Los Angeles Times, January 19, 2023.

<sup>37</sup> Carlos Granda and Grace Manthey, "[Data analysis shows racial disparity in police stops in recent years by Los Angeles law enforcement](#)," KABC, September 8, 2020.

policies promote constitutional policing, boost trust in police, and avoid potentially unlawful uses of force.

The Office of Inspector General recommends that the Sheriff's Department create policies banning low-level traffic stops for certain offenses and limiting the use of crime suppression or pretextual stops to advance the necessary balance between crime fighting strategies and maintaining public trust.

## FOURTH AMENDMENT AND VEHICLE DETENTIONS

The Fourth Amendment of the United States Constitution, as applicable to the states through the Fourteenth Amendment, prohibits unreasonable searches and seizures by a government actor, including law enforcement officers. Generally, a search or seizure of a person or constitutionally protected area is reasonable when predicated upon a warrant; the warrant requirement may only be excused under exigent circumstances or other narrowly delineated circumstances.

The Fourth Amendment applies to all seizures of a person including even brief investigatory stops by law enforcement officers during vehicle stops for minor traffic violations. In order to effectuate a vehicle detention, the law enforcement officer must have at minimum reasonable suspicion based upon articulable facts that the person being stopped is engaged in criminal activity, also known as a *Terry* stop<sup>38</sup>, or probable cause that an offense has occurred, such as that the motorist has committed a traffic violation.<sup>39</sup> The officer may also conduct a vehicle detention if they have reasonable

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<sup>38</sup> "A police officer's right to make an on-the-street "stop" and an accompanying "frisk" for weapons is of course bounded by the protections afforded by the Fourth and Fourteenth Amendments. The Court holds, and I agree, that while the right does not depend upon possession by the officer of a valid warrant, nor upon the existence of probable cause, such activities must be reasonable under the circumstances as the officer credibly relates them in court." *Terry v. Ohio* (1968) 392 U.S. 1, 31, 88 S. Ct. 1868, 1885.

<sup>39</sup> "Police officers may conduct a traffic stop when they have reasonable suspicion to believe that a motorist has committed a traffic violation. See *United States v. Lopez-Soto* (9<sup>th</sup> Cir. 2000) 205 F.3d 1101, 1105.; see also *United States v. Willis* (9<sup>th</sup> Cir. 2005) 431 F.3d 709, 717 ("*Whren* and *Lopez—Soto* require that the officers have reasonable suspicion to stop a driver for traffic infractions, not that the officers issue citations."). "Reasonable suspicion is formed by 'specific, articulable facts which, together with objective and reasonable inferences, form the basis for suspecting that the particular person detained is engaged in criminal activity.'" *Lopez-Soto, supra*, 205 F.3d at 1105." *United States v. Jones* (N.D. Cal 2020) 438 F. Supp. 3d 1039, 1050.

suspicion to believe that a person in the vehicle is wanted for past criminal conduct<sup>40</sup> or that the vehicle contains contraband.<sup>41</sup>

## PRETEXTUAL VEHICLE STOPS

A “pretextual” traffic stop occurs when a law enforcement officer uses a legal justification, such as an observed traffic violation, to detain an individual when the underlying motive of the stop is to investigate a different and more serious crime for which the officer is not yet able to articulate a reasonable suspicion. As discussed earlier, a classic pretextual stop may be distinguished from a crime suppression stop. However, the two share many similarities.

The United States Supreme Court in *Whren v. United States* held that officers are permitted to engage in pretextual traffic enforcement so long as the officer can establish probable cause that a violation has occurred.<sup>42</sup> The Court held that the constitutionality of the stop does not depend on the actual motivations of the individual law enforcement officers involved, so long as the detention is based upon articulable facts which may establish probable cause that an offense has occurred. In practice, this means that a police officer who has a mere hunch about a potential suspect may still conduct an investigatory stop relying upon only the observed traffic violation, however minor that violation is. Since the *Whren* case, courts have not looked to the underlying motive of the officer in effectuating the stop is irrelevant, so long as another permissible basis exists. However, the *Whren* court acknowledged the potential for law enforcement officers to abuse this authority and wrongfully engage in racial profiling.<sup>43</sup>

Although the Supreme Court legally sanctioned pretextual traffic stops as a means for law enforcement officers to develop an articulable suspicion as to other criminal activity, the practice is not necessarily effective to achieve that end. Given the infrequency that

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<sup>40</sup> “It is enough to say that, if police have a reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in or is wanted in connection with a completed felony, then a *Terry* stop may be made to investigate that suspicion.” *United States v. Hensley* (1985) 469 U.S. 221, 229.

<sup>41</sup> “[U]nder certain circumstances, police officers may seize contraband detected during the lawful execution of a *Terry* search. See, e.g., *Michigan v. Long* (1983) 463 U.S. 1032, 1050. (“If, while conducting a legitimate *Terry* search . . . the officer should . . . discover contraband other than weapons, he clearly cannot be required to ignore the contraband, and the Fourth Amendment does not require its suppression under such circumstances.”). *United States v. Rodriguez* (D. Idaho 2020) 471 F. Supp. 3d 1049, 1065-66.

<sup>42</sup> “An automobile stop is thus subject to the constitutional imperative that it not be “unreasonable” under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.” *Whren v. United States* (1996) 517 U.S. 806, 810.

<sup>43</sup> “We think these cases foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved. We of course agree with petitioners that the Constitution prohibits selective enforcement of the law based on considerations such as race.” *Id* at 813.

additional criminal activity is discovered, prolonging traffic stops to investigate evidence of criminality does not aid in crime suppression. What is apparent, however, is that the practice disproportionately affects persons of color and minority communities and hinders public trust in its policing agencies. The Office of Inspector General, therefore, recommends, that the use of pretextual stops be limited to reduce racial disparities in traffic stops and to foster a positive relationship between the Sheriff's Department and the community it serves.

## TREND NATIONWIDE TO LIMIT LOW-LEVEL STOPS

In cities across the country, lawmakers are passing laws banning or restricting the use of traffic stops as pretextual stops. Below is a review of some of the cities that have passed laws limiting minor traffic stops.

### Los Angeles Police Department

In March 2022, the Los Angeles Police Commission, at the recommendation of Chief Michael Moore of the Los Angeles Police Department (LAPD), adopted a new policy restricting the use of pretextual stops, making Los Angeles the most populous city to restrict the policing of minor violations. Under the new policy,<sup>44</sup> officers are only to make stops for minor equipment violations or other infractions when the officer believes that such a violation or infraction significantly interferes with public safety. Pretextual stops may only be made when officers “are acting upon articulable information, which may or may not amount to reasonable suspicion regarding a serious crime (i.e., a crime with potential for great bodily injury or death)”; however such a stop, “should not be based on a mere hunch or a person’s race, gender, age, homeless circumstance, or presence in a high-crime location.”<sup>45</sup> The new policy also requires police officers to inform the individual stopped as to the reason for the stop and to answer questions by the person stopped, while recording the encounter on their body-worn cameras.

In November 2022, the LA Times [published](#) an analysis of newly released data from the LAPD since the implementation of its policy.

“The Times found that insignificant non-moving and equipment violations, which include a wide array of offenses such as expired registration or an air freshener hanging from a rearview mirror, accounted for 12% of all

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<sup>44</sup>[Los Angeles Police Department – Office of the Chief of Police, Special Order No. 3 Policy – Limitation on Use of Pretextual Stops Established, March 9, 2022.](#)

<sup>45</sup> Ibid.

traffic and pedestrian stops from April through the end of August – the five months following the implementation of the new policy. During the same five-month period last year, they made up 21% of all stops, according to the analysis of LAPD data.”<sup>46</sup>

In addition, officers were “much less likely to rely on consent from drivers to conduct searches, which is a common tactic police use when they don’t have evidence to legally justify a search. After the policy went into effect, officers received consent to search in 24% of all searches, compared with 30% during the same five-month period last year.”<sup>47</sup>

Since the enactment of the policy, the LAPD are “less frequently using small infractions as a reason to stop Black people.”<sup>48</sup> Between April and August of 2021, 25% of all stops of Black drivers were for minor equipment and non-moving violations. During the same time period in 2022, that total fell by 10 percentage points. Although no definitive conclusions can be drawn of an analysis from a five-month period, the Times article noted it does suggest that “police can strike a balance between keeping the public safe and respecting the rights of individuals.”

On June 6, 2022, the Los Angeles Times reported<sup>49</sup> that in a new poll by The Times and UC Berkeley, “more than 40% of respondents said the new policy limiting such stops struck the right balance, while 24% said it doesn’t go far enough to protect the rights of residents. Only 15% said the policy went too far in restraining officers, with an additional 20% saying they had no opinion.”

## City of Philadelphia

On March 3, 2022, Philadelphia enacted the [Driving Equality Law](#) banning pretextual stops and became the first major U.S. city to ban police from stopping drivers for low-level traffic violations. The [Defender Association](#), a group that provides free legal assistance to Philadelphians, looked at data from 309,000 traffic stops between October 2018, and September 2019, and found Black drivers represented 72% of recorded incidents, compared with 15% for white drivers. The disparities highlighted in the data led Philadelphia to enact the Driving Equality Law, which went into effect on March 3, 2022, banning police traffic stops for certain low-level offenses.

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<sup>46</sup> Libor Jany and Ben Poston, “[Minor police encounters plummet after LAPD put limits on stopping drivers and pedestrians.](#)” *The Los Angeles Times*, November 14, 2022.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Kevin Rector and Alejandra Reyes-Velarde, “[Confidence in LAPD drops sharply, poll finds, but L.A. voters don’t want to shrink force.](#)” *The Los Angeles Times*, June 6, 2022.

Under the law, drivers can no longer be stopped for the following: vehicle registrations expired for 60 days or less; temporary registration permits that are in the wrong location, but otherwise clearly displayed in the rear window; unfastened registration plates, as long as they are still visible; a single brake or headlight out; other obstructions, like rearview mirror decorations; minor bumper damage; operation of vehicle without official certificate of inspection; a loud muffler; and unlawful operation without evidence of emission inspection. Drivers may still receive a secondary-offense ticket for any of the listed violations if they are pulled over for a separate, primary offense like dangerous driving. Police officers are not prevented from making legitimate public safety stops if they have reasonable suspicion or probable cause to believe that a driver is involved in criminal activity.

### Minneapolis Police Department

Police killings of [Philando Castile](#),<sup>50</sup> 32, in 2016 in St. Anthony; [George Floyd](#),<sup>51</sup> 46, in Minneapolis in 2020; and [Daunte Wright](#),<sup>52</sup> 20, in Brooklyn Center in 2021, have made Minnesota a focal point for justice system reform efforts. In August 2021, Mayor Jacob Frey and Minneapolis Police Chief Medaria Arradondo worked together to create a policy that would eliminate pretextual stops by police officers.

On October 8, 2021, the Minneapolis Police Department created [Policy and Procedure Manual Number 7-600](#) whereby police officers may no longer initiate traffic stops when the only offense is: 1) expired tags; 2) an item dangling from the rearview mirror, unless that object impairs the driver's ability to operate the vehicle safely; or 3) inoperable license plate lights.

### State of Virginia

In March 2021, the state of Virginia similarly passed [legislation](#) prohibiting certain low-level traffic stops. The bill prohibits law enforcement officers from stopping drivers for operating a vehicle 1) without a light illuminating a license plate; 2) with defective and unsafe equipment; 3) without brake lights; 4) without an exhaust system that prevents excessive or unusual levels of noise; 5) tinted windows; and 6) with certain objects suspended in the vehicle rearview mirror.

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<sup>50</sup> Mark Berman, "[What the police officer who shot Philando Castile said about the shooting](#)," The Washington Post, June 21, 2017.

<sup>51</sup> Evan Hill, Ainara Tiefenthäler, Christiaan Triebert, Drew Jordan, Haley Willis, and Robin Stein, "[How George Floyd was Killed in Police Custody](#)," The New York Times, May 31, 2020, Updated January 24, 2022.

<sup>52</sup> "[What to Know About the Death of Daunte Wright](#)," The New Your Times, February 21, 2022.

## Seattle Police Department

In January 2022, the Seattle Police Department Chief, Adrian Diaz, announced she had issued a [directive](#)<sup>53</sup> that certain violations would no longer be the primary reason for cyclists or motorists to be stopped by Seattle police officers. These violations included: 1) driving with expired or missing vehicle registration tabs; 2) vehicles missing a front license plate (must still have a rear license plate); 3) items hanging from rearview mirrors or cracked windshields (unless it causes visual obstruction); 4) and bicycle helmet violations. These violations may still be enforced if another primary violation leads to a traffic stop (e.g., drunk driving, street racing, burglary, or other Part 1 offenses). The Inspector General of the Seattle Police Department stated, “more changes were in the works” and that “this was a rolling project to reduce traffic stops and potential negative interactions between officers and members of the community.”<sup>54</sup>

## Berkeley, California

A report<sup>55</sup> by the non-profit organization, Center for Policing Equity, found Black persons in Berkeley were about 6.5 times more likely, per capita, than White persons to be stopped while driving, and 4.5 times more likely to be stopped on foot by the Berkeley Police Department. Hispanic persons were twice as likely, per capita, as White persons to be stopped while driving, and slightly less likely to be stopped on foot.

The report also found “. . . Black and Hispanic drivers (and pedestrians) were also searched at much higher rates. Once stopped, Black drivers were searched at a rate four times higher than their White counterparts (20% compared to 5%), while Hispanic drivers were searched at three times the rate of Whites (15%). Search-rate disparities were similar among White, Black, and Hispanic pedestrians. The higher rates at which Black and Hispanic drivers and pedestrians were stopped and searched are consistent with the possibility that Black and Hispanic persons were treated with greater suspicion by BPD officers.”

Following the report, the Berkeley City Council voted unanimously to implement reforms including barring police from pulling drivers over for low level offenses like having expired license plate tags, broken taillight(s), or a seat belt violation. In addition, police

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<sup>53</sup>[https://www.seattle.gov/documents/Departments/Police/manual/DIR\\_22\\_006\\_Interim\\_Policy\\_Traffic\\_Stops.pdf](https://www.seattle.gov/documents/Departments/Police/manual/DIR_22_006_Interim_Policy_Traffic_Stops.pdf)

<sup>54</sup>Sara Jean Green, “[Seattle police will no longer enforce some minor violations, including biking without a helmet,](#)” *Seattle Times*, January 14, 2022.

<sup>55</sup> K. Buchanan, E. Pouget, P. Goff, (2018, May). The Science of Justice: Berkeley Police Department National Justice City Database Report, May 2018. Retrieved from [https://www.cityofberkeley.info/uploadedFiles/Police\\_Review\\_Commission/Commissions/2018/Berkeley%20Report%20-%20May%202018.pdf](https://www.cityofberkeley.info/uploadedFiles/Police_Review_Commission/Commissions/2018/Berkeley%20Report%20-%20May%202018.pdf)

officers can no longer ask about a person's probation or parole status during a vehicle detention without an underlying reason. Finally, police officers are required to get written rather than verbal consent for warrantless searches.

## **CURRENT STATE LAW AND SHERIFF'S DEPARTMENT POLICIES RELATED TO CRIME SUPPRESSION OR PRETEXTUAL STOPS**

[Assembly Bill 2773](#) (AB 2773) will become the law effective January 1, 2024. Introduced by California Assemblymember Chris Holden, it requires a peace officer making a traffic or pedestrian stop to state the reason for the stop prior to any questioning, unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat. The bill, the relevant portion of which is codified in section 2806.5 of the California Vehicle Code, also requires the officer to document in a report or on the citation the reason for the stop.

Assembly Bill 2147 prohibiting jaywalking stops absent circumstances that would cause a reasonably careful person to believe that there is an immediate danger of a collision. AB 2147 became effective on January 1, 2023.

California [Assembly Bill 953](#) (AB 953), entitled the Racial and Identity Profiling Act of 2015, prohibits racial and identity profiling by law enforcement and requires law enforcement agencies to report certain data to the state Attorney General on all vehicle and pedestrian stops as well as citizen complaints alleging racial and identity profiling.

AB 953 is incorporated into LASD Policy in the Manual of Policy and Procedures (MPP) at 3-01/000.05 – Bias-Free Policing.<sup>56</sup>

The Sheriff's Department also has a policy on Constitutional Policing, MPP 5-09/520.00.<sup>57</sup> However, the policy only generally espouses equal protection of the law and does not contain any specific provisions related to pretextual investigatory stops. This policy also fails to address modern constitutional policing reforms, which generally reject employing stops for minor traffic violations as a foundation to investigate more serious offenses.

The Sheriff's Department policy related to Stops, Seizures, and Searches, [at MPP 5-09.520.05](#), does contain provisions related to investigatory stops and detentions, as noted below (in relevant part):

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<sup>56</sup>[3-01/000.05 - Bias Free Policing](#)

<sup>57</sup>[5-09/520.00 - Constitutional Policing and Stops](#)



*“Department members shall only conduct investigatory stops or detentions when they have reasonable suspicion that a person has been, is, or is about to be engaged in the commission of a crime.*

*Department members shall not use race, color, ethnicity, national origin, religion, gender, gender identity, disability, or sexual orientation as a factor, to any extent or degree, in establishing reasonable suspicion or probable cause except as part of actual and credible description(s) of a specific suspect or suspects in any criminal investigation.*

*Department members shall not use race, color, ethnicity, national origin, religion, gender, gender identity, disability, or sexual orientation in exercising discretion to conduct a search except as part of an actual and credible description of a specific suspect or suspects in any criminal investigation.*

*Department members shall not initiate stops or other field contacts because of an individual’s actual or perceived immigration status.*

*Department members shall not conduct arbitrary searches. The request to conduct a consent search must be reasonable, and a deputy must be able to articulate a valid reason under law and policy for initially having stopped the individual.”<sup>58</sup>*

Despite the above Sheriff’s Department policies, which are intended to promote constitutional policing the practice of pretextual stops by Sheriff’s deputies has disparately impacted Latino and Black communities without a significant increase to public safety. Such negative contacts between the Sheriff’s Department and the community it serves degrades the public’s trust of the Department.

While other agencies in the United States, including the Los Angeles Police Department, took meaningful action to limit the use of pretextual stops to align with Constitutional policing principles and enhance public trust under its jurisdiction, the Sheriff’s Department has yet to assess whether its current practices are in line with state and federal law, modern police reform recommendations, or to consider revisions to its policies.

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<sup>58</sup> [5-09/520.05 - Stops, Seizures, and Searches - PARS Public Viewer \(lasd.org\)](#)

## CONSENT SEARCHES

The use of consent searches when probable cause does not exist is an investigatory tool which also has historically allowed racial disparities in policing. This topic has been previously reported upon by the Office of Inspector General in its report titled, [Reform and Oversight Efforts: Los Angeles County Sheriff's Department – October to December 2020](#).<sup>59</sup>

## RECOMMENDATIONS FOR THE SHERIFF'S DEPARTMENT

1. The Sheriff's Department should create a policy restricting pretextual stops, including but not limited to the following provisions:
  - a. Deputies shall not conduct pretextual investigatory stops unless they have articulable reasonable suspicion (not a mere hunch) regarding a serious crime<sup>60</sup> in addition to ascertaining probable cause of a minor offense, such as a traffic violation (excluding traffic/equipment stops enumerated in Recommendation 4).
  - b. Deputies shall articulate on their BWC the reason for the stop prior to their encounter with an individual. Any citations and warnings resulting from a stop, should also be articulated on BWC including the deputy's response to any questions posed by the individual stopped.
  - c. If deputies fail to follow the policy as enumerated, the Department may initiate an administrative investigation with the appropriate disciplinary outcome; and
  - d. Deputies shall adhere to Manual of Policy and Procedure 5-09/520.05 by not using a person's race, color, ethnicity, national origin, religion, gender, gender identity, disability, or sexual orientation as a factor, to any extent or degree, in establishing reasonable suspicion or probable cause except as part of actual and credible description(s) of a specific suspect or suspects in any criminal investigation.
  
2. The Sheriff's Department should limit pretextual investigative stops by creating policies restricting deputies from stopping, detaining, or arresting, drivers,

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<sup>59</sup> See [Reform and Oversight Efforts: Los Angeles County Sheriff's Department – October to December 2020](#), at pages 17 to 20.

<sup>60</sup> A definition of serious crimes should be included in any policy covering pretextual stops. The Office of Inspector General recommends including crimes with a potential for great bodily injury or death, crimes defined as serious or violent by the California Penal Code, driving under the influence, reckless driving, street racing, street takeovers, hit and run, human or narcotics trafficking, weapons possession, or burglary.

bicyclists, and pedestrians for certain safety equipment and low-level traffic violations such as the following offenses:<sup>61</sup>

- a. Failure to display registration tags or driving with expired tags;
  - b. A single brake or headlight out;
  - c. Loud muffler;
  - d. Rearview mirror decorations or objects on rearview mirror unless it impairs the driver's view and ability to operate the vehicle safely;
  - e. Failure to illuminate license plates;
  - f. Improperly placed license plates;
  - g. Tinted windows;
  - h. Cracked windshield unless the driver's view is so obstructed as to create a condition that substantially increases the likelihood of injury or death;
  - i. Failing to signal while turning or switching lanes;
    - i. Failure to have a seatbelt fastened, other than an improperly restrained minor under the age of 14; or
    - ii. Crossing outside of a crosswalk or against a traffic light when safe.
3. The Sheriff's Department should enact a policy to comply with section 2806.5 of the California Vehicle Code (AB 2773) prior to its effective date of January 1, 2024, requiring deputies:
- a. to state the reason for the stop prior to any questioning, unless the deputy reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat.
  - b. requires the deputy to document in a report or on the citation the reason for the stop.
4. The Sheriff's Department should enact a policy to comply with Assembly Bill 2147 prohibiting jaywalking stops absent circumstances that would cause a reasonably careful person to believe that there is an immediate danger of a collision.
5. The Sheriff's Department should create a policy limiting when deputies conducting traffic stops of vehicles, bicycles, and pedestrians inquire whether the person is on probation or parole.

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<sup>61</sup> We used as a guide [The Policing Project's An Act to Curtail Pretextual Traffic Stops](#)

6. The Sheriff's Department should collect, review and analyze data on a yearly basis to determine the impact of these policies on racial disparities in traffic stops.

## CONCLUSION

Historically, law enforcement officers have had wide latitude to use pretextual stops in the course of their duties, without meaningful accountability for the harms caused to communities and people of color. Often, they have operated without weighing the effectiveness of traffic stops versus the harm they cause in community relations. The statistics show that police officers sometimes use excessive or unjustified force during pretextual investigatory stops that has led to the death of 400 civilians in the past five years. Across the country, law enforcement agencies and local and state governments are now rethinking the way police officers conduct traffic stops. Whether through legislation or law enforcement agencies' policies, changes are being made to reduce and prohibit low-level traffic stops that lead to both disparate treatment of minorities and for some, death.

The Los Angeles County Sheriff's Department should create the above recommended policies to implement evidence-based best practices and maintain public trust.

The Office of Inspector General met with Sheriff's Department command staff and these recommendations will be considered by the Sheriff's Department.