

EXECUTIVE SUMMARY

[Forthcoming]

DRAFT

DRAFT REPORT – PENDING EDITING AND REVIEW

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INTRODUCTION

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ANALYSIS OF 2023 STOP DATA

[FORTHCOMING]

Stop Data Demographics

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POLICY-FOCUSED DATA ANALYSIS

I. YOUTH INTERACTIONS WITH LAW ENFORCEMENT

A. Introduction

“All youth deserve multiple chances. Some get them. Others do not. Whether you end up incarcerated or in college should not be based on where you live, the color of your skin or how much money your family makes. Some communities have Youth Development while others have containment and suppression. We are a product of those communities that are over-policed and disinvested in. We are more likely to make police contact, not based on our behavior, but how our public resources are spent.”¹

In a global context, the United States is a carceral outlier that over confines youth.² The national incarceration rate is 60 out of 100,000 youth, which is the highest rate of 92 reporting countries in the United Nations.³

The Board, in past reports, examined the “school-to-prison pipeline” and made recommendations aimed at reducing unnecessary interactions between students and law enforcement and reducing racial and disability disparities in the initiation of and the results of those interactions.⁴ Schools, however, are only one pathway for youth to become entangled in the criminal legal system, and the majority of law enforcement stops of youth occur in other settings.⁵ The Board’s prior analysis of 2021 stop data demonstrated that youth are at higher risk of intrusive law enforcement contact.⁶ At least one expert has suggested there is a “community-to-prison

¹ Hayward Burns Institute, *Los Angeles County: Youth Justice Reimagined* (Oct. 2020) L.A. County, p. 9 <<https://burnsinstitute.org/wp-content/uploads/2020/11/Youth-Justice-Reimagined-2020.pdf>> [as of XX, 2024].

² Trejos-Castillo et al., *The Square One Project Learned Helplessness, Criminalization, and Victimization in Vulnerable Youth* (Dec. 2020) p. 6. <<https://squareonejustice.org/paper/learned-helplessness-criminalization-and-victimization-in-vulnerable-youth-by-elizabeth-trejos-castillo-evangelina-lopoo-and-anamika-dwivedi-december-2020/>> [as of XX, 2024].

³ Trejos-Castillo et al., *The Square One Project Learned Helplessness, Criminalization, and Victimization in Vulnerable Youth* (Dec. 2020) p. 5. <<https://squareonejustice.org/paper/learned-helplessness-criminalization-and-victimization-in-vulnerable-youth-by-elizabeth-trejos-castillo-evangelina-lopoo-and-anamika-dwivedi-december-2020/>> [as of XX, 2024].

⁴ See, e.g., Racial and Identity Profiling Advisory Board (2024). *Annual Report*. p. 122 <<https://oag.ca.gov/system/files/media/ripa-board-report-2024.pdf>> [as of XX, 2024]; .

⁵ For example, one study concluded that there was a public housing-to-prison pipeline.(Holdera et al., *Concentrated Incarceration and The Public-Housing-To-Prison Pipeline in New York City Neighborhoods* (2021) <[holder-et-al-2022-concentrated-incarceration-and-the-public-housing-to-prison-pipeline-in-new-york-city-neighborhoods%20\(3\).pdf](https://www.holder-et-al-2022-concentrated-incarceration-and-the-public-housing-to-prison-pipeline-in-new-york-city-neighborhoods%20(3).pdf)> [as of XX, 2024].) Another coined the term foster-care-to-prison pipeline. (Yamat. *Foster-Care-to-Prison Pipeline* (2020) <https://www.cjci.org/media/import/documents/the_foster_care_to_prison_pipeline.pdf> [as of XX, 2024].)

⁶ Racial and Identity Profiling Advisory Board (2023). *Annual Report*. <<https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>> [as of XX, 2024].

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pipeline” that funnels youth into the criminal legal system.⁷ For racialized youth, exposure to police encounters emerges as early as the onset of adolescence.⁸ As scholars have found, “[a] Black child’s journey through the juvenile justice system often begins with law enforcement interaction.”⁹ Therefore, reform of law enforcement policies is critical to reducing the troubling disproportionalities impacting Black youth in the criminal legal system.¹⁰

This year’s Report focuses on youth and policing within the broader community and the concerns those interactions have raised, building on the Board’s prior recommendations to address the issue of racial profiling of youth.

B. Research Shows Youth Are Uniquely Impacted By Law Enforcement Encounters

Before examining the various aspects and consequences of police and youth interactions, the Board broadly defines “youth” as inclusive of “transition age youth,” which the federal government defines as persons between 16 to 24 years of age.¹¹ Within this broad definition of youth, the Board looks at different age ranges because of significant legal and developmental differences between these groups. The Board’s inclusion of transition-age youth in these analyses, in particular, is supported by science:

It is well established that the brain undergoes a “rewiring” process that is not complete until approximately 25 years of age. This discovery has enhanced our basic understanding regarding adolescent brain maturation and it has provided support for behaviors experienced in late adolescence and early adulthood. Several investigators consider the age span 10–24 years as adolescence, which can be further divided into substages specific to physical, cognitive, and social–emotional development.¹²

In determining the age categories used for the analysis within this section, the Board also considered the minimum age whereby California juvenile courts may exercise jurisdiction over

⁷ Redfield and Nance, “Joint Task Force on Reversing the School-to-Prison Pipeline Preliminary Report” (February 2016) American Bar Association 67, 138, 140.

⁸ <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1765&context=facultypub> [As of May 10, 2024].

⁹ Del Tor-o et al. (2022). *The Policing Paradox: Police stops predict youth’s school disengagement via elevated psychological distress*. American Psychological Association. p. 1

¹⁰ Bratton and Howard Smith, *Growing Up a Suspect: An Examination of Racial Profiling of Black Children and Effective Strategies to Reduce Racial Disparities in Arrests* (2018) 45 N. Ky. L. Rev. 137, 154.

¹¹ Bratton and Howard Smith, *Growing Up a Suspect: An Examination of Racial Profiling of Black Children and Effective Strategies to Reduce Racial Disparities in Arrests* (2018) 45 N. Ky. L. Rev. 137, 154.

¹² Interagency Working Group on Youth Programs, *Transition & Aging Out* (2022) Youth.gov.

<https://youth.gov/youth-topics/transition-age-youth>

¹² Arrain et al., *Maturation of the Adolescent Brain* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3621648/>> [as of XX, 2024]

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youth, the age categories that the Board has included in prior reports, and the disproportional impact of likely erroneous reporting of perceived age on categories, which would include children perceived to be younger than eight years old.¹³ California law establishes age 12 as the minimum age whereby a juvenile court may exercise jurisdiction over a youth, with exceptions for five enumerated offenses.¹⁴ California law also directs counties to create school, health, and community-based services for youth under 12 who would otherwise be subject to the juvenile court’s jurisdiction and to release youth under 12 whose behavior brings them into contact with law enforcement to their parent, guardian, caregiver, or other county-established alternative program.¹⁵

Considering these factors, the following perceived age categories were used in the analysis of the RIPA data in this Report: 8 to 11 years, 12 to 14 years, 15 to 17 years, 18 to 24 years, and 25 years and older.

1. Demographics of Youth Who Are Interacting with Law Enforcement in California

In California, the youth demographic is large. In 2022, over 12 million (nearly one in three) Californians were under 25 years of age and nearly nine million (approximately one in five) Californians were under 18 years of age.¹⁶ Given the size of this population, and their unique vulnerability, it is crucial to examine their interactions with law enforcement to determine the impact of those interactions, and to determine whether policies are needed to address concerns that may arise from those interactions.

¹³ Several characteristics of the stops within the one to seven-year-old age group suggest they may contain a higher proportion of errors within the age field or misunderstandings by officers relating to proper data entry practices. These entries often do not make sense, e.g., an entry where a driver was perceived as a one year old. Some of these may be due to data entry errors in which officers inadvertently missed a digit when typing in the age of someone whom they perceived to be older (e.g., officer typed “5” when they intended to type “35”). The Board expects this problem may occur less frequently for perceived ages of eight and nine because a perceived age of 80 or 90 would be less common and people tend to approximate age in increments ending in 0 or 5 for older ages. (See U.S. Census Bureau, *Age Distribution for U.S. Population: 2000, 2010, and 2020 Censuses* (2023) <<https://www.census.gov/library/visualizations/interactive/age-distribution-for-united-states-population.html>> [as of XX, 2024].) Other entries may be due to officers incorrectly completing a stop record for a child who was a passenger of a vehicle being operated by another person. These sorts of errors may be present for other age groups, but likely constitute a much smaller proportion of the stops for the other age groups, given how few stops of persons perceived to be one to seven years old occurred, relative to other age categories.

¹⁴ Welf. & Inst. Code, §§ 601, 602; California Department of Justice (July 5, 2019) *SB 439 Compliance* [Information Bulletin] p. 1 <https://oag.ca.gov/sites/all/files/agweb/pdfs/info_bulletins/2019-dle-04.pdf>.

¹⁵ Welf. & Inst. Code, § 602.1; California Department of Justice (July 5, 2019) *SB 439 Compliance* [Information Bulletin] p. 1 <https://oag.ca.gov/sites/all/files/agweb/pdfs/info_bulletins/2019-dle-04.pdf>.

¹⁶ Statista (2024). *Distribution of Resident Population in California, by Age Group*. <<https://www.statista.com/statistics/912915/california-population-share-age-group/>> [31.2 percent of Californians were under 25 years of age and 22.8 percent were under 18 years of age.] [as of Apr. 26, 2024]; U.S. Census Bureau American Community Survey 2017-2021 5-Year Estimates; U.S. Census Bureau (2023). *Quick Facts: California*. <<https://www.census.gov/quickfacts/fact/table/CA/PST045222#PST045222>> [as of Apr. 29, 2024].

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Youth demographics in California differ from the demographics of older age groups.¹⁷ For example, a majority of California children are Latine (51.9% of children 0-17 and 50.1% of youth 18-24).¹⁸ Overall, 40.2 percent of Californians are Latine.¹⁹ The following chart shows racial distribution within age groups in California.

Racial Identity across Age Groups in California²⁰

	0-17 years	18-24 years	Overall
Latine	51.9%	50.1%	40.2%
White	23.5%	26.2%	34.2%
Asian/Pacific Islander	12.1%	12.5%	15.2%
Black	4.6%	5.6%	5.3%
Native American	0.2%	0.3%	0.2%
Multiracial/Other	7.8%	5.3%	4.8%

Younger Californians are much more likely than older Californians to identify as LGBT,²¹ with 234,000 youth ages 13-17 identifying as lesbian, gay, or bisexual and 22,200 youth ages 13-17 identifying as transgender.²² Among transition age youth, 514,400 youth ages 18-24 (13.6 percent) identify as lesbian, gay, bisexual, and/or transgender, while lower proportions of people in older age ranges identify as LGBT.²³ The LGBT population in California largely reflects the racial and ethnic diversity of the state.²⁴

2. Impact of Law Enforcement Interactions on Youth

Researchers have concluded contact with law enforcement—including simply being *stopped* by police—could have long-term consequences on youth, including higher levels of delinquency, fewer educational and employment opportunities, and negative attitudes.²⁵ Research has also linked law enforcement contact to school absenteeism, even when such contact occurs outside of

¹⁷ Johnson et al. (2023). *Race and Diversity in the Golden State*. Public Policy Institute of California. <<https://www.ppic.org/publication/race-and-diversity-in-the-golden-state/>>.

¹⁸ Johnson et al. (2023). *Race and Diversity in the Golden State*. Public Policy Institute of California. <<https://www.ppic.org/publication/race-and-diversity-in-the-golden-state/>>.

¹⁹ Johnson et al. (2023). *Race and Diversity in the Golden State*. Public Policy Institute of California. <<https://www.ppic.org/publication/race-and-diversity-in-the-golden-state/>>.

²⁰ Johnson et al. (2023) *Race and Diversity in the Golden State*, Public Policy Institute of California. <<https://www.ppic.org/publication/race-and-diversity-in-the-golden-state/>>.

²¹ Johnson, *California's LGBT Population* (June 8, 2022) Public Policy Institute of California.

²² Conron, *LGBT Youth Population in the United States* (2020) UCLA School of Law Williams Institute. p. 1 <<https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Youth-US-Pop-Sep-2020.pdf>> [as of XX, 2024].

²³ Flores and Conron. (2023). *Adult LGBT Population in the United States*. UCLA School of Law Williams Institute. p. 13. <<https://oag.ca.gov/system/files/media/ripa-notice-agenda-06242024.pdf>> [as of June 6, 2024]. [8.1 percent of Californians ages 25-34 identify as LGBT, 3.7 percent of Californians ages 35-49 identify as LGBT, 2.5 percent of Californians ages 50-6 identify as LGBT, and 1.6 percent of Californians who are 65 and older identify as LGBT.]

²⁴ Johnson. (June 8, 2022). *California's LGBT Population*. Public Policy Institute of California.

²⁵ Wiley and Esbensen, *The Effect of Police Contact: Does Official Intervention Result in Deviance Amplification?* (2013) 62 *Crime & Delinquency* 3, 283-307.

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school.²⁶ The research suggests that the experience of contact with law enforcement, when negative, could have a more harmful impact the earlier it occurs in a child’s life.²⁷

Law enforcement stops can lead to general “strain”—the phenomenon that aggregate and/or acute stressors increase the likelihood of delinquent behaviors because the psychological distress that results is correlated with a greater likelihood of engaging in delinquent acts.²⁸ Law enforcement encounters can undermine children and teens’ sense of safety and stability and contribute to the development of stress, anxiety, post-traumatic stress disorder, and depression.²⁹ Direct contact with law enforcement and vicarious exposure to aggressive policing practices, such as strict enforcement of low-level crimes and extensive use of police stops, are associated with negative education outcomes, such as reduced test scores for Black children and youth and lower grade point averages in teenagers.³⁰ Aggressive policing practices include strict enforcement of low-level crimes, use of force, and the extensive use of police stops.³¹

The “applied police model, which emphasizes extensive police contact at low levels of suspicious behavior, can lower the educational performance of African American boys, with implications for child development and racial inequality.”³² The negative health consequences of police contact related to stress, fear, trauma, and anxiety can also hinder children’s educational performance. “Police encounters are often harsh, entail racial/ethnic degradation, and in many cases include use of police force. They can trigger adverse health effects such as stress, fear, anxiety, and even depressive symptoms which reduce cognitive and educational performance.”³³

²⁶ Geller and Mark, *Student Absenteeism and the Role of Police Encounters* (2022) 21 *Criminology and Public Policy* 4, 893-914.

²⁷ Del Toro et al., *The Criminogenic and Psychological Effects of Police Stops on Adolescent Black and Latino Boys* (March 2019) 116 *PNAS* 17, 8261-8268.

²⁸ Del Toro et al., *The Criminogenic and Psychological Effects of Police Stops on Adolescent Black and Latino Boys* (March 2019) 116 *PNAS* 17, 8261-8268.

²⁹ Geller, *Youth-Police Contact: Burdens and Inequities in an Adverse Childhood Experience, 2014-2017 (“Youth-Police Contact: Burdens and Inequities”)* (2021) 11 *Am. J. Public Health*. pp. 1300-1302, 1306 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8493138/>> [as of Nov. 29, 2022]; Jackson et al., *Police Stops Among At-Risk Youth: Repercussions for Mental Health* (2019) *Journal of Adolescent Health* 1-6.

³⁰ Gottlieb and Wilson, *The effect of direct and vicarious police contact on the educational achievement of urban teens* (2019) *Children and Youth Services Review* 103, 190–199.

³¹ St. John et al., “Reducing Adverse Police Contact Would Heal Wounds for Children and Their Communities” (June 14, 2022) *Child Trends: Trauma and Resilience*, <<https://childtrends.org/publications/reducing-adverse-police-contact-would-heal-wounds-for-children-and-their-communities>> [as of May 8, 2024].

³² Legewie and Fagan, *Aggressive Policing and the Educational Performance of Minority Youth* (April 2019) 84 *American Sociological Review* 2, 220-247.

³³ Legewie and Fagan, *Aggressive Policing and the Educational Performance of Minority Youth* (April 2019) 84 *American Sociological Review* 2, 220-247.

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3. Racial Disparities in Law Enforcement Contact with Youth

Researchers suggest that police encounters with racialized youth are qualitatively different from those with White youth.³⁴ Specifically, researchers found “race makes a difference in how youth are treated by police and in their perceptions of officers.”³⁵ Youth encounters with law enforcement may be impacted by differences in the perceived maturity of racialized youth (adultifying perceptions). Multiple studies demonstrate adults perceive Black children as older and more likely to be guilty than their White peers, and perceive that police violence against them is more justified.³⁶ Adultification is the term used to describe this phenomenon. Researchers found that for Black boys adultification begins as early as age ten and is greatest for Black girls between 5-14 years of age.³⁷

A study that included experienced law enforcement officers demonstrated that the officers consistently overestimated the age of Black and Latine children in criminal legal contexts, while White children were not subjected to these overestimations.³⁸ The officers overestimated the age of Black youth suspected of felonies by 4.59 years.³⁹ Racialized children are more likely to be perceived as adults prematurely and, in turn, are perceived to have less of a need for the protections typically afforded to children.⁴⁰ “[T]he single most common proactive policing

³⁴ Geller, *Youth-Police Contact: Burdens and Inequities in an Adverse Childhood Experience, 2014-2017* (“*Youth-Police Contact: Burdens and Inequities*”) (2021) 11 Am. J. Public Health. pp. 1300-1302, 1306 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8493138/>> [as of Nov. 29, 2022].

³⁵ Brunson and Weitzer, *Police Relations with Black and White Youths in Different Urban Neighborhoods* (2009) 44 Urban Affairs Review, 858-885.

³⁶ Epstein et al. (2017). *Girlhood Interrupted: The erasure of Black girls’ childhood*. Georgetown Law Center on Poverty and Inequality. pp. 1 and 4; Goff et al, *The Essence of Innocence: Consequences of dehumanizing Black children* (2014) 106 J. of Personality and Social Psychology. pp. 526, 529, 536 <<https://search.issuelab.org/resource/the-essence-of-innocence-consequences-ofdehumanizing-black-children.html>> [as of XX, 2024].

³⁷ Goff et al, *The Essence of Innocence: Consequences of dehumanizing Black children* (2014) 106 J. of Personality and Social Psychology. pp. 526, 529, 536 <<https://search.issuelab.org/resource/the-essence-of-innocence-consequences-ofdehumanizing-black-children.html>> [as of XX, 2024]; Perillo et al. (2023). *Examining the Consequences of Dehumanization and Adultification in Justification of Police Use of Force Against Black Girls and Boys*. American Psychological Association. Vol. 47. P. 36; Epstein et al. (2017). *Girlhood Interrupted: The erasure of Black girls’ childhood*. Georgetown Law Center on Poverty and Inequality. p. 1.

³⁸ Goff et al, *The Essence of Innocence: Consequences of dehumanizing Black children* (2014) 106 J. of Personality and Social Psychology. pp. 526, 529, 536 <<https://search.issuelab.org/resource/the-essence-of-innocence-consequences-ofdehumanizing-black-children.html>> [as of XX, 2024].

³⁹ Goff et al, *The Essence of Innocence: Consequences of dehumanizing Black children* (2014) 106 J. of Personality and Social Psychology. pp. 534-535 <<https://search.issuelab.org/resource/the-essence-of-innocence-consequences-ofdehumanizing-black-children.html>> [as of XX, 2024].

⁴⁰ Epstein et al. (2017). *Girlhood Interrupted: The erasure of Black girls’ childhood*. Georgetown Law Center on Poverty and Inequality. p. 1; Bratton and Smith, *Growing Up a Suspect: An Examination of Racial Profiling of Black Children and Effective Strategies to Reduce Racial Disparities in Arrests* (2018) 45 N. Ky. L. Rev. 137, 154; see also Taylor-Thompson, *Treating All Kids as Kids* (May 24, 2021) Brennan Center for Justice; Perillo et al. *Examining the Consequences of Dehumanization and Adultification in Justification of Police Use of Force Against Black Girls and Boys* (2023) 47 American Psychological Association 36, 38 (“Engaging in ... dehumanization does

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strategy⁴¹—directing officers to make contact with individual boys and young men in “high-crime” areas—may impose a terrible cost.”⁴²

These perceptions may cause law enforcement officers to perceive Black youth as threats, exercise more punitive discretion, employ more use of force, and impose harsher penalties on Black youth.⁴³ A youth of color’s experience with adultification, in turn, colors their experience and perception of law enforcement officers and other individuals in positions of authority.⁴⁴

4. How Does Increased Law Enforcement Contact Impact Youth

Racialized youth are more likely to live in areas with a heavier law enforcement presence, meaning they experience a greater likelihood of law enforcement contact than White youth who live in less policed neighborhoods.⁴⁵ Disparities in some youth contacts could be explained by structural racism, which contributes to residential segregation, with predominantly Black neighborhoods particularly heavily policed.⁴⁶

In one study, although the vast majority of youth participants, both Black and White, “complained about routinely being subjected to what they considered unjustified police stops and physically intrusive searches . . . such unwelcome police encounters occurred less frequently for White [respondents]. In addition, Black respondents expressed hopelessness regarding the situation because they felt that officers would never see them as anything other than symbolic assailants, even when they were engaged in entirely lawful activity.”⁴⁷

not entail literally seeing individuals as nonhuman or subhuman but rather ascribing them to fewer traits associated with humanity.”)

⁴¹ As noted below, “proactive policing” has also been described as a model “in which officers actively engage citizens in high-crime areas to detect imminent criminal activity or disrupt circumstances interpreted as indicia that ‘crime is afoot.’” Geller et al., *Aggressive Policing and the Mental Health of Young Urban Men* (Dec. 2014) 104 *American Journal of Public Health* 12, 2321-2327. It encompasses tactics such as stop-and-frisk or *Terry* stops.

⁴² Del Toro et al., *The Criminogenic and Psychological Effects of Police Stops on Adolescent Black and Latino Boys* (March 2019) 116 *PNAS* 17, 8261-8268.

⁴³ Epstein et al. (2017). *Girlhood Interrupted: The erasure of Black girls’ childhood*. Georgetown Law Center on Poverty and Inequality. p. 1

⁴⁴ See Taylor-Thompson, *Treating All Kids As Kids: Persistent and Longstanding Racism Has Fueled Harsher Treatment of Young Black People In The Justice System* (May 24, 2021) <<https://www.brennancenter.org/our-work/analysis-opinion/treating-all-kids-kids>>[as of XX, 2024]

⁴⁵ Geller, *Youth-Police Contact: Burdens and Inequities in an Adverse Childhood Experience, 2014-2017* (“*Youth-Police Contact: Burdens and Inequities*”) (2021) 11 *Am. J. Public Health*. pp. 1300-1302, 1306 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8493138/>> [as of XX, 2024].

⁴⁶ Geller, *Youth-Police Contact: Burdens and Inequities in an Adverse Childhood Experience, 2014-2017* (“*Youth-Police Contact: Burdens and Inequities*”) (2021) 11 *Am. J. Public Health*. p. 1306 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8493138/>> [as of XX, 2024].

⁴⁷ Brunson and Weitzer, *Police Relations with Black and White Youths in Different Urban Neighborhoods* (2009) 44 *Urban Affairs Review*, 858-885.

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Studies show Black youth have a higher risk of arrest than White youth in all contextual climates.⁴⁸ Further, racial disparities are magnified in counties with a low concentration of Black youth compared to White youth.⁴⁹ Researchers found that non-delinquent Black and Latine boys faced the same risk of law enforcement surveillance as self-reported delinquent boys.⁵⁰ The research showed that “[p]rior law-abiding behaviors did not protect boys against future police stops, yet being stopped by police was associated with increased engagement in delinquent behavior.”⁵¹

Research has documented substantial police contact among racialized girls, who experience police contact in forms both similar to and distinct from that experienced by Black boys.⁵² Considering that the use of force against women has been growing at a much higher rate than the use of force against men nationwide,⁵³ it is important to understand the unique vulnerabilities that Black girls may face in connection to police use of force, as discussed later in this section.⁵⁴

C. Youth-Specific RIPA Stop Data Analysis [Content Under Development]

1. Reasons for Stops

a. Loitering/trespass

(1) Analysis of reason for stop narrative fields for language related to appearance

The 2022 RIPA data showed that, during stops for loitering violations, the rates of search, curbside or patrol car detention, and handcuffing were much higher compared to all other

⁴⁸ Andersen, *Race, ethnicity, and structural variations in youth risk of arrest: Evidence from a national longitudinal sample* (2015) 42 *Criminal Justice and Behavior* 9, 900-916.

⁴⁹ Andersen, *Race, ethnicity, and structural variations in youth risk of arrest: Evidence from a national longitudinal sample* (2015) 42 *Criminal Justice and Behavior* 9, 900-916.

⁵⁰ Del Toro et al., *The Criminogenic and Psychological Effects of Police Stops on Adolescent Black and Latino Boys* (March 2019) 116 *PNAS* 17, p. 8267.

⁵¹ Del Toro et al., *The Criminogenic and Psychological Effects of Police Stops on Adolescent Black and Latino Boys* (March 2019) 116 *PNAS* 17, p. 8267.

⁵² Perillo et al., *Examining the Consequences of Dehumanization and Adultification in Justification of Police Use of Force Against Black Girls and Boys* (2023) 47 *American Psychological Association* 36 (noting that racialized girls experience with police contact may include elements of sexual harassment and assault); Geller, *Youth-Police Contact: Burdens and Inequities in an Adverse Childhood Experience, 2014-2017* (“*Youth-Police Contact: Burdens and Inequities*”) (2021) 11 *Am. J. Public Health*. pp. 1301 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8493138/>> [as of XX, 2024].

⁵³ Tapp and Davis, *Contacts Between Police and the Public, 2020* (2022) U.S. DOJ Special Report, p. 5 <<https://bjs.ojp.gov/media/document/cbpb20.pdf>> (noting that the rate of use of force reported by women increased from 1.1 percent in 2018 to 1.2 percent in 2020, and that during the same period, the rate of reported use of force by men decreased from 3 percent to 2.7 percent).

⁵⁴ Perillo et al., *Examining the Consequences of Dehumanization and Adultification in Justification of Police Use of Force Against Black Girls and Boys* (2023) 47 *American Psychological Association* 36, 37.

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stops.⁵⁵ The rates of consent and supervision only searches that occurred during stops for loitering violations were elevated compared to all other stops, but also varied between racial and ethnic groups.⁵⁶

- b. **Vandalism**
- c. **Pedestrian Roadway Violations**
 - (1) **Analysis of reason for stop narrative fields for language related to appearance**
- d. **Bicycle Infractions**
 - (1) **Analysis of reason for stop narrative fields for language related to appearance**
- e. **Status Offenses**

Status offenses are actions that are illegal only because of a youth’s age.⁵⁷ Status offenses vary across states, but generally fall under five categories: truancy, running away from home, rebellious behavior, underage drinking, and curfew violations.⁵⁸ Researchers have also found that youth of color are more likely to be incarcerated for public order offenses and status offenses when compared to White youth offenders.⁵⁹

Even residential placement does not guarantee positive outcomes; youth who enter the foster care system often experience instability, and it becomes nearly impossible for youth to set down roots. “Inequitable treatment persists when governmental actors do not take intergenerational

⁵⁵ Racial and Identity Profiling Advisory Board, *Annual Report* (2023) pp. 85-86 <<https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>> [as of XX, 2024].

⁵⁶ Racial and Identity Profiling Advisory Board, *Annual Report* (2023) pp. 85-86 <<https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>> [as of XX, 2024].

⁵⁷ Youth.gov (2023). *Youth Involved with the Juvenile Justice System*. <<https://youth.gov/youth-topics/juvenile-justice/youth-involved-juvenile-justice-system>> [as of XX, 2024].

⁵⁸ Zarate, “How Status Offenses Shape a Youth’s Path through the Justice System” (August 21, 2017) The Imprint, <<https://imprintnews.org/research-and-resources/status-offenses-shape-path-youth-justice-system/27910>> [as of March 27, 2024]. The available national data shows there is substantial disproportionality with racialized youth who are alleged to have committed status offenses. There is also a significant disproportionate representation of youth of color—particularly Black youth—among those in residential placement for status offenses. (SOS Project, *Disproportionate Minority Contact and Status Offenses* (Spring 2014) Coalition for Juvenile Justice <https://www.bscc.ca.gov/wp-content/uploads/DMC_Emerging_Issues_Policy_Brief_Final_0.pdf>[as of XX, 2024].)

⁵⁹ Rovner, “Racial Disparities in Youth Incarceration Persist” (August 2022) The Sentencing Project, p. 5 <<https://www.sentencingproject.org/app/uploads/2022/08/Racial-Disparities-in-Youth-Incarceration-Persist.pdf>> [as of March 28, 2024].

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violence and its psycho-social effects into account when interacting with vulnerable youth.”⁶⁰ Youth who have child welfare involvement become entangled in the criminal justice system, which may include staying in detention centers during their teenage years. Their entry into the system is “often due to the effects of trauma, which can lead to substance misuse and mental health challenges that bring them to the attention of law enforcement.”⁶¹ Those exiting foster care or detention centers may rely on criminalized activity for survival.⁶² For example, some may turn to sex work. A criminal record creates further difficulties in securing stability, including basic needs like suitable housing.⁶³

Unhoused youth are often vulnerable to status offenses. “The result is the criminalization of homelessness, making unhoused youth more prone to displacement, unwarranted searches, and police brutality.” Moreover, stigmatizing homelessness as criminal can preclude youth from receiving or pursuing resources, which “may push youth into more remote and dangerous spaces where, with increased exposure to the elements and violence, they face an increased likelihood of abuse, injury, or death.”⁶⁴

⁶⁰ Trejos-Castillo et al., *The Square One Project Learned Helplessness, Criminalization, and Victimization in Vulnerable Youth* (Dec. 2020) pp. 13, 20 <<https://squareonejustice.org/paper/learned-helplessness-criminalization-andvictimization-in-vulnerable-youth-by-elizabeth-trejos-castillo-evangelina-lopoo-and-anamika-dwivedi-december2020/>> [as of Nov. 29, 2022].

⁶¹ Kurzawski, “The Link Between Foster Care, Homelessness, and Criminalization” (March 31, 2021) The Homeless Hub <<https://www.homelesshub.ca/blog/link-between-foster-care-homelessness-and-criminalization>> [as of May 12, 2024].

⁶² Kurzawski, “The Link Between Foster Care, Homelessness, and Criminalization” (March 31, 2021) The Homeless Hub <<https://www.homelesshub.ca/blog/link-between-foster-care-homelessness-and-criminalization>> [as of May 12, 2024].

⁶³ Kurzawski, “The Link Between Foster Care, Homelessness, and Criminalization” (March 31, 2021) The Homeless Hub <<https://www.homelesshub.ca/blog/link-between-foster-care-homelessness-and-criminalization>> [as of May 12, 2024].

⁶⁴ Toolis & Hammack, *The Lived Experience of Homeless Youth: A Narrative Approach* (2015) 2 Qualitative Psychology 1, pp. 50-68.

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2. **Actions Taken by Officers during Stops**
 - a. **Searches**
 - b. **Consent Only Searches**
3. **Results of Stops**
 - a. **No Reportable Action Taken Data and Warnings Suggest Racial Profiling of Youth**
 - b. **Field Interview Cards (Associating with Other Youth)**

Officers indicated in the 2021 RIPA data that they completed a field interview card as a result of stop during 3.7 percent of all stops.⁶⁵ Across all age groups, officers completed field interview cards during a higher percentage of stops of individuals perceived to be Black and the second highest percentage during stops of individuals perceived to be Latine(x).⁶⁶ Compared to other age categories, officers completed field interview cards during a higher percentage of stops of individuals perceived to be 10-14 years old (14.9% overall (Black 19.1%, Latine 16.4%, Asian 11.3%, White 10.1%, and other 8.6%)).⁶⁷

In 2021, there were over 30,000 people in the CalGang database, and of those, 351 were youth from ages 13 to 17.⁶⁸ Children as young as 13 years old can be entered into the CalGang system.⁶⁹

(1) Prior Board Recommendations Related to Field Interview Cards (Associating with Other Youth)

The Board has made the following recommendations regarding field interview cards. In 2024, the Board recommended:

- The Legislature, municipalities, and law enforcement agencies should prohibit the collection of field interview cards and entries of youth into CalGang or any agency

⁶⁵ Racial and Identity Profiling Advisory Board (2023). *Annual Report*. p. 121
<<https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>> [as of Feb. 23, 2024].

⁶⁶ Racial and Identity Profiling Advisory Board (2023). *Annual Report*. p. 121
<<https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>> [as of Feb. 23, 2024].

⁶⁷ Racial and Identity Profiling Advisory Board (2023). *Annual Report*. pp. 121, 123
<<https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>> [as of Mar. 19, 2024].

⁶⁸ Racial and Identity Profiling Advisory Board (2023). *Annual Report*. pp. 121, 123
<<https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>> [as of Mar. 19, 2024].

⁶⁹ Racial and Identity Profiling Advisory Board (2023). *Annual Report*. pp. 121, 123
<<https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>> [as of Mar. 19, 2024].

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database designed to track criminal information after youth are questioned or a field interview is conducted without the presence of an attorney.⁷⁰

- If an agency does not adopt the previous recommendation, the agency should recognize and state in their policies that these encounters may not be fully consensual, and officers should be required to inform the individuals subject to the field interview that they do not have to respond to questions and are free to leave.⁷¹

In many police departments in California, a field interview card is a document officers fill out to record and “track[] contacts made during stops and investigations, as well as arrests . . . [that] is generally [but not always] entered into a searchable database.”⁷² The databases record information about the interaction, such as who the person is with, if they have any monikers or nicknames, and any alleged criminal affiliations.⁷³ Some of the agencies’ field interview cards, such as LAPD’s, collect information about a person’s social media accounts.⁷⁴ The RIPA data shows: [data forthcoming]

II. LAW ENFORCEMENT POLICIES RELATED TO YOUTH [CONTENT UNDER DEVELOPMENT]

Researchers urge state and local agencies “to assemble diverse groups of experts and stakeholders to draft model standards and policies that integrate best practices for working with youth. The standards would clearly convey expectations for outcomes to law enforcement leadership, and develop oversight mechanisms to ensure compliance.”⁷⁵

⁷⁰ Racial and Identity Profiling Advisory Board (2024). *2024 RIPA Report: Recommendations and best practices*. p. 3 <<https://oag.ca.gov/system/files/media/ripa-best-practices-2024.pdf>> [as of May. 10, 2024].

⁷¹ Racial and Identity Profiling Advisory Board (2024). *2024 RIPA Report: Recommendations and best practices*. p. 3 <<https://oag.ca.gov/system/files/media/ripa-best-practices-2024.pdf>> [as of May. 10, 2024].

⁷² Off. of the Inspector General, *Review of Stops Conducted by the Los Angeles Police Department in 2019* (“OIG Review of LAPD Stops”) (Oct. 2020) p. 39 <<https://www.oig.lacity.org/files/ugd/b2dd23d3e88738022547acb55f3ad9dd7a1dcb.pdf>> [as of Nov. 29, 2022].

⁷³ *The CalGang Criminal Intelligence System* (Aug. 2016) Cal. State Auditor Report 2021-130, at p. 11 <<https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>> [as of Nov. 29, 2022].

⁷⁴ *LAPD Field Interview (FI) Cards NR21240jl* (“Field Interview Cards”) (Sep. 2021) <<https://www.lapdonline.org/newsroom/lapd-field-interview-fi-cards-nr21240jl/>> [as of XX, 2024]

⁷⁵ Thureau, “Where’s The State? Creating and Implementing State Standards For Law Enforcement Interactions with Youth” (May 2017) *Strategies for Youth*, 3 <https://strategiesforyouth.org/sitefiles/wp-content/uploads/2017/06/SFY_StandardsReport_053117.pdf> [as of XX, 2024].

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LEA POLICIES Youth	Use of Force	Youth Interviews	Field Interview (FI) Cards	CalGang Database	Youth Diversion
Lexipol⁷⁶	✓	✘	?		
CHP					
Fresno PD					
LAPD					
LASD					
Long Beach PD					
Oakland PD					
OC Sheriff					
Riverside SD					
Sacramento SD					
Sacramento PD					
San Jose PD					
San Diego SD					
SFSD					
San Bernardino SD					
Riverside SD					

✘ indicates there is not a policy addressing the issue; ✓ indicates there is a policy addressing the issue; ? indicates more research is required or policy unclear.

⁷⁶ [Explanation of Lexipol will be added here]

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A. Special Considerations for Youth: Use of Force

Police use of force against children and adolescents who are acting in developmentally appropriate ways can lead to acute distress; the aftermath of use of force on children can be harmful in a number of ways, affecting a child’s ability to cope with stressful situations later in life.⁷⁷ It may also lead to “a cascade of psychological sequelae,” including the development or worsening of mental illness, and result in traumatization, serious injury, lower attainment in education and employment, or death.⁷⁸

An analysis of approximately 3,000 instances of use of force against youth in the United States between 2010-2021 uncovered the most common types of police force used against youth were forcibly taking a child to the ground, physical strikes or punching, and firearms pointed or used against children.⁷⁹ Disturbingly, Black children—who only represent 15 percent of children in the United States—made up more than 50 percent of children handled forcibly nationwide.⁸⁰ Officers are also more likely to use force against youth than adults. Nationally, youth are involved in just 3.5 percent of law enforcement interactions, but account for 30.1 percent of those involving force.⁸¹ The majority of contacts involving police use of force—81 percent—are initiated by police.⁸² According to the Washington Post Police Shooting Database, from 2015 to 2022, 134 youth under the age of 18 were shot and killed by law enforcement across the nation. In California, during that same period, 19 children under the age of 18 were killed by law enforcement.⁸³

⁷⁷ American Psychiatric Association, “Position Statement on Police Interactions with Children and Adolescents in Mental Health Crisis,” <<https://www.psychiatry.org/getattachment/085c5817-87e3-4fd9-8885-ed1d83ec7266/Position-Police-Interactions-with-Children-Adolescents-in-Crisis.pdf>> [as of XX, 2024].

⁷⁸ American Psychiatric Association, “Position Statement on Police Interactions with Children and Adolescents in Mental Health Crisis,” <<https://www.psychiatry.org/getattachment/085c5817-87e3-4fd9-8885-ed1d83ec7266/Position-Police-Interactions-with-Children-Adolescents-in-Crisis.pdf>> [as of XX, 2024].

⁷⁹ The Associated Press, *Tiny wrists in cuffs: How police use force against children* (Oct. 2021) NPR <<https://www.npr.org/2021/10/20/1047618263/tiny-wrists-in-cuffs-how-police-use-force-against-children>> [as of XX, 2024].

⁸⁰ The Associated Press, *Tiny wrists in cuffs: How police use force against children* (Oct. 2021) NPR <<https://www.npr.org/2021/10/20/1047618263/tiny-wrists-in-cuffs-how-police-use-force-against-children>> [as of XX, 2024].

⁸¹ Thureau, “Where’s The State? Creating and Implementing State Standards For Law Enforcement Interactions with Youth” (May 2017) *Strategies for Youth*, 5 <https://strategiesforyouth.org/sitefiles/wp-content/uploads/2017/06/SFY_StandardsReport_053117.pdf> [as of XX, 2024].

⁸² Thureau, “Where’s The State? Creating and Implementing State Standards For Law Enforcement Interactions with Youth” (May 2017) *Strategies for Youth*, 5 <https://strategiesforyouth.org/sitefiles/wp-content/uploads/2017/06/SFY_StandardsReport_053117.pdf> [as of XX, 2024].

⁸³ Washington Post Police Shooting Database: Fatal Force (“Fatal Police Shooting Database”) <<https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>> [as of XX, 2024].

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B. Special Considerations for Youth: Questioning by Law Enforcement

Well-established research indicates that adolescents are less capable of understanding their constitutional rights than their adult counterparts, and that they are more prone to falsely confessing to a crime they did not commit.⁸⁴ Research suggests that “[b]ecause adolescents are more impulsive, are easily influenced by others (especially by figures of authority), are more sensitive to rewards (especially immediate rewards), and are less able to weigh in on the long-term consequences of their actions, they become more receptive to coercion.”⁸⁵ The context of custodial interrogation is believed to exacerbate these risks.

In 2022, California passed the Juvenile Deceptions Bill, AB 2644, which prohibits law enforcement from using threats, physical harm, deception, or psychologically manipulative interrogation tactics when questioning a youth 17 years of age or younger about the commission of a felony or misdemeanor.⁸⁶ “Deception,” as used in the law, includes, but is not limited to, the knowing communication of false facts about evidence, misrepresenting the accuracy of the facts, or false statements regarding leniency.⁸⁷ “Psychologically manipulative interrogation tactics” include, but are not limited to (a) maximization, minimization, and other interrogation practices that rely on a presumption of guilt or deceit; (b) making direct or indirect promises of leniency, such as indicating the youth will be released if they cooperate with law enforcement; and (c)

⁸⁴ See, e.g., Luna, *Juvenile False Confessions: Juvenile Psychology, Police Interrogation Tactics, And Prosecutorial Discretion* (2018) 18 Nev. L.J. 291, 297 <<https://scholars.law.unlv.edu/nlj/vol18/iss1/10/>> [as of XX, 2024]; Meyer & Reppucci, *Police Practices and Perceptions Regarding Juvenile Interrogation and Interrogative Suggestibility* (2007) 25 Behav. Sci. & L. 757, 763; Ceci & Bruck, *Suggestibility of the Child Witness: A Historical Review and Synthesis* (1993) 113 Psychol. Bull. 3, 403-409; Note, *Questioning the Reliability of Children’s Testimony: An Examination of the Problematic Elements* (1995) 19 Law & Psychol. Rev. 203-215; Owen-Kostelnick et al., *Testimony and Interrogation of Minors: Assumptions About Maturity and Morality* (2006) 61 Am. Psychologist 4, 286-304; Redlich, *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas* (2010) 62 Rutgers L.Rev. 943, 952; Viljoen et al., *Legal Decisions of Preadolescent and Adolescent Defendants: Predictors of Confessions, Pleas, Communication with Attorneys, and Appeals* (2005) 29 Law & Hum. Behav. 3, 253; Note, *No Match for the Police: An Analysis of Miranda’s Problematic Application to Juvenile Defendants* (2011) 38 Hastings Const. L.Q. 1053, 1066-1069.

⁸⁵ See, e.g., Luna, *Juvenile False Confessions: Juvenile Psychology, Police Interrogation Tactics, And Prosecutorial Discretion* (2018) 18 Nev. L.J. 291, 297 <<https://scholars.law.unlv.edu/nlj/vol18/iss1/10/>> [as of XX, 2024]; Meyer & Reppucci, *Police Practices and Perceptions Regarding Juvenile Interrogation and Interrogative Suggestibility* (2007) 25 Behav. Sci. & L. 757, 763; Ceci & Bruck, *Suggestibility of the Child Witness: A Historical Review and Synthesis* (1993) 113 Psychol. Bull. 3, 403-409; Note, *Questioning the Reliability of Children’s Testimony: An Examination of the Problematic Elements* (1995) 19 Law & Psychol. Rev. 203-215; Owen-Kostelnick et al., *Testimony and Interrogation of Minors: Assumptions About Maturity and Morality* (2006) 61 Am. Psychologist 4, 286-304; Redlich, *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas* (2010) 62 Rutgers L.Rev. 943, 952; Viljoen et al., *Legal Decisions of Preadolescent and Adolescent Defendants: Predictors of Confessions, Pleas, Communication with Attorneys, and Appeals* (2005) 29 Law & Hum. Behav. 3, 253; Note, *No Match for the Police: An Analysis of Miranda’s Problematic Application to Juvenile Defendants* (2011) 38 Hastings Const. L.Q. 1053, 1066-1069.

⁸⁶ Assem. Com. on Public Safety, Off. of Sen Floor Analyses, Rep. on Assem. Bill No. 2644 (2021-2022 Reg. Sess.) as amended March 22, 2022 (“Amended AB 2644”), pp. 3-5.

⁸⁷ Assem. Com. on Public Safety, Off. of Sen Floor Analyses, Rep. on Assem. Bill No. 2644 (2021-2022 Reg. Sess.) as amended March 22, 2022 (“Amended AB 2644”), pp. 3-5.

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employing the “false” or “forced” choice strategy, where the youth is encouraged to select one of two options, both incriminatory, and one is characterized as morally or legally justified or excusable.⁸⁸

Although it was passed in 2022, the law’s implementation was delayed until July 1, 2024, to provide law enforcement agencies with time to draft and implement policies and procedures incorporating the law’s mandate.⁸⁹

Youth, generally, are more susceptible to police coercion and pressure than adults, and are more suggestible to the inherent power imbalance between officer and suspect in a custodial setting than are adults.⁹⁰ Research shows there are unique vulnerabilities that make youth of color even more susceptible to coercive tactics during interrogations that could lead to false confessions.

One of those additional vulnerabilities is the injection of racial bias in the officer’s assessment of whether the youth is being deceptive and, as explained by the adultification bias, the likelihood an officer perceives a youth of color as an adult offender.⁹¹ Research shows that the behavior of youth of color in interrogations may affect officers’ assessment of whether they are being deceptive.⁹² This is partially because of cross-cultural differences in nonverbal communication styles, which could cause BIPOC suspects “to appear more deceptive and police investigators” during interrogations, who then increase pressure on them to confess.⁹³ For instance, there are significant race-based differences even in nonverbal behaviors in response to questioning, and some behaviors—for example, inappropriate smiling, or minimal eye contact—can be deemed “suspicious” by the police.⁹⁴ However, these subjective “cues” are unreliable in assessing culpability.⁹⁵

Another vulnerability in the context of interrogations that is unique to people of color is stereotype threat.⁹⁶ There are, unfortunately, many widely-known negative stereotypes about

⁸⁸ Assem. Com. on Public Safety, Off. of Sen Floor Analyses, Rep. on Assem. Bill No. 2644 (2021-2022 Reg. Sess.) as amended March 22, 2022 (“Amended AB 2644”), pp. 3-5.

⁸⁹ Assem. Com. on Public Safety, Off. of Sen Floor Analyses, Rep. on Assem. Bill No. 2644 (2021-2022 Reg. Sess.) as amended March 22, 2022 (“Amended AB 2644”), pp. 3-5.

⁹⁰ Kassir et al., *Police-Induced Confessions: Risk Factors and Recommendations* (Feb. 2010) 34 *Law and Human Behavior* 1, 8.

⁹¹ Assem. Com. on Public Safety, Off. of Sen Floor Analyses, Rep. on Assem. Bill No. 2644 (2021-2022 Reg. Sess.) as amended March 22, 2022 (“Amended AB 2644”), pp. 3-5.

⁹² Blandón-Gitlin et al., *Race and ethnicity as a compound risk factor in police interrogation of youth* (2020) in Stevenson et al., *The legacy of racism for children: Psychology, law, and public policy*, p. 175.

⁹³ Najdowski, *Stereotype Threat in Criminal Interrogations: Why Innocent Black Suspects Are at Risk for Confessing Falsely* (2011) 17 *Psychology, Public Policy, and Law* 4, 563.

⁹⁴ Blandón-Gitlin et al., *Race and ethnicity as a compound risk factor in police interrogation of youth* (2020) in Stevenson et al., *The legacy of racism for children: Psychology, law, and public policy*, p. 175.

⁹⁵ Johnson, *Race and police reliance on suspicious non-verbal cues* (2007) 30 *Policing: An International Journal of Police Strategies & Management* 2, 277–290.

⁹⁶ Najdowski, *Stereotype Threat in Criminal Interrogations: Why Innocent Black Suspects Are at Risk for Confessing Falsely* (2011) 17 *Psychology, Public Policy, and Law* 4, 563; Steele and Aronson, *Stereotype Threat*

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individuals of color, and these stereotypes contribute to both conscious and unconscious biases towards individuals of color every day. The simple fact of the stereotype’s existence “means that anything one does or any of one’s features that conform to it make the stereotype more plausible as a self-characterization in the eyes of others.”⁹⁷ Youth of color “are aware of negative stereotypes that apply to them, and activating stereotypes can negatively influence their performance” in many different settings, including, for example, standardized testing.⁹⁸ This phenomenon has been referred to as *stereotype threat*, or the apprehension that one’s behavior or actions will confirm, “as self-characteristic, a negative stereotype about one’s group.”⁹⁹ “[B]ecause of negative stereotypes that depict Black people as criminals, Black (vs. White) individuals are more likely to be suspected by the police of committing crimes. If Black suspects are aware of this, they will experience increased stress and mental load when interrogated by police. Signs of stress and behavior control may be wrongly perceived as signs of deception or guilt.”¹⁰⁰ This increased stress and mental load as a result of stereotype threat, may also impair a suspect’s comprehension of legal concepts, such as their rights under *Miranda*.¹⁰¹

The effects of stereotype threat “may be even more harmful” to youth than adults, as these effects “deplete cognitive resources and impair self-regulatory strategies, abilities that are already limited among youth.”¹⁰²

1. *Miranda*

Studies show that youth, generally, are less protected by the *Miranda*¹⁰³ warnings officers give than adults under custodial interrogation and that they are more likely to waive their rights and speak to officers, even when it is against their interests to do so. Youth suspects under age 15, for example, “are more likely to believe that they should waive their rights and tell what they have done, partly because they are still young enough to believe that they should never disobey authority.”¹⁰⁴ Youth suspects are also more likely to waive their rights if they believe not doing so will create “the potential for immediate negative consequences”—for example, if they believe

and the Intellectual Test Performance of African Americans (1995) 69 *Journal of Personality and Social Psychology* 5, 797-811.

⁹⁷ Steele and Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans* (1995) 69 *Journal of Personality and Social Psychology* 5, 797-811.

⁹⁸ Blandón-Gitlin et al., *Race and ethnicity as a compound risk factor in police interrogation of youth* (2020) in Stevenson et al., *The legacy of racism for children: Psychology, law, and public policy*, p. 175.

⁹⁹ Steele and Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans* (1995) 69 *Journal of Personality and Social Psychology* 5, 797-811.

¹⁰⁰ Blandón-Gitlin et al., *Race and ethnicity as a compound risk factor in police interrogation of youth* (2020) in Stevenson et al., *The legacy of racism for children: Psychology, law, and public policy*, p. 174.

¹⁰¹ Blandón-Gitlin et al., *Race and ethnicity as a compound risk factor in police interrogation of youth* (2020) in Stevenson et al., *The legacy of racism for children: Psychology, law, and public policy*, p. 174.

¹⁰² Blandón-Gitlin et al., *Race and ethnicity as a compound risk factor in police interrogation of youth* (2020) in Stevenson et al., *The legacy of racism for children: Psychology, law, and public policy*, p. 175.

¹⁰³ *Miranda v. Arizona* (1966) 384 U.S. 436.

¹⁰⁴ Kassir et al., *Police-Induced Confessions: Risk Factors and Recommendations* (Feb. 2010) 34 *Law and Human Behavior* 1, 8.

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not doing so means they will not be allowed to go home.¹⁰⁵ Relatedly, research shows that youth do not consider the long-term consequences of having their statements used against them—and being subject to adjudication as a result—when deciding whether to waive their rights.¹⁰⁶

In 2017, recognizing that children and adolescents are “much more vulnerable to psychologically coercive interrogations,” the California Legislature passed Senate Bill No. 395, which requires that a youth 15 years of age or younger consult with legal counsel before a custodial interrogation.¹⁰⁷ In 2020, Senate Bill No. 203 (2019-2020 Reg. Sess.) (SB 203) extended these protections to youth 17 years of age or younger.¹⁰⁸ This consultation is mandatory and cannot be waived.¹⁰⁹

2. Consent Searches

As discussed in the 2023 RIPA Report, agreeing to an officer’s request to conduct a search is not necessarily voluntary, given the inherent power inequality between law enforcement officers and members of the public.¹¹⁰ Some scholars have suggested that because of these disparities and the lack of voluntariness in agreeing to a search, officers should be required to have probable cause before conducting a search of anyone, especially youth.¹¹¹

[Content Under Development]

C. Law Enforcement Strategies and Policies that Impact Youth

1. Predictive Policing
2. Probation

[Content Under Development]

¹⁰⁵ Kassir et al., *Police-Induced Confessions: Risk Factors and Recommendations* (Feb. 2010) 34 *Law and Human Behavior* 1, 8.

¹⁰⁶ Kassir et al., *Police-Induced Confessions: Risk Factors and Recommendations* (Feb. 2010) 34 *Law and Human Behavior* 1, 8.

¹⁰⁷ [Citation to SB 395, 2017-2018 session; https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB395]

¹⁰⁸ Sen. Rules Com., Off. of Sen Floor Analyses, Sen. Bill No. 203 (2019-2020 Reg. Sess.) as amended July 27, 2020 (“Amended SB 203”), p. 2.

¹⁰⁹ Welf. & Inst. Code, § 625.6; California Department of Justice (March 15, 2023) *Mandatory Consultation with Counsel Prior to Custodial Interrogations of Youth Under 18* [Information Bulletin] p. 1 <https://oag.ca.gov/system/files/media/2023-dle-02.pdf>.

¹¹⁰ Racial and Identity Profiling Advisory Board (2023) *Annual Report*. pp. 15, 109, 112-113, 116-118 <<https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>> [as of XX, 2024].

¹¹¹ Anitto, *Consent Searches of Minors* (2014) 38 *N.Y.U. Rev. of L. & Social Change* 1-2, 7, 18, 36-37, 41, 45, 48-49 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2412356> [as of XX, 2024].

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III. THE PATH FORWARD: DEVELOPMENTALLY APPROPRIATE RESPONSES

A. Restorative Justice

Restorative justice models of conflict resolution, previously conceived of as radical or experimental, have in recent years become acknowledged as powerful alternatives to criminal sentencing and punishment. Rather than focusing on the ultimate result of conviction as a “punishment” of the accused—either retribution, incarceration, or incapacitation—restorative justice focuses on the need for “repair” of the harms caused by the accused to the wronged party and may also focus on repair of harms experienced by the accused person. In the restorative justice system, “[u]nderstanding and responding to the needs of each involved party and the broader community is central to the collective creation of a just outcome.”¹¹²

Restorative justice programs have been implemented across the country in both schools and the courts to divert youth offenders out of the criminal legal system.¹¹³ In 2021, there were more than 40 statutes, laws, and provisions in California implementing some form of diversion or restorative justice for youth offenders.¹¹⁴ In Santa Cruz County, the implementation of two publicly funded youth diversion programs for youth charged with certain offenses contributed to a 27 percent drop in juvenile hall bookings between 2011 and 2020.¹¹⁵ A 2016 study of restorative justice programs in Texas showed recidivism rates dropped from 50 percent to 31 percent when youth were permitted to access those programs rather than the traditional juvenile court system.¹¹⁶

However, effective restorative justice programs should account for racial disparities in outcomes. For instance, the 2016 Texas study showed that non-White youth offenders—approximately 30 percent of the group studied—only received 9 percent of the referrals to community panels.¹¹⁷ Community panels involve the offender meeting with community volunteers and the victim to discuss the offense and come to an agreement on a contract which includes reparations to the victim and/or community, and the offender’s participation in various activities or programs

¹¹² Pointer, “What is ‘Restorative Justice’ and How Does it Impact Individuals Involved in Crime?” (August 2021) Bureau of Justice Assistance National Training and Assistance Center, <<https://bjatta.bja.ojp.gov/media/blog/what-restorative-justice-and-how-does-it-impact-individuals-involved-crime>> [as of XX, 2024].

¹¹³ Martinez, “The Promise and Limits of Restorative Justice for Youth” (August 12, 2021) The Imprint, <<https://imprintnews.org/justice/juvenile-justice-2/the-promise-and-limits-of-restorative-justice-for-youth/57793>> [as of XX, 2024].

¹¹⁴ Martinez, “The Promise and Limits of Restorative Justice for Youth” (August 12, 2021) The Imprint, <<https://imprintnews.org/justice/juvenile-justice-2/the-promise-and-limits-of-restorative-justice-for-youth/57793>> [as of XX, 2024].

¹¹⁵ Martinez, “The Promise and Limits of Restorative Justice for Youth” (August 12, 2021) The Imprint, <<https://imprintnews.org/justice/juvenile-justice-2/the-promise-and-limits-of-restorative-justice-for-youth/57793>> [as of XX, 2024].

¹¹⁶ Bouffard et al., *The Effectiveness of Various Restorative Justice Interventions on Recidivism Outcomes Among Juvenile Offenders* (2016) 15 *Youth Violence and Juvenile Justice* 4, 465-480.

¹¹⁷ Bouffard et al., *The Effectiveness of Various Restorative Justice Interventions on Recidivism Outcomes Among Juvenile Offenders* (2016) 15 *Youth Violence and Juvenile Justice* 4, 465-480.

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designed to prevent future offending. They are a “more common restorative response to juvenile offending” and have been “demonstrated to be a cost-effective method for reducing the likelihood of reoffending.”¹¹⁸ Disproportionate representation in restorative justice programs is also seen in other areas involving youth offenses, such as in the school setting.¹¹⁹

This is particularly troubling, as at least one study has indicated restorative practices in the school setting have significant benefits for youth of color, reducing the Black-White suspension gap while simultaneously boosting teacher reports of school climate and reducing overall rates of suspension.¹²⁰ One researcher has attributed this disproportionality to educator discretion in choosing who is referred to restorative justice programs.¹²¹ Both discretion and subjectivity contribute to racial disproportionality. If restorative pathways are incorporated into an existing discipline system without transforming it, this increases the potential for discretion, making it “unlikely to realize significant gains for Black students” over the long term.

B. Community Policy Building

[Content Under Development]

IV. BOARD RECOMMENDATIONS

A. Prior Board Recommendations Related to Youth

The Board has, in prior reports, made several recommendations regarding police interactions with youth:

- Policymakers should consider providing youth with additional protections and safeguards prior to waiving any rights, particularly if any statements they make could lead to their inclusion in a criminal database or could be used against them in criminal proceedings.¹²²
- The Legislature, law enforcement agencies, and local policymakers should prohibit or limit supervision inquiries during stops (i.e. asking whether the stopped person is under a form of supervision).¹²³

¹¹⁸ Bouffard et al., *The Effectiveness of Various Restorative Justice Interventions on Recidivism Outcomes Among Juvenile Offenders* (2016) 15 *Youth Violence and Juvenile Justice* 4, 465-480.

¹¹⁹ Davison et al., *Restorative for All? Racial Disproportionality and School Discipline Under Restorative Justice* (August 2022) 59 *Am. Educ. Res. J.* 4, 687-718; Hashim et al., *Justice for All? Suspension Bans and Restorative Justice Programs in the Los Angeles Unified School District* (February 2018) 93 *Peabody J. of Educ.* 2, 174-189.

¹²⁰ Davison et al., *Restorative for All? Racial Disproportionality and School Discipline Under Restorative Justice* (August 2022) 59 *Am. Educ. Res. J.* 4, 687-718.

¹²¹ Hashim et al., *Justice for All? Suspension Bans and Restorative Justice Programs in the Los Angeles Unified School District* (February 2018) 93 *Peabody J. of Educ.* 2, 174-189.

¹²² Racial and Identity Profiling Advisory Board, *RIPA Report: Recommendations and Best Practices* (2023) p. 3 <<https://oag.ca.gov/system/files/media/2023-ripa-report-best-practices.pdf>> [as of XX, 2024].

¹²³ Racial and Identity Profiling Advisory Board, *RIPA Report: Recommendations and Best Practices* (2022) p. 4 <<https://oag.ca.gov/system/files/media/2022-ripa-report-best-practices.pdf>> [as of XX, 2024].

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- Officers should be prohibited from detaining or searching a person simply because an officer is aware of the person’s supervision status, recommending that the officer should instead, at a minimum, have a reasonable suspicion the person is engaged in criminal activity.¹²⁴
- Policymakers should consider requiring officers to have probable cause prior to conducting a search of youth or take measures to prohibit officers from requesting consent to search youth without an attorney present.¹²⁵
- Law enforcement agencies and POST should provide scenario-based training on the law prohibiting officers from conducting a frisk for weapons or pat down during an investigatory stop except where officers have reasonable suspicion based on articulable facts, that a person is armed with a dangerous and deadly weapon, and provide scenario-based training regarding *Terry v. Ohio* frisks/pat searches.¹²⁶
- Policymakers should reform use of force policies and practices to take into account the physical and developmental differences between youth and adults.¹²⁷

B. 2025 Board Recommendations

[Content Under Development]

V. CONCLUSION AND VISION FOR FUTURE REPORTS

[Content Under Development]

¹²⁴ Racial and Identity Profiling Advisory Board, *RIPA Report: Recommendations and Best Practices* (2022) p. 4 < <https://oag.ca.gov/system/files/media/2022-ripa-report-best-practices.pdf>> [as of XX, 2024].

¹²⁵ Racial and Identity Profiling Advisory Board, *RIPA Report: Recommendations and Best Practices* (2023) pp. 3-4 < <https://oag.ca.gov/system/files/media/2023-ripa-report-best-practices.pdf>> [as of XX, 2024].

¹²⁶ Racial and Identity Profiling Advisory Board, *RIPA Report: Recommendations and Best Practices* (2022) p. 4 < <https://oag.ca.gov/system/files/media/2022-ripa-report-best-practices.pdf>> [as of XX, 2024].

¹²⁷ Racial and Identity Profiling Advisory Board, *RIPA Report: Recommendations and Best Practices* (2023) p. 3 < <https://oag.ca.gov/system/files/media/2023-ripa-report-best-practices.pdf>> [as of XX, 2024].

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CIVILIAN COMPLAINTS

I. CIVILIAN COMPLAINT DATA

[2023 data available July 2024]

II. RENEWED RECOMMENDATIONS AND FOLLOW-UP ON IMPLEMENTATION

A. Adopt Uniform Definition of “Civilian Complaints”

1. The Board identified the need to define “civilian complaint” in 2020 and has recommended legislative action since 2022.

There continues to be no standard definition of “civilian complaint.”¹²⁸ The term is not defined by California law, nor is there a professional consensus on what constitutes a “civilian complaint.”¹²⁹ Law enforcement agencies are left to decide, on an agency-by-agency basis, what counts as a “civilian complaint,” meaning that what may count as a reportable complaint at one agency may not count at another. For example, one agency could decide that a verbal allegation of unprofessional behavior does not rise to the level of a “civilian complaint” and is merely an “informal complaint” or “inquiry” that does not need to be reported for purposes of RIPA. However, the same complaint could be reportable at another agency that defines “civilian complaint” more broadly to include any allegation against a peace officer by a member of the public.

Differences in the definition of “civilian complaint” can lead not only to inconsistencies in the public’s ability to access the complaint process, wherein a person’s ability to file a complaint depends on their local police agency’s definition of “complaint,” but to disparities in the RIPA complaint data. For example, an agency may report a lower number of complaints than it actually received, if the agency chooses to define “civilian complaint” narrowly to include only written, and not verbal, complaints.

This concerns the Board greatly. As such, the Board has recommended, in three prior reports, that the Legislature amend Penal Code section 832.5 to define “civilian complaint” as follows:

(1) Complaint means either of the following:

¹²⁸ Racial and Identity Profiling Advisory Board, *Annual Report* (2020 Report) pp. 65-67; Racial and Identity Profiling Advisory Board, *Annual Report* (2022 Report) pp. 227-229; Racial and Identity Profiling Advisory Board, *Annual Report* (2023 Report) pp. 179; Racial and Identity Profiling Advisory Board, *Annual Report* (2024 Report) pp. 195-196.

¹²⁹ See Gov. Code § 12525.5; Cal. Code Regs., tit. 11 § 999.224; Pen. Code §§ 148.6, 832.5, 832.7, 832.8; Racial and Identity Profiling Advisory Board, *Annual Report* (2020 Report) p. 65 (“[T]here is no professional consensus within California on a definition [of “complaint”]”); Racial and Identity Profiling Advisory Board, *Annual Report* (2020 Report) p. 66 (finding that no Wave 1 reporting agency defined the term “civilian complaint” in its complaint policies).

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(A) any issue brought to a department or agency where the complainant perceives that a department or agency employee engaged in criminal conduct, abusive or discriminatory behavior, inappropriate or discourteous conduct, or violation of any law or rules, policies, and regulations of the department or agency; or

(B) disagreement solely with the policies, procedures, or services of the department or agency and not with the performance of any personnel. If during the course of investigating this type of complaint, conduct is discovered that could be the basis of a complaint under subdivision (1)(A), the investigator shall report this conduct to a supervisor, which should be logged, tracked, and investigated separately from the original complaint.¹³⁰

Neither this definition nor another definition that would provide a uniform definition of a complaint has been adopted under California law.

B. Remove Deterrent Language From Complaint Forms

1. Board's Initial Recommendation and Reasons Supporting It

Since its inception, the Board expressed concern that, in addition to the lack of definition of civilian complaint, members of the community may be deterred from filing complaints if certain advisory language is included on the complaint form.¹³¹ Specifically, the Board cautions that complaint forms containing an advisory based on Penal Code section 148.6, warning that an individual may face criminal liability for filing a false complaint, may discourage members of the community from submitting valid complaints.

Penal Code section 148.6 states that law enforcement agencies shall require complainants to read and sign an advisory that states, in part:

IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.¹³²

The Board is concerned that this language may have a chilling effect on members of the public seeking to file a complaint. For example, in its inaugural 2018 Report, the Board reviewed 85 civilian complaint forms and found that the vast majority (81%) included language based on the Penal Code section 148.6 advisory.¹³³ The Board examined additional complaint forms in its

¹³⁰ Racial and Identity Profiling Advisory Board, *Annual Report (2022)* p. 229; Racial and Identity Profiling Advisory Board, *Annual Report (2023 Report)*, p. 179; Racial and Identity Profiling Advisory Board, *Annual Report (2024)* pp. 195-196.

¹³¹ See Racial and Identity Profiling Advisory Board, *Annual Report (2018)* p. __; Racial and Identity Profiling Advisory Board, *Annual Report (2020)* pp. 73-75.

¹³² Pen. Code § 148.6, subd. (a)(2).

¹³³ Racial and Identity Profiling Advisory Board, *Annual Report (2018)* pp. 28-29.

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2020 Report and found that some, but not all, agencies had removed the advisory from their complaint forms.¹³⁴ And, in its 2021 and 2022 Reports, the Board found that many agencies still included language from Penal Code section 148.6 on their complaint forms.¹³⁵

Given the continued inclusion of the advisory on many agencies' complaint forms, the Board has repeatedly recommended that the Legislature amend Penal Code section 148.6 to eliminate the criminal sanctions for filing a false complaint, as well as the requirement that a complaint must be signed and in writing.¹³⁶

2. Recent Developments Demonstrate the Continued Need to Amend Penal Code section 148.6

As discussed in the 2023 RIPA Report, the constitutionality of Penal Code section 148.6 is currently at issue in *Los Angeles Police Protective League v. City of Los Angeles* (2022) 78 Cal.App.5th 1081, indicating a continuing need for legislative intervention.¹³⁷ The issue in that case arose after the state and federal courts reached conflicting decisions regarding the constitutionality and enforceability of section 148.6.¹³⁸ The Los Angeles Police Department subsequently stopped enforcing section 148.6's written advisory requirement and, in turn, was sued by a police union—the Los Angeles Police Protective League.¹³⁹ The matter is currently pending before the California Supreme Court.¹⁴⁰

The Board continues to recommend, that, pending a ruling in *Los Angeles Police Protective League*, law enforcement agencies accept complaints even when a complainant has not signed the advisory required by section 148.6.¹⁴¹ The Board notes that this recommendation is

¹³⁴ Racial and Identity Profiling Advisory Board, *Annual Report* (2020) pp. 74, 87-90.

¹³⁵ See Racial and Identity Profiling Advisory Board, *Annual Report* (2021) pp. 129-134; Racial and Identity Profiling Advisory Board, *Annual Report* (2022 Report) pp. 211-226.

¹³⁶ Racial and Identity Profiling Advisory Board, *Annual Report* (2020) pp. 74-75; Racial and Identity Profiling Advisory Board, *Annual Report* (2022 Report) p. 232; Racial and Identity Profiling Advisory Board, *Annual Report* (2023) pp. 182-183.

¹³⁷ Racial and Identity Profiling Advisory Board, *Annual Report* (2023) pp. 182-83.

¹³⁸ In 2002, the California Supreme Court found that section 148.6 is a permissible regulation of prohibited speech (i.e., false allegations against peace officers) in 2002. (*People v. Stanistreet* (2002) 29 Cal.4th 497, 506, 512.) But, in 2005, the Ninth Circuit Court of Appeals found that section 148.6 is an impermissible content-based regulation of speech, creating confusion among law enforcement agencies as to the enforceability of section 148.6. (*Chaker v. Crogan* (9th Cir. 2005) 428 F.3d 1215, 1228.) The California Court of appeal affirmed this decision in May of 2022, and the City of Los Angeles appealed.

¹³⁹ The Superior Court ruled in favor of the union, finding the court was bound to follow the California Supreme Court decision upholding section 148.6, rather than the Ninth Circuit's decision finding it unconstitutional. *L.A. Police Protective League v. City of L.A.* (2022) 78 Cal.App.5th 1081, 1088.

¹⁴⁰ *Los Angeles Police Protective League v. City of Los Angeles* (2022) 514 P.3d 892 (review granted).

¹⁴¹ Racial and Identity Profiling Advisory Board, *Annual Report* (2023) p. 183 (citing Attorney General Opinion No. 96-111, which concluded that law enforcement agencies may accept and investigate civilian complaints, even when the complainant has not signed the advisory required by Penal Code § 148.6).

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consistent with Senate Bill 2, which allows POST to accept anonymous complaints.¹⁴² Lastly, the Board emphasizes that legislative action is necessary to resolve this conflict while also minimizing the deterrent effect of section 148.6.

C. Legislative Response to the Board’s Prior Recommendations

On February 15, 2024, the California Legislature introduced Assembly Bill No. 2923 (2023-2024 Reg. Sess.) (AB 2923), which addresses the Board’s past recommendations in part by seeking to ensure a “procedurally fair civil complaint process.”¹⁴³

In part, AB 2923 proposed amending Penal Code section 832.5 to define “civilian complaint” as follows:

*(1) “Complaint” means a report, given either in writing or verbally, that brings to the attention of a department or agency an incident during which the complainant perceives that a department or agency employee engaged in criminal conduct, abusive or discriminatory behavior, inappropriate or discourteous conduct, or a violation of any law, rule, policy, or regulation of the department or agency.*¹⁴⁴

While the proposed definition accounts for some of the Board’s prior recommendations, such as including written and verbal complaints, it is also narrower than the Board’s proposed definition of “civilian complaint.” Specifically, under AB 2923, a complaint would not include a statement of disagreement with a department’s policies, procedures, or services, separate from the performance of department personnel. Moreover, AB 2923 would not require investigators to report conduct that could be the basis of a complaint to supervisors, unlike subdivision (B) of the Board’s proposed definition below:

PROPOSED DEFINITIONS OF “CIVILIAN COMPLAINT”

RIPA	AB 2923
(A) Any issue brought to a department or agency where the complaint perceives that a department or agency employee engaged in criminal conduct, abusive or discriminatory behavior, inappropriate or discourteous conduct, or violation of any law or rules, policies, and regulations of the department or agency; or	A written or verbal report that “brings to the attention of a department or agency an incident during which the complainant perceives that a department or agency employee engaged in criminal conduct, abusive or discriminatory behavior, inappropriate or discourteous conduct, or a violation of any law, rule, policy, or regulation of the department or agency.”

¹⁴² See POST Complaint Form, <https://post.ca.gov/public-complaint-form> [as of XX, 2024].

¹⁴³ Cal. Assem., Public Safety Com. Hearing (Apr. 2, 2024) <<https://www.assembly.ca.gov/media/assembly-public-safety-committee-20240402>> [as of XX, 2024].

¹⁴⁴ Assem. Bill No. 2923 (2023-2024 Reg. Sess.) <<https://legiscan.com/CA/text/AB2923/id/2930681/California-2023-AB2923-Introduced.html>> [as of XX, 2024].

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<p>(B) Disagreement solely with the policies, procedures, or services of the department or agency and not with the performance of any personnel. If during the course of investigating this type of complaint, conduct is discovered that could be the basis of a complaint under subdivision (1)(A), the investigator shall report this conduct to a supervisor, which should be logged, tracked, and investigated separately from the original complaint.</p>	
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In addition to defining “civilian complaint,” AB 2923 sought to amend Penal Code section 148.6 to add an intent requirement, such that a complainant must knowingly and intentionally submit a false statement that is material to the complaint allegations in order to be prosecuted. The bill’s sponsor, Assembly Member Reginald Jones-Sawyer, emphasized that, as currently written, Penal Code section 148.6 is very broad, meaning that prosecution for filing a false complaint could be based on fact that is not material to the allegation or is simply a mistake of fact.¹⁴⁵ However, “mistakes over minor details should not bring forth prosecution.”¹⁴⁶

Accordingly, AB 2923 initially proposed amending Penal Code section 148.6 to require that a complainant “knowingly and intentionally make a false statement that is material... with the intent that the false statement will be used as a basis to punish a peace officer” to be found guilty of a misdemeanor.¹⁴⁷ The bill also proposed amendments to section 148.6, which would clarify that (1) complainants “will not be punished or penalized for making a complaint,” and (2) the prohibition against making false statements “does not include a statements of facts that [the complainant] in good faith believe[s] to be true but are disputed by the officer.”¹⁴⁸

During a hearing before the Assembly’s Public Safety Committee on April 2, 2024, committee members proposed amendments to refine the intent requirement. Although the proposed amendments were submitted, the bill’s scheduled re-hearing, set for April 23, 2024, was canceled, and the bill did not pass.

¹⁴⁵ Cal. Assem., Public Safety Com. Hearing (Apr. 2, 2024) <<https://www.assembly.ca.gov/media/assembly-public-safety-committee-20240402>> [as of XX, 2024].

¹⁴⁶ Cal. Assem., Public Safety Com. Hearing (Apr. 2, 2024) <<https://www.assembly.ca.gov/media/assembly-public-safety-committee-20240402>> [as of XX, 2024].

¹⁴⁷ Assem. Bill No. 2923 (2023-2024 Reg. Sess.) <<https://legiscan.com/CA/text/AB2923/id/2930681/California-2023-AB2923-Introduced.html>> [as of XX, 2024].

¹⁴⁸ Assem. Bill No. 2923 (2023-2024 Reg. Sess.) <<https://legiscan.com/CA/text/AB2923/id/2930681/California-2023-AB2923-Introduced.html>> [as of XX, 2024].

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PROPOSED LEGISLATIVE CHANGES TO PENAL CODE § 148.6 ADVISORY STATEMENT¹⁴⁹

Penal Code § 148.6	AB 2923 (as introduced)	AB 2923 (as amended)
<p>You have the right to make a complaint against a police officer for any improper police conduct. California law requires this agency to have a procedure to investigate civilians' complaints. You have a right to written description of this procedure. This agency may find after investigation that there is not enough evidence to warrant action on your complaint; even if that is the case, you have the right to make the complaint and have it investigated if you believe an officer behaved improperly. Civilian complaints and any reports or findings relating to complaints must be retained by this agency for at least five years.</p> <p>It is against the law to make a complaint that you know to be false. If you make a complaint against an officer knowing that it is false, you can be prosecuted on a misdemeanor charge.</p>	<p>You have the right to make a complaint against a police officer for any improper police conduct. California law requires this agency to have a procedure to investigate civilians' complaints. You have a right to written description of this procedure. This agency may find after investigation that there is sufficient evidence supporting the complaint and the department is required to take action and provide you notice of their decision. In the event the investigation determines that there is not enough evidence to warrant action on your complaint, you have the right to make the complaint and have it investigated if you believe an officer behaved improperly. You will not be punished or penalized for making a complaint. Civilian complaints and any reports or findings relating to complaints must be retained by this agency for at least five years.</p> <p>However, it is against the law to make a complaint that contains material false statements if you know the statements to be false and intentionally make the false statements with intent to improperly take action against the peace officer. This does not include a statement of facts that you in good faith believe</p>	<p>You have the right to make a complaint against a police officer for any improper police conduct. California law requires this agency to have a procedure to investigate civilians' complaints. You have a right to written description of this procedure. This agency may find after investigation that there is sufficient evidence supporting the complaint and the department is required to take action and provide you notice of their decision. In the event the investigation determines that there is not enough evidence to warrant action on your complaint, you have the right to make the complaint and have it investigated if you believe an officer behaved improperly. You will not be punished or penalized for making a complaint. Civilian complaints and any reports or findings relating to complaints must be retained by this agency for at least five years.</p> <p>However, it is against the law to make a complaint that contains false statements material to the allegation of misconduct by the officer if you know the statements to be false and intentionally make the false statements with intent that the statements will be used to improperly take action against the peace officer</p>

¹⁴⁹ The relevant sections of each version are noted in bold text. Changes between versions are noted in blue font.

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Penal Code § 148.6	AB 2923 (as introduced)	AB 2923 (as amended)
	<p>to be true but are disputed by the officer. If you make a complaint against an officer knowing that it is false, you can be prosecuted on a misdemeanor charge.</p>	<p>or to harass or otherwise harm the officer. If you make a complaint against an officer knowing that it is false, you can be prosecuted on a misdemeanor charge.</p>

The Board commends the Legislature for introducing legislation to address the Board’s concerns regarding the lack of a definition for “civilian complaint” and the inclusion of deterrent language on civilian complaint forms. However, as no legislative amendments have passed, the Board continues to reiterate its past recommendations that the Legislature amend Penal Code sections 832.5 and 148.6.

III. INCORPORATING ROOT CAUSE ANALYSIS IN COMPLAINT INVESTIGATIONS

Last year, the Board explored the principles of root cause analysis and urged law enforcement agencies to begin incorporating those principles into their civilian complaint procedures.¹⁵⁰ This year, the Board explores the application of those principles, within law enforcement and other fields, to develop recommendations for how to apply those principles in the civilian complaints process.

A. Root Cause Analysis in the Healthcare, Transportation, and Education

[Content Under Development]

B. Root Cause Analysis in Law Enforcement

[Content Under Development]

IV. VISION FOR FUTURE REPORTS

The Board remains committed to analyzing civilian complaint data and practices in order to make the complaint process more meaningful to members of law enforcement and the community. To that end, in the coming years, the Board hopes to look closer at trends in complaint data over time and develop further recommendations to help law enforcement agencies incorporate root cause analysis into the complaint process.

¹⁵⁰ Racial and Identity Profiling Advisory Board, *Annual Report* (2024) pp. 199-203.

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POST TRAINING & RECRUITMENT

I. INTRODUCTION

*A cultural shift is required to end racism in policing, and making that shift requires a multipronged approach, including addressing systemic racism and accountability in training.*¹⁵¹

This year, the Peace Officer Standards and Training (POST) Subcommittee's work focuses on the development of training and policy guidelines for all POST racial and identity profiling courses. The RIPA Board provides recommendations for the structure and content of the guidelines and documents their development by POST. Guidelines inform officers of the relevant state and federal legal standards, for practices like pretextual stops and racial and identity profiling. In its 2023 and 2024 Reports, as part of its legislative mandate to review POST-certified training courses, the Board recommended that POST publish separate guidelines for its racial and identity profiling-related courses as required under Penal Code section 13519.4. In the context of training related to racial and identity profiling, separate guidelines notify California's law enforcement agencies of the reasons behind specific training and curricula, the requirements under the law, and the expected outcomes of bias-free policing required by law.

In August 2023, POST agreed to develop these guidelines as a standalone document and to include Board members in their development. Previously, the guidelines were dispersed throughout POST's training curricula. In May 2024, POST advised the DOJ that instead of developing POST-certified training guidelines required by law,¹⁵² POST would develop racial and identity profiling policy guidelines for optional use by interested California law enforcement agencies. POST also advised that it would be using the certified Museum of Tolerance (MOT) Racial and Identity Profiling Course for Trainers as the template curriculum to develop the policy guidelines. While guidelines that law enforcement agencies could use to develop policies on racial and identity profiling are important and commendable, the Board reiterates its recommendation that POST develop similar guidelines for training to ensure compliance with Penal Code section 13519.4.

The POST Commission convened its first workshop to develop racial and identity policy guidelines on racial and identity profiling on May 14-16, 2024, at the Museum of Tolerance in

¹⁵¹ Eberhardt et al., "When the Cruiser Lights Come On:" *Using the Science of Bias & Culture to Combat Racial Disparities in Policing* (2024) 153 Daedalus 1, pp. 124-125, 134 <https://doi.org/10.1162/daed_a_02052>.

¹⁵² "The commission shall develop and disseminate guidelines and training for all peace officers in California [], on the racial and cultural differences among the residents of this state. The course or courses of instruction and the guidelines shall stress understanding and respect for racial, identity, and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a diverse racial, identity, and cultural environment." (Pen. Code, § 13519.4, subd. (a).)

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Los Angeles. A group of subject matter experts and academy instructors, including three RIPA Board members, were selected to help develop the policy guidelines. During the workshop, the group discussed the five-hour MOT Racial and Identity Profiling Course outline and compliance with section 13519.4.

II. POST RESPONSE TO 2024 RECOMMENDATIONS

Over the past eight years, the RIPA Board has conducted extensive reviews of POST’s training and curriculum materials and provided recommendations for improving them. However, the RIPA data show that across all years of the RIPA data collection (2018-2023), disparities persist in how individuals perceived as Black, Hispanic/Latine(x), and transgender are treated, despite the training officers receive through POST and their own law enforcement agency on bias.

In all years of RIPA data collection (2018-2022), individuals perceived as Black had the highest search rate (20.3%) and were handcuffed during a higher percentage of stops (14.7%) than any other racial or ethnic groups. Despite a higher search rate, the discovery rate of contraband or evidence was lower for Black individuals than White individuals. Individuals perceived as Hispanic/Latine(x) (13%) had a higher percentage of stops than the overall average in years 2020, 2021, and 2022. In all years (2018-2022), individuals perceived as transgender men/boys and transgender women/girls were handcuffed during a higher percentage of stops than cisgender or gender non-conforming individuals.

The RIPA data shows racial and identity profiling continues to impact all aspects of a stop, from the decision to initiate stop to actions taken during the stop, including the result of the stop. For example, the 2022 RIPA data demonstrated that stopped individuals perceived as having a disability had a higher proportion of their stops involve officers taking actions towards them (69.6%) than individuals not perceived to have a disability (24.4%).¹⁵³ Additionally, Black individuals were stopped 131.5 percent more frequently than expected, given their relative proportion of the California population.¹⁵⁴ Yet officers reported taking no action as a result of a stop most frequently for individuals perceived to be Black than for any other demographic group.¹⁵⁵

The persistence of these disparities raises questions about whether training and awareness alone can eliminate bias in policing. Current research and prior Board reports suggest that the most

¹⁵³ Racial and Identity Profiling Advisory Board, *Annual Report* (2024) at p. 40.

¹⁵⁴ Racial and Identity Profiling Advisory Board, *Annual Report* (2024) p. 6.

¹⁵⁵ This grey box contains RIPA data from last year. We anticipate receiving updated data sometime after the subcommittee meeting.

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effective way to eliminate racial bias is through a combination of training and policies that circumscribe officer discretion.

RIPA data should inform the training necessary to eliminate racial and identity profiling in California. Pursuing that goal can also lead to officer and civilian safety in the field. To that end, the Board recommended in the 2024 RIPA Report to improve training and guidelines through the following:

- (1) Adopt a process and publish timelines for Board and community review that will engage community and stakeholder input on how to improve trainings (Pen. Code, § 13519.4, subd. (b));
- (2) Allow time for meaningful feedback throughout curriculum updates and development, including community sourcing of subject matter experts (SMEs);
- (3) Measure course effectiveness by examining RIPA data outcomes and official reports to infer behavioral changes; and,
- (4) Include individual officer and supervisor accountability and reporting as a required training topic in all racial and identity profiling courses.¹⁵⁶

POST adopted **XX** out of XX recommendations from the 2024 RIPA Report.

III. BACKGROUND LAW AND REGULATIONS FOR POST GUIDELINES

A. Assembly Bill 953 (AB 953) Requirements

RIPA requires POST to develop and disseminate guidelines *and* mandatory training for all peace officers to “address the pernicious practice of racial and identity profiling.”¹⁵⁷ RIPA requires the curricula for POST courses and its guidelines on profiling to “stress understanding and respect for racial, identity, and cultural differences,” and “prescribe evidence-based patterns, practices, and protocols that prevent racial or identity profiling.”¹⁵⁸

Penal Code section 13519.4, subdivision (h), lists the following necessary subjects for curricula instruction:

- Identification of key indices and perspectives that make up racial, identity, and cultural differences among residents in a local community;

¹⁵⁶ Racial and Identity Profiling Advisory Board, *2024 Report*, at p. 219.

¹⁵⁷ Pen. Code, § 13519.4, subd. (d)(5).

¹⁵⁸ Pen. Code, § 13519.4, subs. (a) and (h).

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- Negative impact of intentional and implicit biases, prejudices, and stereotyping on effective law enforcement, including examination of how historical perceptions of discriminatory enforcement practices have harmed police-community relations and contributed to injury, death, disparities in arrest detention and incarceration rights, and wrongful convictions;
- The history and role of the civil and human rights movement and struggles and their impact on law enforcement;
- Specific obligations of peace officers in preventing, reporting, and responding to discriminatory or biased practices by fellow peace officers;
- Perspectives of diverse, local constituency groups and experts on particular racial, identity, and cultural and police-community relations issues in a local area; and
- The prohibition against racial or identity profiling in subdivision (f).¹⁵⁹

Penal Code section 13519.4 also requires POST to create refresher courses on racial and identity profiling and cultural awareness for in-service officers.¹⁶⁰ These courses must be taken at a minimum of every five years.¹⁶¹ In developing these courses, the Legislature requires POST to consult with the RIPA Board, as well as “appropriate groups and individuals” such as community groups and individuals with “an interest and expertise in the field of racial, identity, and cultural awareness and diversity.”¹⁶²

B. POST Current Standards for Racial and Identity Profiling

Before a cadet can exercise powers as a peace officer, they must complete the Regular Basic Course Academy Trainings.¹⁶³ Forty-two POST-certified academies across California¹⁶⁴ present the entry-level training. That basic training includes 43 course subjects, called Learning Domains (“LD”).¹⁶⁵ Guidelines dictate training content and the framework for the LDs. According to POST, officer training and guidelines on racial and identity profiling are scattered across various LDs, including LD 42: Cultural Diversity/Discrimination, a 16-hour course, and LD 3: Principled Policing in the Community, a 26-hour course.

¹⁵⁹ Pen. Code, § 13519.4, subd. (h).

¹⁶⁰ Pen. Code, § 13519.4, subd. (i).

¹⁶¹ Pen. Code, § 13519.4, subd. (i).

¹⁶² Pen. Code, § 13519.4, subds. (b) and (h).

¹⁶³ Cal. Code Regs., tit. 11, § 1005, subd. (a)(1).

¹⁶⁴ Commission on Peace Officer Standards and Training, Regular Basic Course <<https://post.ca.gov/regular-basic-course>> [as of May 22, 2024].

¹⁶⁵ Commission on Peace Officer Standards and Training, Regular Basic Course Training Specifications <<https://post.ca.gov/regular-basic-course-training-specifications>><<https://post.ca.gov/regular-basic-course>>;<<https://post.ca.gov/regular-basic-course>> [as of May 22, 2024]. In its regulations, POST requires a total of 664 minimum mandatory hours of general law enforcement training. (Cal. Code Regs., tit. 11, § 1005, subd. (a)(1)(C)(1)(a)(i).)

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Over the past eight years, POST has provided courses for the RIPA Board to review to meet the training mandates of AB 953 and improve curricula content. The Board has reviewed the following courses POST identified as related to racial and identity profiling:

Name of Course	Course Type/Length	Year of Board Review
Basic Academy Learning Domain #3 Principled Policing in the Community ¹⁶⁶	Academy – 26 hrs.	2022 Report
Basic Academy Learning Domain #42 Cultural Diversity and Discrimination ¹⁶⁷	Academy – 16 hrs. * MOT training required to facilitate this course	2023 Report
Principled Policing: Implicit Bias and Procedural Justice	In-Service Officers – 8 hrs.	2020 Report
Bias and Racial Profiling Video	In-Service Officers – 2 hrs. *MOT training required to facilitate this course	2021 Report
Beyond Bias Racial and Identity Profiling Online	Supervisors – 2 hrs.	2021 and 2022 Reports
PSP: Strategic Communications	In-Service Officers – 3 hrs.	2021 and 2022 Reports
MOT – Racial Profiling Train-the-Trainer	In-Service Officers – 24 hrs.	2023 Report

In addition to publishing its reviews in the RIPA Reports, the Board relayed the training recommendations related to racial and identity profiling for each of the reviewed courses to the

¹⁶⁶ A copy of the student workbook for LD 3 can be located here: https://post.ca.gov/portals/0/post_docs/basic_course_resources/workbooks/LD_03_V-5.1.pdf [as of Nov. 29, 2022].

¹⁶⁷ A copy of the student workbook for LD 42 can be located here: https://post.ca.gov/portals/0/post_docs/basic_course_resources/workbooks/LD_42_V-6.5.pdf [as of Nov. 29, 2022].

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POST Commission, in each Report and via an annual letter. Board members also made in person presentations at regularly scheduled POST Commission meetings.

[Post Process For Review of RIPA Board’s Recommendations-Content Under Development]

1. Racial and Identity Profiling Legal Standards

The development of guidelines on racial and identity profiling is critical to officer compliance with RIPA.¹⁶⁸ Guidelines inform officers of the relevant state and federal legal standards, for practices like hate crimes, use of force, and racial and identity profiling.¹⁶⁹ For example, California law provides more protection than federal law by prohibiting “the *consideration of, or reliance on, to any degree,*” on protected characteristics like race, identity, or gender.¹⁷⁰

Effective training on racial profiling in California must reflect California’s legal standard prohibiting racial and identity profiling and provide guidance regarding how to comply with the law.¹⁷¹ Furthermore, the training must acknowledge the harm caused by profiling to individuals, communities, and police community relations.¹⁷²

Failing to comply with AB 953’s prohibition against racial and identity profiling or other state or federal laws prohibiting discrimination in policing can subject the officer, law enforcement agencies, school district police departments, and municipalities to significant legal liability, including civil and criminal penalties, or result in the exclusion of evidence in a criminal case.

¹⁶⁸ See Racial and Identity Profiling Advisory Board, *2024 Report*, at pp. 208-209.

¹⁶⁹ See POST Publications and Guidelines <<https://post.ca.gov/Publication-List>>; see, e.g., Cal. Com. on Peace Officer Stds. and Training, *POST Use of Force Standards and Guidelines* (2021) p. 8 <https://post.ca.gov/Portals/0/post_docs/publications/Use_Of_Force_Standards_Guidelines.pdf> (“These guidelines include the statewide minimum standards law enforcement executives are now required to incorporate into their agency’s use of force policy. The guidelines incorporate best practices and are intended to assist with implementation of the practical requirements of these requisite minimum standards”); Cal. Com. on Peace Officer Stds. and Training, *POST Hate Crimes Model Policy* (Mar. 19, 2024) p. vii <https://post.ca.gov/Portals/0/post_docs/publications/Hate_Crimes.pdf> [

¹⁷⁰ California prohibits “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.” Pen. Code, § 13519.4, subd. (e) (emphasis added). In comparison, under federal law, pretextual stops are permitted so long as an officer can point to an objective reason for the stop, and the officer’s subjective motives or hunches (which research and data shows may be susceptible to racial bias) do not affect the legality of the stop. (*Whren v. United States* (1996) 517 U.S. 806, 813.) Even under federal law, however, “a seizure justified only by a police-observed traffic violation, therefore ‘become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission’ of issuing a ticket for the violation.” (See *Rodriguez v. United States* (2015) 575 U.S. 348, 350-51 (citation omitted).)

¹⁷¹ See Pen. Code, § 13519.4.

¹⁷² See Pen. Code, § 13519.4.

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In 2021, California enacted Senate Bill No. 2 (2021-2022 Reg. Sess.) (SB 2), the Kenneth Ross Jr. Police Decertification Act of 2021, which allows for the decertification of officers for serious misconduct including demonstrating bias against an individual based on their perceived membership in a protected class or group, like race or identity.¹⁷³ [REFERENCE RIPA POLICIES SECTION DISCUSSION OF SB 2] To fully inform officers of their obligations to not engage in racial profiling, any racial and identity profiling guidelines POST develops must also advise officers of the potential range of consequences of engaging in racial and identity profiling or failing to intervene or report officers who engage in racial and identity profiling. Those consequences could include personal accountability (including financial and reputational harm), citizen complaints, job discipline or loss, and decertification under SB 2.¹⁷⁴

2. Guidelines Workshop

a. Describe Workshop [Content Under Development]

b. Racial and Identity Profiling Guidelines Format

POST routinely develops different sets of guidelines to provide selection and training standards for local agencies to ensure their compliance with the law and facilitate agency-specific policies and trainings.¹⁷⁵ Effective guidelines highlight best practices, support the development of internal accountability measures, and obtain measurable improvements in law enforcement and community relations.¹⁷⁶ One example of POST guidelines is the 2021 Use of Force Guidelines. The guidelines advise law enforcement agencies on maintaining a policy that includes minimum standards for the application of deadly force, alternatives to the use of force, and requirements for intervention, reporting, and training.¹⁷⁷

Following the example of the 2021 Use of Force Guidelines, the racial and identity profiling guidelines should provide selection and training standards to ensure agencies are complying with California's prohibition against racial and identity profiling and facilitate agency-specific policies and training to address and reduce the disparities in profiling.

¹⁷³ See Pen. Code, § 13510.8.

¹⁷⁴ See Racial and Identity Profiling Advisory Board, *2024 Report*, at p. 209.

¹⁷⁵ See, e.g., Cal. Com. on Peace Officer Stds. and Training, *POST Use of Force Standards and Guidelines* (2021) p. 8 <https://post.ca.gov/Portals/0/post_docs/publications/Use_Of_Force_Standards_Guidelines.pdf>.

¹⁷⁶ See Racial and Identity Profiling Advisory Board, *2023 Report*, at pp. 201-206, 208-210.

¹⁷⁷ See Cal. Com. on Peace Officer Stds. and Training, *POST Use of Force Standards and Guidelines* (2021) <https://post.ca.gov/Portals/0/post_docs/publications/Use_Of_Force_Standards_Guidelines.pdf>

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- c. **Who were the Subject Matter Experts? How were they selected (refer to organizations and fields not individuals)**
 - (1) **Other comments on community engagement**
- d. **Collaborative process, integration of edits**
- e. **RIPA Board members comments on the process and edits**
- f. **Status Update on guidelines, lessons learned, outstanding recommendations**

Echoing some of the Board’s recommendations, outside organizations have also provided best practices for racial profiling policies for police agencies, including the Southern Poverty Law Center.¹⁷⁸

IV. EMERGING RESEARCH ON ANTI-BIAS TRAINING

Despite its proliferation across policing agencies, researchers concerned about the stability of racial disparities in policing, have raised concerns that the positive effects of implicit bias training on reforming officer behavior are fleeting or null.¹⁷⁹ The trainings’ “null effects on behavior come as no surprise to cognitive social psychologists, given that these trainings typically aim to, in a single day or less, mitigate the effects of cognitive biases that are learned over the life-span operate outside of conscious awareness and occur automatically.”¹⁸⁰ Social psychological theory suggests that communication styles and behaviors that are rooted in these

¹⁷⁸ Southern Poverty Law Center, *10 Best Practices for Writing Policies Against Racial Profiling* (October 23, 2018) <<https://www.splcenter.org/20181023/10-best-practices-writing-policies-against-racial-profiling>>. According to the Southern Poverty Law Center, an effective racial profiling policy (1) defines racial profiling as a law enforcement officer’s reliance – to any degree – on a person’s race or ethnicity to determine whom to target for law enforcement action; (2) states explicitly that racial profiling is unconstitutional; (3) bans pretextual stops that are based, in whole or in part, on race; (4) explains that racial profiling undermines effective police work; (5) avoids language that encourages over-policing; (6) incorporates procedures to eliminate the influence of improper bias; (7) requires reporting on and investigations of racial profiling incidents; (8) requires periodic, scenario-based training (including refresher training) for all officers; (9) systematizes data collection on police activities; and (10) makes data publicly available to facilitate outside analysis.

¹⁷⁹ See e.g., Forscher et al., *A Meta-Analysis of Procedures to Change Implicit Measures* (2019) 117 *Journal of Personality & Social Psychology* 3, pp. 37-38; Glaser, *Disrupting the Effects of Implicit Bias: The Case of Discretion & Policing* (2024) 153 *Daedalus* 1, pp. 159-160 <https://doi.org/10.1162/daed_a_02053> [as of XX, 2024]; Lai and Lisnek, *The Impact of Implicit Bias-Oriented Diversity Training on Police Officers’ Beliefs, Motivations, and Actions* (2023) 34 *Psychological Science* p. 3.

¹⁸⁰ Glaser, *Disrupting the Effects of Implicit Bias: The Case of Discretion & Policing* (2024) 153 *Daedalus* 1, pp. 159-160 <https://doi.org/10.1162/daed_a_02053>.

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biases are hardwired and cannot be undone with a one-day classroom training taken every few years.¹⁸¹

Several studies indicate that focused, short-term training to reduce implicit bias can produce some initial significant reductions in implicit bias, but the officers return to their baseline levels of implicit bias after a few months.¹⁸² However, variations in the intensity of the training—total number of hours, distribution across weeks or months, and refresher courses—can affect the durability of implicit bias training.¹⁸³ While some researchers continue to seek the proper balance of implicit-bias training intensity,¹⁸⁴ others have turned to alternatives to anti-bias training to reduce racial disparities in policing such as looking into cognitive training,¹⁸⁵ policies that limit discretion,¹⁸⁶ and changes to policing culture.¹⁸⁷

A. Research Shows Need for Frequent Anti-Bias Training

Research shows frequent implicit-bias training is necessary to sustain reductions in bias. One study assessed the effects of a Managing Bias (MB) training program on thousands of veteran peace officers from July 2019 through January 2021. The MB program, developed by the Anti-Defamation League to reduce the influence of bias in interactions and decision-making by law enforcement, improve police-community relations, and increase officer safety, was considered by the researchers as a “best-case scenario for diversity training in society today.”¹⁸⁸ The training

¹⁸¹ Lai and Lisnek, *The Impact of Implicit Bias-Oriented Diversity Training on Police Officers’ Beliefs, Motivations, and Actions* (2023) *Psychological Science* 34, p. 12.

¹⁸² Glaser, *Disrupting the Effects of Implicit Bias: The Case of Discretion & Policing* (2024) 153 *Daedalus* 1, pp. 157-158 <https://doi.org/10.1162/daed_a_02053>; Forscher et al., *A Meta-Analysis of Procedures to Change Implicit Measures* (2019) 117 *Journal of Personality & Social Psychology* 3, pp. 37-38; Lai et al., *Reducing Implicit Racial Preferences: II. Intervention Effectiveness across Time* (2016) 145 *Journal of Experimental Psychology* 8, p. 1001.

¹⁸³ Dube et al., *A Cognitive View of Policing* (2023) The Pearson Institute 2023-13, at p. 42 <<https://thepearsoninstitute.org/research/cognitive-view-policing>>.

¹⁸⁴ Forscher et al., *A Meta-Analysis of Procedures to Change Implicit Measures* (2019) 117 *Journal of Personality & Social Psychology* 3, pp. 5-6, 43-44; Glaser, *Disrupting the Effects of Implicit Bias: The Case of Discretion & Policing* (2024) 153 *Daedalus* 1, p. 158 <https://doi.org/10.1162/daed_a_02053>.

¹⁸⁵ Dube et al., *A Cognitive View of Policing* (2023) The Pearson Institute 2023-13, at pp. 40-41 <<https://thepearsoninstitute.org/research/cognitive-view-policing>>.

¹⁸⁶ Glaser, *Disrupting the Effects of Implicit Bias: The Case of Discretion & Policing* (2024) 153 *Daedalus* 1, p. 161 <https://doi.org/10.1162/daed_a_02053>.

¹⁸⁷ Eberhardt et al., “*When the Cruiser Lights Come On: Using the Science of Bias & Culture to Combat Racial Disparities in Policing* (2024) 153 *Daedalus* 1, pp. 124-125 <https://doi.org/10.1162/daed_a_02052>.

¹⁸⁸ Lai and Lisnek, *The Impact of Implicit Bias-Oriented Diversity Training on Police Officers’ Beliefs, Motivations, and Actions* (2023) *Psychological Science* 34, pp. 3-4, 11. The study also found that facilitator’s race and relationship with law enforcement professionals did not relate to the learning outcomes of the training.

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lasted a full day (longer than most diversity trainings) and was delivered by a diverse array of 24 educators.¹⁸⁹

Officers in the MB program were taught five practices to reduce biased behavior: mindfulness, stereotype substitution, perspective-taking, individuation, and diverse exposure.¹⁹⁰ In the officer surveys, researchers found the MB program was immediately effective at increasing awareness and concerns of bias in officers, but that increase disappeared only one month after training.¹⁹¹ Further, the results showed that officers who immediately reported their intention to use intervention strategies to reduce bias did not follow through with that intention one month after the training.¹⁹² Multiple reasons could explain this lack of action including decreased motivation or officers finding the strategies ineffective.¹⁹³

Overall, the study showed “implicit bias-oriented diversity training as they are *currently practiced* in real-world settings” with implementation by an external organization and administration separate from the rest of the police department’s activities has little evidence of long-term efficacy.¹⁹⁴ To improve the duration of favorable behavior changes, implicit bias-oriented diversity training should “be embedded within organizational initiatives, reinforced by police managers, [] evaluated as part of job performance” and administered with increased frequency.”¹⁹⁵ The researchers found that department policies are necessary to support training and sustain anti-bias intervention awareness and behavior.¹⁹⁶

¹⁸⁹ Lai and Lisnek, *The Impact of Implicit Bias-Oriented Diversity Training on Police Officers’ Beliefs, Motivations, and Actions* (2023) *Psychological Science* 34, pp. 3-4, 11. The study also found that facilitator’s race and relationship with law enforcement professionals did not relate to the learning outcomes of the training.

¹⁹⁰ Lai and Lisnek, *The Impact of Implicit Bias-Oriented Diversity Training on Police Officers’ Beliefs, Motivations, and Actions* (2023) *Psychological Science* 34, p. 4. Lai and Lisnek define the five intervention strategies as follows: (1) mindfulness: intentionally bringing awareness to the present moment; (2) stereotype substitution: replacing thoughts of negative stereotypes with positive mental images; perspective-taking: (3) taking the perspective of another person to understand their point of view; (4) individuation: getting to know people as unique individuals; and (5) diversity exposure: learning learn about people from different backgrounds through direct and indirect intergroup contact.

¹⁹¹ Lai and Lisnek, *The Impact of Implicit Bias-Oriented Diversity Training on Police Officers’ Beliefs, Motivations, and Actions* (2023) *Psychological Science* 34, pp. 8-9.

¹⁹² Lai and Lisnek, *The Impact of Implicit Bias-Oriented Diversity Training on Police Officers’ Beliefs, Motivations, and Actions* (2023) *Psychological Science* 34, pp. 9-10.

¹⁹³ Lai and Lisnek, *The Impact of Implicit Bias-Oriented Diversity Training on Police Officers’ Beliefs, Motivations, and Actions* (2023) *Psychological Science* 34, pp. 9-10.

¹⁹⁴ Lai and Lisnek, *The Impact of Implicit Bias-Oriented Diversity Training on Police Officers’ Beliefs, Motivations, and Actions* (2023) *Psychological Science* 34, p. 11.

¹⁹⁵ Lai and Lisnek, *The Impact of Implicit Bias-Oriented Diversity Training on Police Officers’ Beliefs, Motivations, and Actions* (2023) *Psychological Science* 34, p. 12.

¹⁹⁶ Lai and Lisnek, *The Impact of Implicit Bias-Oriented Diversity Training on Police Officers’ Beliefs, Motivations, and Actions* (2023) *Psychological Science* 34, pp. 3-4.

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A different strain of research in this area focuses on the malleability of implicit biases, or the “contextual and strategic influences that can temporarily alter the manifestation of implicit biases.”¹⁹⁷ Distinct from research evaluating lasting changes in bias, malleability research studies whether implicit bias can be changed at all. Dr. Lois James at Washington State University has studied the stability of implicit racial bias in police officers. In her 2018 study, James tested whether officers’ implicit biases against Black people were malleable by measuring how a lack of sleep affected levels of implicit bias in officers.¹⁹⁸ Using 80 participants, James tested implicit bias at four different times with varying amounts of prior sleep.¹⁹⁹ Scores of implicit bias varied significantly at testing times within participants, indicating implicit bias is a variable rather than a stable state.²⁰⁰ Less rest predicted more bias. James found that “when officers received less sleep preceding each test session, they were significantly more likely to associate Black Americans with weapons compared with when they received more sleep.”²⁰¹ Her findings indicate that effective training, such as counter stereotyping, may have a potential to reduce implicit bias on officers.²⁰² The outstanding question is what duration or intensity of anti-bias training is required to sustain reductions in implicit bias?

B. Alternatives to Anti-Bias Training to Reduce Disparities

Given the short-term results of implicit bias training, training alone cannot reduce implicit bias; it must be accompanied by cultural change within the department and policies that reduce discretion during stops.²⁰³ “The body of evidence to date indicates that, without meaningful, lasting environmental change, implicit biases are resilient.”²⁰⁴ Environmental changes within law enforcement agencies should address officer and department goals and motivations rather than induce threat or rely on affirmation to maintain positive behaviors.²⁰⁵

To reform subconscious actions, a person must first recognize their biases and how it impacts their behavior. Implicit bias must first be subjectively experienced to actively inhibit acts of discriminatory behavior. Yet, people do not know the biases they hold and must be trained to

¹⁹⁷ Glaser, *Disrupting the Effects of Implicit Bias: The Case of Discretion & Policing* (2024) 153 *Daedalus* 1, p. 156 <https://doi.org/10.1162/daed_a_02053>.

¹⁹⁸ James, *Stability of Implicit Racial Bias in Police Officers* (2018) 21 *Police Quarterly* 1, pp. 30-52.

¹⁹⁹ James, *Stability of Implicit Racial Bias in Police Officers* (2018) 21 *Police Quarterly* 1, p. 37.

²⁰⁰ James, *Stability of Implicit Racial Bias in Police Officers* (2018) 21 *Police Quarterly* 1, p. 43.

²⁰¹ James, *Stability of Implicit Racial Bias in Police Officers* (2018) 21 *Police Quarterly* 1, p. 43.

²⁰² James, *Stability of Implicit Racial Bias in Police Officers* (2018) 21 *Police Quarterly* 1, p. 36.

²⁰³ Glaser, *Disrupting the Effects of Implicit Bias: The Case of Discretion & Policing* (2024) 153 *Daedalus* 1, p. 158 <https://doi.org/10.1162/daed_a_02053>.

²⁰⁴ Glaser, *Disrupting the Effects of Implicit Bias: The Case of Discretion & Policing* (2024) 153 *Daedalus* 1, p. 158 <https://doi.org/10.1162/daed_a_02053>.

²⁰⁵ Forscher et al., *A Meta-Analysis of Procedures to Change Implicit Measures* (2019) 117 *Journal of Personality & Social Psychology* 3, p. 36.

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identify them.²⁰⁶ If peace officers are trained to identify the subtle cues of implicit bias activating during a rapid response, some officers would be able to disrupt or stop a response that is rooted in their automatic bias.²⁰⁷

Researchers have turned to examining alternative interventions and revising existing anti-bias trainings to produce lasting reductions in adverse outcomes with police interactions, including use of force, officer injury, and racial disparities.²⁰⁸ In response to these findings, researchers recommend (1) repeated training sessions for sustained behavior changes; (2) supervisor support from the top-down to influence cultural shifts within departments; (3) using body-worn camera footage to train officers; (4) integrating implicit bias-oriented diversity training within organizational initiatives; (5) evaluating bias intervention as part of job performance; and (6) adopting a policy that limits peace officer discretion during stops, encourages intelligence-based stops, and disrupts the influence of implicit biases.

1. Addressing Systemic Racism that Fuels Individual Bias

A cultural shift is required to end racism in policing, and making that shift requires a multipronged approach, including addressing systemic racism and accountability in training.²⁰⁹ Bias in policing has been portrayed as an individual psychological issue.²¹⁰ But that view ignores the ways systemic racism impacts group dynamics that, in turn,

“There is strong evidence that the abusive [behavior] of some individual police officers is part of a broader and menacing pattern, connected into larger social, historical, cultural and structural contexts, within which policing is undertaken. Law enforcement officers in the United States share and reproduce values, attitudes and stereotypes of US society and institutions.”

²⁰⁶ Glaser, *Disrupting the Effects of Implicit Bias: The Case of Discretion & Policing* (2024) 153 Daedalus 1, p. 153 <https://doi.org/10.1162/daed_a_02053>.

²⁰⁷ Glaser, *Disrupting the Effects of Implicit Bias: The Case of Discretion & Policing* (2024) 153 Daedalus 1, p. 155 <https://doi.org/10.1162/daed_a_02053>.

²⁰⁸ See Forscher et al., *A Meta-Analysis of Procedures to Change Implicit Measures* (2019) 117 *Journal of Personality & Social Psychology* 3, p. 6.

²⁰⁹ Eberhardt et al., “*When the Cruiser Lights Come On: Using the Science of Bias & Culture to Combat Racial Disparities in Policing*” (2024) 153 Daedalus 1, pp. 124-125, 134 <https://doi.org/10.1162/daed_a_02052>.

²¹⁰ U.N. Human Rights Council, A/HRC/54/CRP.7: International Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement - Visit to the United States of America (Expert Mechanism

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influence individual behavior.²¹¹ In the past decade, institutions like the United Nations have rejected the notion that discrimination in policing is the result of a few rogue officers: “There is strong evidence that the abusive [behavior] of some individual police officers is part of a broader and menacing pattern, connected into larger social, historical, cultural and structural contexts, within which policing is undertaken. Law enforcement officers in the United States share and reproduce values, attitudes and stereotypes of US society and institutions.”²¹²

Recognizing this, researchers started to examine the influence of department culture on stop data. In one study, Stanford researchers worked with police departments to help reduce disparities and profiling in stops by analyzing collected stop data using a sociocultural lens to identify the ways racism and discrimination within institutions, laws, practices, history, interpersonal interactions, and individual psychology affect officer actions and contribute to disparities and bias.²¹³

The Stanford experts developed a conceptual tool called the “culture cycle” to diagnose how institutions produce and maintain bias in different settings.²¹⁴ The culture cycle mapped four levels—ideas, institutions, interactions, and individuals—to see the dynamic interplay between racial bias on an individual level and within police culture.²¹⁵ Alongside reliable data, the culture cycle helped researchers “navigate the broader context and [] learn the roles of people within it,” to diagnose problems and prescribe solutions for lasting change.²¹⁶

To stop the racist culture cycle, the experts found it necessary to intervene at the decision-making point when officers decide to make a stop and require officers to provide an intelligence-led reason for the stop. Research shows that “automaticity” plays a key role in decision-making. “[C]onscious deliberation is mentally costly” so humans developed automatic responses that are

to Advance Racial Justice and Equality in the Context of Law Enforcement) (Sept. 26, 2023) p. 9 <<https://www.ohchr.org/en/documents/country-reports/ahrc54crp7-international-independent-expert-mechanism-advance-racial>>.

²¹¹ Eberhardt et al., “*When the Cruiser Lights Come On: Using the Science of Bias & Culture to Combat Racial Disparities in Policing* (2024) 153 *Daedalus* 1, p. 126 <https://doi.org/10.1162/daed_a_02052>.

²¹² U.N. Human Rights Council, A/HRC/54/CRP.7: International Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement - Visit to the United States of America (Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement) (Sept. 26, 2023) p. 9 <<https://www.ohchr.org/en/documents/country-reports/ahrc54crp7-international-independent-expert-mechanism-advance-racial>>.

²¹³ Parker, *Stanford Big Data Study Finds Racial Disparities in Oakland, California, Police Behavior, Offers Solutions* (2016) *Stanford News*; Eberhardt et al., “*When the Cruiser Lights Come On: Using the Science of Bias & Culture to Combat Racial Disparities in Policing* (2024) 153 *Daedalus* 1, p. 124 <https://doi.org/10.1162/daed_a_02052>.

²¹⁴ Eberhardt et al., “*When the Cruiser Lights Come On: Using the Science of Bias & Culture to Combat Racial Disparities in Policing* (2024) 153 *Daedalus* 1, p. 125 <https://doi.org/10.1162/daed_a_02052>.

²¹⁵ Eberhardt et al., “*When the Cruiser Lights Come On: Using the Science of Bias & Culture to Combat Racial Disparities in Policing* (2024) 153 *Daedalus* 1, p. 125 <https://doi.org/10.1162/daed_a_02052>.

²¹⁶ Eberhardt et al., “*When the Cruiser Lights Come On: Using the Science of Bias & Culture to Combat Racial Disparities in Policing* (2024) 153 *Daedalus* 1, p. 126 <https://doi.org/10.1162/daed_a_02052>.

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adaptive to commonly faced problems.²¹⁷ Simply the act of requiring officers to articulate the specific intelligence-led reasons for the stop—an intervention designed to “mitigate specific situational triggers of bias, and in the process, alter the way officers make the decision to pull someone over”—²¹⁸ reduced disparities.²¹⁹

The research team also found additional accountability mechanisms, such as reviewing body-worn camera footage to examine interactions between officers and residents for the lack of respect through tone, body language, and word choice reduced profiling.²²⁰ Reviewing body-worn camera footage helped to ensure both the community and officers that interactions were being carried out in a constitutional and procedurally just matter, an increasingly important metric of community trust and safety amid escalating relations between police and Black communities, in particular.²²¹ The experts then deployed body-worn camera footage as a training tool to provide feedback to officers on their behavior.²²² Overall, their team found that mandating intelligence-led stops and using body-worn camera footage to improve training and accountability reduced racial bias and improved the culture of law enforcement agencies in Oakland.

2. Cognitive Training

Another line of research found that officer training focused on managing the cognitive demands of policing and making officers more deliberate led to less force, fewer discretionary arrests, fewer officer injuries, and reduced racial disparities.²²³ From 2020-2021, a team of experts trained over two thousand officers at the Chicago Police Department using a new training model, called Situational Decision-making (Sit-D), which trains officers to develop more varied explanations of subject behavior, process information more efficiently, and update initial threat

²¹⁷ University of Chicago Crime Lab, *Preventing Youth Violence: An Evaluation of Youth Guidance’s becoming a Man Program* (2018) p. 4
<https://www.americorps.gov/sites/default/files/evidenceexchange/BAM_SIF_Final_Report_Revision_20181005_508_1.pdf>.

²¹⁸ Eberhardt et al., “*When the Cruiser Lights Come On: Using the Science of Bias & Culture to Combat Racial Disparities in Policing* (2024) 153 *Daedalus* 1, p. 134 <https://doi.org/10.1162/daed_a_02052>.

²¹⁹ Dube et al., *A Cognitive View of Policing* (2023) The Pearson Institute 2023-13, 3
<https://thepearsoninstitute.org/research/cognitive-view-policing>; Eberhardt et al., “*When the Cruiser Lights Come On: Using the Science of Bias & Culture to Combat Racial Disparities in Policing* (2024) 153 *Daedalus* 1, p. 134, 138 <https://doi.org/10.1162/daed_a_02052>.

²²⁰ Eberhardt et al., “*When the Cruiser Lights Come On: Using the Science of Bias & Culture to Combat Racial Disparities in Policing* (2024) 153 *Daedalus* 1, pp. 136-137 <https://doi.org/10.1162/daed_a_02052>.

²²¹ Eberhardt et al., “*When the Cruiser Lights Come On: Using the Science of Bias & Culture to Combat Racial Disparities in Policing* (2024) 153 *Daedalus* 1, p. 137 <https://doi.org/10.1162/daed_a_02052>.

²²² Eberhardt et al., “*When the Cruiser Lights Come On: Using the Science of Bias & Culture to Combat Racial Disparities in Policing* (2024) 153 *Daedalus* 1, p. 138 <https://doi.org/10.1162/daed_a_02052>.

²²³ Dube et al., *A Cognitive View of Policing* (2023) The Pearson Institute 2023-13, pp. 40-41
<<https://thepearsoninstitute.org/research/cognitive-view-policing>>.

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assessments throughout the duration of the interaction.²²⁴ The training did not explicitly focus on racial bias in policing, but instead generally encouraged officers to go beyond initial impressions to more effectively assess a situation.²²⁵ It gave officers tools to evaluate multiple perspectives and consider more appropriate ways to respond.²²⁶

Four months after the training, researchers evaluated the effectiveness of the training and the results proved Sit-D training significantly reduced adverse police outcomes.²²⁷ The training reduced non-lethal force by 23 percent; reduced discretionary arrests (which may “stem from officers’ emotional responses, such as frustration with a subject’s behavior”) by 23 percent; reduced overall arrests of Black subjects (without any corresponding effects on other races) by 11 percent; and reduced officer injuries.²²⁸

Importantly, this training approach mitigated racial disparities, despite its focus on cognitive biases instead of racial biases. The research suggests that disrupting the influence of implicit attitudes on officers’ actions—by making them more deliberate—could be a more effective way to reduce racial disparities than implicit bias training, which is ineffective or has fleeting results.²²⁹

3. Policies Limiting Officer Discretion

Expert Jack Glaser has argued in favor of policies that constrain discretion instead of more anti-bias training in order to obtain a more immediate reduction in racial disparities in policing. “When discretion is high—for example, when decision-makers can use their own judgment in ambiguous situations—cognitive shortcuts like stereotypes have more opportunity to influence decisions.”²³⁰

In his research, Glaser reviewed stop data from the U.S. Customs Service (now Customs and Border Patrol), New York Police Department (NYPD), and eight largest agencies in California,

²²⁴ Dube et al., *A Cognitive View of Policing* (2023) The Pearson Institute 2023-13, pp. 3-5. <<https://thepearsoninstitute.org/research/cognitive-view-policing>>.

²²⁵ Dube et al., *A Cognitive View of Policing* (2023) The Pearson Institute 2023-13, pp. 3-4 <<https://thepearsoninstitute.org/research/cognitive-view-policing>>.

²²⁶ Dube et al., *A Cognitive View of Policing* (2023) The Pearson Institute 2023-13, pp. 28-29 <<https://thepearsoninstitute.org/research/cognitive-view-policing>>.

²²⁷ The researchers analyzed Chicago Police Department administrative data aligned with the timing of the training assessments. (Dube et al., *A Cognitive View of Policing* (2023) The Pearson Institute 2023-13, p. 5 <<https://thepearsoninstitute.org/research/cognitive-view-policing>>.)

²²⁸ Dube et al., *A Cognitive View of Policing* (2023) The Pearson Institute 2023-13, pp. 5, 32-33 <<https://thepearsoninstitute.org/research/cognitive-view-policing>>.

²²⁹ Dube et al., *A Cognitive View of Policing* (2023) The Pearson Institute 2023-13, p. 8 <<https://thepearsoninstitute.org/research/cognitive-view-policing>>.

²³⁰ Glaser, *Disrupting the Effects of Implicit Bias: The Case of Discretion & Policing* (2024) 153 *Daedalus* 1, p. 160 <https://doi.org/10.1162/daed_a_02053>.

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and found that when officer search discretion was high, so were racial disparities in search rates. “White people were being subjected to higher thresholds of suspicion than Black people and Latino people in order to get stopped and/or searched. When discretion was relatively low (when search decisions were based on more stringent, prescribed criteria), yield rates were higher overall, and far less disparate.”²³¹ Glaser’s comparison suggests that reducing discretion

“When discretion is high—for example, when decision-makers can use their own judgment in ambiguous situations—cognitive shortcuts like stereotypes have more opportunity to influence decisions.” – See footnote XXX

effectively reduces racial, ethnic, or other disparities in policing stops and searches.

Glaser appeared before the POST Commission on September 21, 2023. During Glaser’s presentation, POST staff acknowledged that the anti-bias training being delivered does not seem to be effective and asked Glaser for advice.²³² Glaser advised POST to concentrate their implicit bias training on management, from sergeants all the way up to chief or sheriff, to make the training more effective and a more efficient use of department resources.²³³ Glaser stated that training

officers “is good for setting the stage and for motivating people to do things differently,” but policies and strategies need to be implemented to reinforce the training in the field.²³⁴ By addressing bias systemically through top-down training and policies, incentives within the department shift and influence the actions of individual officers more than individual training.²³⁵ Glaser recommended limiting officer discretion by formalizing decision criteria used during stops to reduce racial bias.²³⁶

In response to emerging research, several law enforcement agencies in California, including California Highway Patrol (CHP) and Los Angeles Police Department (LAPD), adopted policies to limit officer discretion.²³⁷

²³¹ Glaser, *Disrupting the Effects of Implicit Bias: The Case of Discretion & Policing* (2024) 153 *Daedalus* 1, p. 164 <https://doi.org/10.1162/daed_a_02053>.

²³² POST Commission Meeting, Reporter’s Transcript (Sept. 21, 2023) p. 61

²³³ POST Commission Meeting (Sept. 21, 2023) p. 65:7-9.

²³⁴ POST Commission Meeting (Sept. 21, 2023) p. 63:19-22.

²³⁵ See POST Commission Meeting (Sept. 21, 2023) pp. 61-66.

²³⁶ POST Commission Meeting (Sept. 21, 2023) p. 65: 10-12.

²³⁷ California Highway Patrol, General Order: Search and Seizure Policy, 100.91 (Aug. 2019); L.A. County Board of Police Commissioners, Department Manual Vol. 1: 240.06 Policy Limitation on Use of Pretextual Stops (Mar. 2022) pp. 1–2 <http://www.lapdpolicecom.lacity.org/030122/BPC_22-042.pdf> [as of XXX]. See also, page XX.

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V. **BEST PRACTICES, POLICY, LEGISLATIVE RECOMMENDATIONS [CONTENT UNDER DEVELOPMENT]**

A. **Commission Regulation 1205**

(May be housed within Accountability unless POST specific recommendations)

- B. **Expand public members of POST Commission (Reiteration of 2022 Report Recommendation)²³⁸**
- C. **Increase hours at basic academy and FTO (compare to other types of training – less hours at basic academy than required for cosmetologist)**
- D. **Require LEA's have policy on racial and identity profiling that includes accountability and consequences of non-compliance (ex. SB 2)**
- E. **Require more frequent trainings on racial and identity profiling**
- F. **Supervisors required to take racial and identity profiling course (i.e. FTO)**
- G. **Require BWC footage be used in the training or highly publicized incidents in the training in lieu of staged scenarios (see what happened with DOJ recs to POST on these issues)**

²³⁸ Racial and Identity Profiling Advisory Board, *Annual Report (2022)* at pp. 251-252.

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1. In the 2021 RIPA Report, the Board recommended POST “use actual footage of law enforcement encounters in lieu of scripted scenarios” as a more effective teaching tool.²³⁹ Emerging implicit bias research proves the effectiveness of BWC footage during trainings (supra).

H. [Bill to address limited effectiveness of implicit bias training]

1. Limit officer discretion on LEA stops;
2. Require and fund cognitive training;
3. Amend the law to allow for a more diverse group of stakeholders to present the MOT training, including the organizations listed in the original bill;²⁴⁰
4. Require POST or any training program to present data on the efficacy of their trainings in order to continue receiving funding/certification.
5. Require third-party audits of trainings
6. To POST: Update trainings relating to youth (from the Policies section) (juvenile law, campus law enforcement, etc.)

VI. LEGISLATIVE AND STATE AGENCY UPDATES TO TRAININGS ACROSS THE STATE

[Content Under Development-Will insert new or updated training-related bills, policies, or reviews in California.]

VII. VISION FOR FUTURE REPORTS

²³⁹ Racial and Identity Profiling Advisory Board, *2021 Report*, at p. 154.

²⁴⁰ Those organizations included: (1) State Conference of the NAACP, (2) Brotherhood Crusade, (3) Mexican American Legal Defense and Education Fund, (4) The League of United Latin American Citizens, (5) American Civil Liberties Union, (6) Anti-Defamation League, (7) California NOW, (8) Asian Pacific Bar of California, and (9) The Urban League. (See Former Pen. Code, § 13519.4, subd (f), (1)-(9), as amended by Statutes 2011, chapter 854, section 63; see also, Racial and Identity Profiling Advisory Board, *Annual Report (2023)* at p. 200.

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ACCOUNTABILITY

I. INTRODUCTION

AB 953 was enacted “to address the pernicious practice of racial or identity profiling.” In enacting the bill, the Legislature expressed appreciation for the dedication of peace officers who protect public safety.²⁴¹ It noted, however, that there are officers who commit discriminatory practices, tarnishing the names of those peace officers dedicated to serving the public.²⁴² It described racial and identity profiling as a “practice that presents a great danger to the fundamental principles of our Constitution and a democratic society,” one that “should not be tolerated.”²⁴³ As detailed above, AB 953 mandated that POST and the RIPA Board work together to create curricula focused on the goal of eliminating this pernicious practice from policing in California. In enacting Senate Bill No. 2 (2021-2022 Reg. Sess.) (SB 2), the Kenneth Ross, Jr. Police Decertification Act of 2021,²⁴⁴ the Legislature provided another tool to POST to address serious misconduct, such as demonstrating bias during policing, and remove from the profession those officers its training cannot save. In this way, SB 2 aligns with the Board’s goal of eliminating racial and identity profiling by establishing a statewide system to decertify or suspend officers who have engaged in racial profiling. It is an effort at accountability, one of the pillars of a multi-prong approach to eliminating bias from policing.

This section of the Report examines SB 2, providing an overview of the SB 2 decertification process and data on SB 2 certification actions POST has initiated against peace officers to educate the public about this promising tool for combatting bias in policing. Further, continuing in its legislatively mandated role of consulting with POST on training and policies that affect racial and identity profiling in policing, this section also provides recommendations to POST to help shape SB 2 into an effective accountability tool that can help accomplish the Board’s goal of eliminating bias in policing.

II. SB 2 AND DECERTIFICATION

A. SB 2 Overview

SB 2 establishes a statewide system for suspension or revocation of a peace officer’s certification due to serious misconduct. The Commission on Peace Officer Standards and Training (POST) plays a pivotal role in this system. POST is statutorily mandated to set minimum standards for

²⁴¹ Pen. Code § 13519.4, subd. (d)(1).

²⁴² Pen. Code § 13519.4, subd. (d)(1).

²⁴³ Pen. Code § 13519.4, subd. (d)(2).

²⁴⁴ Stats. 2021, c. 409 (SB 2) eff. Jan. 1, 2022.

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the recruitment and training of peace officers, develop peace officer training courses and curriculum, and issue professional certificates to peace officers to foster education, training, and professionalism in law enforcement; raise the level of competence of law enforcement officers; and foster cooperation between POST, its clients, and individuals.²⁴⁵

Before SB 2, POST could cancel a peace officer's certificate that was awarded in error or obtained through misrepresentation or fraud but otherwise, was prohibited from canceling a certificate that had been properly issued. POST also did not maintain any disciplinary records for California peace officers.²⁴⁶ POST now has the authority to review and investigate reports of serious misconduct by peace officers and suspend or revoke the certification of peace officers POST determined had engaged in serious misconduct.²⁴⁷

POST is responsible for promulgating regulations that outline the procedural aspects of the certification and decertification process under SB 2.²⁴⁸ Regulations POST promulgated to implement SB 2 define what constitutes serious misconduct.²⁴⁹ POST is also required to revoke the certification of a peace officer who has become ineligible to hold office as a peace officer because of a criminal conviction listed in Government Code section 1029.²⁵⁰ Under SB 2, POST has the power to investigate and determine the fitness of any person to serve as a peace officer in the state.²⁵¹

SB 2 also imposes duties on law enforcement agencies. Law enforcement agencies can only employ individuals with current, valid certifications as peace officers.²⁵² The only exception is that an agency may provisionally employ a person for up to 24 months, pending their certification by POST, provided the person has received a proof of eligibility and has not previously been certified or denied certification or had their certification revoked.²⁵³ Agencies are required to report the employment, appointment, or termination or separation from

²⁴⁵ POST, Peace Officer Certification, <<https://post.ca.gov/Certification>> [as of XX, 2024].

²⁴⁶ POST, Peace Officer Certification, <<https://post.ca.gov/Certification>> [as of XX, 2024].

²⁴⁷ Pen. Code § 13510.8, subd. (a), (c).

²⁴⁸ See Cal. Code Regs. tit. 11, §1201 et seq.

²⁴⁹ Cal. Code Regs., tit. 11, § 1205.

²⁵⁰ See Pen. Code § 13510.8; Cal. Code Regs., tit. 11, § 1212, subd. (a); see also POST, *Penal Code § 13512 Annual Report 2023*, at p. 4 <https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf> [as of XX, 2024].

²⁵¹ Pen. Code § 13503, subd. (f).

²⁵² Pen. Code § 13510.1, subd. (g).

²⁵³ Pen. Code § 13510.1, subd. (g). The certification requirement applies to peace officers described in Penal Code sections 830.1, 830.2 with the exception of those described in subdivision (d) of that section, 830.3, 830.32, or 380.33, or any other peace officer employed by an agency that participates in the POST program. Peace officer identified in these sections must possess either a valid Proof of Eligibility or a Basic Certificate. (Pen. Code § 13510.1, subd. (a).)

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employment or appointment of any peace officer to POST within 10 days.²⁵⁴ Separation from employment or appointment includes an involuntary termination, resignation, or retirement.²⁵⁵ Agencies are also required to report serious misconduct by a peace officer to POST within 10 days of receiving the allegation.²⁵⁶

Members of the public can also submit complaints about peace officers to POST.²⁵⁷ POST sends any complaints received from the public to the agency employing the peace officer to conduct an internal investigation.²⁵⁸ POST also has the authority to initiate investigations if made aware of serious misconduct by a peace officer through other means.²⁵⁹ According to POST's 2023 annual report, POST has received more than 22,000 reports of allegations of serious misconduct from law enforcement agencies, as well as complaints from the public.²⁶⁰

SB 2 also establishes a process for determining whether an action should be taken against a peace officer's certification.²⁶¹

Finally, SB 2 imposes obligations on the California Department of Justice (California DOJ), requiring it to provide POST with necessary disqualifying felony and misdemeanor conviction data for all persons known to be current or former peace officers.²⁶² POST is permitted to use this information for decertification purposes.²⁶³

As part of the decertification process, SB 2 created two new entities. One is the Peace Officer Standards Accountability Division (POSAD), which is the investigative entity within POST that makes findings on whether grounds to decertify or suspend a peace officer exist.²⁶⁴ The second one is the Peace Officer Standards Accountability Advisory Board (Accountability Board), a separate entity lead by civilians, which makes recommendations to POST about whether to decertify or suspend a peace officer based on POSAD's findings.²⁶⁵

²⁵⁴ Pen. Code § 13510.9, subd. (a)(1).

²⁵⁵ Pen. Code § 13510.9, subd. (a)(1).

²⁵⁶ Pen. Code § 13510.9.

²⁵⁷ Cal. Code Regs., tit. 11, § 1206, subd. (b); POST, Public Complaints, <<https://post.ca.gov/public-complaints>> [as of XX, 2024].

²⁵⁸ POST, Public Complaints, <https://post.ca.gov/public-complaints> [as of XX, 2024].

²⁵⁹ POST, *Penal Code § 13512 Annual Report 2023*, at p. 4

<https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf> [as of XX, 2024].

²⁶⁰ POST, *Penal Code § 13512 Annual Report 2023*, at p. 4

<https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf> [as of XX, 2024].

²⁶¹ Pen. Code § 13510.8.

²⁶² Gov. Code § 1029, subd. (f).

²⁶³ Gov. Code § 1029, subd. (f).

²⁶⁴ Pen. Code § 13509.5.

²⁶⁵ Pen. Code § 13509.6; see also POST, Peace Officer Standards Accountability Advisory Board, <<https://post.ca.gov/Peace-Officer-Standards-Accountability-Advisory-Board>> [as of XX, 2024].

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1. Peace Officer Standards Accountability Division

POSAD is comprised of six bureaus: four Professional Conduct Bureaus, a Certification Bureau, and an Intake/Disposition Bureau. The Professional Conduct Bureaus conduct the decertification investigations.²⁶⁶ As part of their process, the Bureaus review investigations of peace officers conducted by law enforcement agencies, and when necessary, conduct further investigation into serious misconduct that may provide grounds for suspension or revocation of a peace officer's certification.

At the conclusion of its investigation, POSAD is required to make findings as to whether grounds for action against a peace officer's certification exist.²⁶⁷ POSAD notifies the peace officer subject to decertification of their findings.²⁶⁸ POSAD reports the findings of its investigations to the Accountability Board and to POST.²⁶⁹ The officer has 30 days to request review from the Accountability Board.²⁷⁰

2. Peace Officer Standards Accountability Board

The purpose of the Accountability Board is to make recommendations regarding the decertification of peace officers to POST.²⁷¹ The Accountability Board is a civilian-led advisory board consisting of nine members appointed by the Governor and California Legislature.²⁷²

The Board must include:

- 1) One member who is a current or former peace officer with substantial experience at a command rank, appointed by the Governor.
- 2) One member who is a current or former peace officer with substantial experience at a management rank in internal investigations.
- 3) Two members who are members of the public, who are not former peace officers, and who have substantial experience working at nonprofit or academic institutions on issues related to police accountability. One of these members must be appointed by the Governor and one by the Speaker of the Assembly.

²⁶⁶ See SB 2 Informational Video, <https://www.youtube.com/playlist?list=PLVY_-7Z6jpM2hhwTtiNc7x000_COSFsGw> [as of XX, 2024]; see also POST, *Penal Code § 13512 Annual Report 2023*, at p. 8 <https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf> [as of XX, 2024].

²⁶⁷ See Pen. Code § 13509.5, subd. (b).

²⁶⁸ Pen. Code § 13510.85, subd. (a)(1).

²⁶⁹ Pen. Code § 13509, subd. (b).

²⁷⁰ Pen. Code § 13510.85, subd. (a)(2).

²⁷¹ Pen. Code § 13509.6, subd. (b).

²⁷² Pen. Code § 13509, subd. (d).

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- 4) Two members who are members of the public, who are not former peace officers, and who have substantial experience working at community-based organizations on issue related to police accountability. One of these members must be appointed by the Governor and one by the Senate Rules Committee.
- 5) Two members who are members of the public, and who are not former peace officers, with strong consideration given to individuals who have been subject to wrongful use of force likely to cause death or serious bodily injury by a peace officer, or who are surviving family members of a person killed by the wrongful use of deadly force by a peace officer, appointed by the Governor.
- 6) One member who is an attorney, and who is not a former peace officer, with substantial professional experience involving oversight of peace officers, appointed by the Governor.²⁷³

Each member of the Accountability Board is appointed for a term of three years and holds office until the appointment of the member's successor or until one year has elapsed since the expiration of the term for which the member was appointed, whichever occurs first. Vacancies are filled by appointment for the unexpired term of a person with the same qualification for appointment as the person being replaced. No person may serve more than two terms consecutively. The Governor must remove from the Accountability Board any peace officer member whose certification as a peace officer has been revoked, and may, after hearing, remove any member of the Accountability Board for neglect of duty or other just cause.²⁷⁴ All members of the Accountability Board must complete a 40-hour decertification training course, as developed by POST on the decertification process, internal investigations, evidentiary standards, use of force standards and training, and local disciplinary processes.²⁷⁵

The Accountability Board is required to hold public meetings to review the findings of the serious misconduct investigations conducted by POSAD and to make recommendations to POST on whether to take action against a peace officer's certification. The Board is also required to report annually on its activities, as well as those of POSAD and POST, relating to the certification program, including the number of applications for certification, the events reported, the number of investigations conducted, and the number of certificates surrendered or

²⁷³ Pen. Code § 13509.6, subd. (d)(1) - (6). The list and biographies of current Accountability Board members can be found on POST's website at <https://post.ca.gov/Peace-Officer-Standards-Accountability-Advisory-Board>.

²⁷⁴ Pen. Code § 13509.6, subd. (e).

²⁷⁵ Pen. Code § 13509.6, subd. (i).

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revoked.²⁷⁶ The first report was published in 2024 and is available in POST's Data Warehouse.²⁷⁷

3. Grounds for Decertification

A peace officer will have their certification revoked if the officer has become ineligible to hold office as a peace officer under Government Code section 1029.²⁷⁸ A peace officer may also have their certification suspended or revoked if the officer has been terminated for cause from employment as a peace officer or has otherwise engaged in serious misconduct, as described and defined in Penal Code section 13510.8, subdivision (b) and POST regulations.²⁷⁹

a. Government Code Section 1029

Under Government Code section 1029, a person is disqualified from holding office as a peace officer or being employed as a peace officer of the state, county, city, city and county, or other political subdivision if, among other things, the person has:

- 1) specified criminal convictions or adjudications,
- 2) had their certification revoked by POST,
- 3) has voluntarily surrendered their certification pursuant to California Penal Code 13510.8, subdivision (f),
- 4) has met the minimum requirement for issuance of certification but has been denied issuance of certification, or
- 5) has been previously employed in law enforcement in any state or United States territory or by the federal government, whose name is listed in the National Decertification Index of the International Association of Directors of Law Enforcement Standards and Training or any other database designated by the federal government.²⁸⁰

As of March 14, 2024, POST has decertified 199 officers. Sixty-seven of those decertifications were based on Government Code section 1029. Fifty-six were made ineligible through section 1029, and eleven certifications were revoked following a felony conviction after January 1, 2022.²⁸¹

²⁷⁶ Pen. Code § 13512, subd. (b)(1) - (10).

²⁷⁷ POST, *Penal Code § 13512 Annual Report 2023*,

https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf [as of XX, 2024]; POST, Decertification: Annual Report, <https://post.ca.gov/Decertification> [as of XX, 2024].

²⁷⁸ Pen. Code § 13510.8, subd. (a)(1).

²⁷⁹ Pen. Code § 13510.8, subd. (a)(2).

²⁸⁰ Gov. Code § 1029.

²⁸¹ POST, Peace Officer Certification Actions, <https://post.ca.gov/Peace-Officer-Certification-Actions> [as of XX, 2024].

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b. Serious Misconduct

POST may also suspend or revoke the certification of a peace officer if the person has been terminated for cause from employment as a peace officer or if POST has determined that the person has engaged in serious misconduct while employed as a peace officer. “Serious misconduct” is defined as:

- 1) Dishonesty relating to the reporting, investigation, or prosecution of a crime or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer.²⁸²
- 2) Abuse of power.²⁸³
- 3) Physical abuse.²⁸⁴
- 4) Sexual assault.²⁸⁵
- 5) Demonstrating bias on the basis of actual or perceived race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status in violation of law or department policy or inconsistent with a peace officer’s obligation to carry out their duties in a fair and unbiased manner.²⁸⁶
- 6) Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer’s obligation to uphold the law or respect the rights of members of the public.
- 7) Participation in a law enforcement gang.
- 8) Failure to cooperate with an investigation into potential police misconduct.
- 9) Failure to intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.

²⁸² This includes but is not limited to, false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data. POST, Peace Officer Certification Actions, <<https://post.ca.gov/Peace-Officer-Certification-Actions>> [as of XX, 2024].

²⁸³ Abuse of power includes but is not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest.

²⁸⁴ Physical abuse includes, but is not limited to, the excessive or unreasonable use of force.

²⁸⁵ As described in subdivision (b) of Penal Code section 832.7, and shall extend to acts committed amongst member of any law enforcement agency.

²⁸⁶ In December 2023, POST published notice of a proposed amendment to POST Regulation 1205 that would expand the definition of “demonstrating bias” to clarify what POST considers a demonstration of bias. See Notice of Proposed Regulatory Action – Amend Commission Regulation 1205 – Definitions Related to Serious Misconduct, No. 2-23-70, https://post.ca.gov/Portals/0/post_docs/bulletin/2023-70.pdf; Text of Proposed Regulatory Action: Amend Commission Regulation 1205, https://post.ca.gov/Portals/0/post_docs/regulationnotices/2023/2023-70_TPRA_Reg1205.pdf.

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Demonstrating bias is applicable to RIPA’s goal of eliminating racial and identity profiling. An officer is “demonstrating” bias when the officer either shows or displays, by words, actions or other conduct, prejudice, intolerance, contempt, or hatred towards one or more persons due to that person’s perceived membership within a class of persons identified in Penal Code section 13510.8, subdivision (b)(5), when such words, actions, or other conduct would lead a reasonable person to conclude that the officer has not fairly and impartially performed, or will not fairly and impartially perform, their law enforcement duties.²⁸⁷

B. Initiating the SB 2 Decertification Process

1. Reporting and Agency Investigation of Serious Misconduct

Serious misconduct by a peace officer can be reported to POST through a variety of means, including mandatory reporting by law enforcement agencies and by complaints from the public.

2. Reporting by Law Enforcement Agencies

Each law enforcement agency is required to investigate internally any allegations of serious misconduct by a peace officer, regardless of the officer’s employment status.²⁸⁸ Any agency employing peace officers must also report any serious misconduct allegations and findings of internal investigations of serious misconduct to POST within 10 days of receiving the allegation and within 10 days of the final dispositions of any investigation that determines a peace officer engaged in conduct that could render the officer subject to suspension or revocation.²⁸⁹ Any allegations of serious misconduct have to be reported by the agency to POST for review, regardless of the investigative outcome.²⁹⁰ This means law enforcement agencies have to submit exonerated, sustained, not sustained, and unfounded cases to POST for review as an oversight of the agency investigation. POSAD investigators examine the thoroughness of the agency’s investigation and independently determine if the officer committed serious misconduct. The agency must make available for inspection or duplication by POST any investigation into any complaint, charges, or allegations of serious misconduct by a peace officer reported to POST, including any physical or documentary evidence, witness statements, analysis, and conclusions.²⁹¹

²⁸⁷ Cal Code Regs., tit. 11, § 1205, subd. (a)(5).

²⁸⁸ Pen. Code § 13510.8, subd. (c)(1).

²⁸⁹ Pen. Code § 13510.9; Cal. Code Regs. tit. 11, § 1207; see also POST, Senate Bill No. 2 – Frequently Asked Questions, <<https://post.ca.gov/SB-2-FAQs>> [as of XX, 2024].

²⁹⁰ See SB 2 Informational Video, Session #3 <https://www.youtube.com/watch?v=H2hNCB5AI74&list=PLVY_-7Z6jpM2hhwTtiNc7x00O_COSFsGw&index=3> [as of XX, 2024].

²⁹¹ Pen. Code § 13510.9, subd. (c).

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3. Public Complaints

Under SB 2, members of the public may also submit complaints against peace officers directly to POST.²⁹² Complaints may be submitted online using POST's Public Complaint Form,²⁹³ by email or mail, by phone, or in person at POST headquarters.²⁹⁴ Complaints may also be submitted anonymously.²⁹⁵

Any allegations of serious misconduct received directly by POST from the public are referred to the peace officer's employing agency for investigation. The agency will then forward any findings from the agency's investigation to POST for review.²⁹⁶ POST will review the agency's findings to determine if the officer's conduct warrants decertification.²⁹⁷

POST can only conduct investigations into allegations of serious misconduct that could lead to decertification of a California peace officer. POST does not have the authority to conduct criminal or administrative investigations, which may lead to agency discipline.²⁹⁸ Allegations that a California peace officer has committed a crime, which are not resolved by the local law enforcement agency, should be reported to the district attorney in the county where the law enforcement agency is located or to California DOJ.²⁹⁹

4. Immediate Temporary Suspensions

Penal Code section 13510.8, subdivision (d) requires the executive director of POST to immediately suspend the certificate or proof of eligibility held by a peace officer when the executive director determines that the temporary suspension is in the best interest of the health, safety, or welfare of the public and any of the following occurs:

- 1) A peace officer is arrested or indicted for any crime described in Government Code section 1029; or

²⁹² POST accepts complaints from members of the public against California peace officers appointed pursuant to Penal Code sections 830.1, 830.2 (with the exception of subdivision (d)), 830.3, 830.32, or 830.33 (Pen. Code § 13510.1, subd. (a).) See also POST, Public Complaints, <<https://post.ca.gov/public-complaints>> [as of XX, 2024].

²⁹³ POST, Public Complaint Form, <<https://post.ca.gov/public-complaint-form>> [as of XX, 2024].

²⁹⁴ Cal. Code Regs. tit. 11, § 1206.

²⁹⁵ See POST Complaint Form, <https://post.ca.gov/public-complaint-form> [as of XX, 2024].

²⁹⁶ POST, Senate Bill No. 2 – Frequently Asked Questions, <<https://post.ca.gov/SB-2-FAQs>> [as of XX, 2024].

²⁹⁷ See POST, Senate Bill No. 2 – Frequently Asked Questions, <<https://post.ca.gov/SB-2-FAQs>> [as of XX, 2024].

²⁹⁸ POST, Public Complaints, <<https://post.ca.gov/public-complaints>> [as of XX, 2024].

²⁹⁹ POST, Public Complaints, <<https://post.ca.gov/public-complaints>> [as of XX, 2024].

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- 2) A peace officer is discharged from any law enforcement agency for grounds set forth in Penal Code section 13510.8, subdivision (a)³⁰⁰, or
- 3) A peace officer has separated from employment as a peace officer during a pending investigation into allegations of serious misconduct.³⁰¹

The temporary suspension remains in effect until POST issues its final decision or until the executive director withdraws the order.³⁰² An individual may not exercise the powers of a peace officer during any period during which their certification is temporarily suspended.³⁰³

Following an Order of Immediate Temporary Suspension, POSAD must notify the involved peace officer and the head of the agency in writing and specify the basis for the executive director's determination.³⁰⁴ The notice must also advise the peace officer that they have the right to respond to the executive director in writing within 14 calendar days if the officer believes that the immediate suspension order should be withdrawn.³⁰⁵ Upon the receipt of a response, the executive director will consider the facts, evidence and argument in the response, and must withdraw the immediate temporary suspension if it is determined that continuing the suspension is no longer in the best interest of the health, safety, or welfare of the public.³⁰⁶ If the executive director does not issue an order of withdrawal within 15 calendar days of the date of service of the officer's response, the response will be deemed denied.³⁰⁷

5. POSAD Review and Investigation

Once POST receives the results of the law enforcement agency's internal investigation of serious misconduct, POSAD must promptly review any grounds for decertification received from the

³⁰⁰ Under Penal Code section 13510.8, subdivision (a), a peace officer's certification may be revoked if the person has become ineligible to hold office as a peace officer pursuant to Government Code section 1029; a peace officer's certification may be suspended or revoked if the officer has been terminated for cause from employment as a peace officer or has otherwise engaged in serious misconduct; and a peace officer's certificate or proof of eligibility may be canceled if POST determines that there was fraud or misrepresentation made by an application during the application process that resulted in a certificate being issued.

³⁰¹ Pen. Code § 13510.8, subd. (d); see also POST, *Information and Options for the Peace Officer: The Immediate Temporary Suspension (ITS) Process*, <https://post.ca.gov/portals/0/post_docs/resources/sb2/Immediate_Temporary_Suspension.pdf> [as of XX, 2024].

³⁰² Pen. Code § 13510.8, subd. (d).

³⁰³ POST, *Information and Options for the Peace Officer: The Immediate Temporary Suspension (ITS) Process*, <https://post.ca.gov/portals/0/post_docs/resources/sb2/Immediate_Temporary_Suspension.pdf> [as of XX, 2024].

³⁰⁴ Cal. Code Regs. tit. 11, § 1208, subd. (a).

³⁰⁵ The officer's response must be served upon POST within 14 calendar days of the date of the mailing of the Order of Immediate Temporary Suspension, either by personal delivery on POST headquarters, or by mail, postmarked no later than 14 calendar days of the date of mailing of the order to the peace officer. (Cal. Code Reg. tit. 11, § 1208, subd. (a)(1)(A).)

³⁰⁶ Cal. Code Regs. tit. 11, § 1208, subd. (a)(1)(B).

³⁰⁷ Cal. Code Regs. tit. 11, § 1208, subd. (a)(1)(B).

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agency.³⁰⁸ POSAD has the authority to review any agency or other investigative authority file, as well as conduct further investigation as needed to determine whether serious misconduct has occurred. POSAD only has the authority to review and investigate allegations for purposes of decertification. POSAD is required to complete the investigation within three years after the receipt of the completed report of the disciplinary or internal affairs investigation from the employing agency.³⁰⁹ No time limit applies, however, if a report of the conduct was not made to POST.³¹⁰

During its investigation, POST must consider the peace officer's prior conduct and service record, and any instances of misconduct, including any incidents occurring beyond the time limitation for investigation in evaluating whether to revoke certification for the incident under investigation.³¹¹ An investigation by POSAD is considered complete once POSAD issues notice to the peace officer of its intent to deny, suspend, or revoke certification.³¹² The time limit for POSAD's investigation is tolled during the appeal of a termination or other disciplinary action through an administrative or judicial proceeding or during any criminal prosecution of a peace officer.³¹³

If POSAD finds reasonable grounds for the denial, revocation, or suspension of a peace officer's certification, POSAD must take appropriate steps to promptly notify the peace officer in writing of its determination, the reasons for its determination, provide a detailed explanation of the decertification procedure, and provide notice of the officer's rights to contest and appeal.³¹⁴

Within 30 days of receiving notice from POSAD, the officer may file a request for review of the determination by the Accountability Board and POST.³¹⁵ If the peace officer files a timely request for review, the Accountability Board will schedule the case for a hearing. If the peace officer does not file a timely request for review, the officer's certification will be suspended or revoked without further proceedings.³¹⁶

³⁰⁸ Pen. Code § 13510.8, subd. (c)(2).

³⁰⁹ Pen. Code § 13510.8, subd. (c)(5).

³¹⁰ Pen. Code § 13510.8, subd. (c)(5).

³¹¹ Pen. Code § 13510.8, subd. (c)(5).

³¹² Pen. Code § 13510.8, subd. (c)(5).

³¹³ Pen. Code § 13510.8, subd. (c)(5).

³¹⁴ Pen. Code § 13510.85, subd. (a)(1). POST has issued a guide that is intended to serve that purpose. See POST, *Guide to Peace Officer Decertification Proceedings and Officer Rights to Contest and Appeal* (Aug. 2023) <https://post.ca.gov/portals/0/post_docs/resources/sb2/Guide_to_Decertification.pdf> [as of XX, 2024].

³¹⁵ Pen. Code § 13510.85(a)(2); Cal. Code Regs. § 1209. The request for review must be received by POST or postmarked within 30 calendar days of the date of mailing of the notice of intent to suspend or revoke the officer's certification. (Cal. Code Regs. § 1209, subd. (b); POST, *Guide to Decertification* at p. 6, <https://post.ca.gov/portals/0/post_docs/resources/sb2/Guide_to_Decertification.pdf>[as of XX, 2024].)

³¹⁶ Pen. Code § 13510.85, subd. (a)(2).

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Instead of appealing the decision, the officer can voluntarily surrender their certification.³¹⁷ The case will be administratively closed without further legal proceedings, and the person would be permanently ineligible for employment as a peace officer in California. Voluntary permanent surrender of certification will have the same effect as revocation, meaning that the certification cannot be reactivated.³¹⁸

6. Accountability Board Hearing

If the peace officer appeals POSAD's determination, POST will schedule a public hearing before the Accountability Board.

During the hearing before the Accountability Board, POSAD will present its findings to the Accountability Board.³¹⁹ Following the conclusion of POSAD's presentation and any public comments related to the case, the Accountability Board will make a recommendation to POST by majority vote on what action should be taken on the certification of the peace officer involved. The Accountability Board may only recommend revocation if the factual basis for revocation is established by clear and convincing evidence.³²⁰ If the Accountability Board determines that the facts and circumstances revealed by the investigation warrant a sanction other than revocation, it may recommend that a peace officer's certification be suspended for a period of time.³²¹ The Accountability Board must issue a written decision explaining its reasons for decertification or suspension.

7. Review by POST

Following the hearing by the Accountability Board, POST will review all recommendations made by the Accountability Board regarding the peace officer's certification. POSAD will also present its findings, including any information added to the record during the Accountability Board's hearing and recommendation, to POST.³²² Any decision by POST to adopt a recommendation by the Accountability Board to seek revocation requires a two-thirds vote of the POST commissioners present and must be based on whether the record, in its entirety, supports the Board's conclusion that serious misconduct has been established by clear and convincing evidence.³²³ If POST reaches a different determination than the Accountability Board's

³¹⁷ Cal. Code Regs., tit. 11, § 1209, subd. (c).

³¹⁸ POST, *Guide to Peace Officer Decertification*, at p. 6,

https://post.ca.gov/portals/0/post_docs/resources/sb2/Guide_to_Decertification.pdf [as of XX, 2024].

³¹⁹ Pen. Code § 13510.85, subd. (a)(4); Cal Code Regs. tit. 11, § 1209.

³²⁰ Pen. Code § 13510.85, subd. (a)(4).

³²¹ Pen. Code § 13510.85, subd. (a)(4).

³²² Cal. Code Regs., tit. 11, § 1209.

³²³ Pen. Code § 13510.85, subd. (a)(5).

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recommendation, POST must set forth its analysis and reasons for reaching a different determination in writing.³²⁴

These hearings do not result in a determination as to whether serious misconduct actually occurred and only serve as a mechanism by which the Accountability Board and POST can make a preliminary determination as to whether the case should be referred for a full evidentiary hearing.³²⁵ Thus, the officer is not allowed to present witness testimony, evidence, or argument.³²⁶ During these proceedings, the peace officer may be represented by counsel, but the officer and their counsel may only address the issue of the sufficiency of POSAD's findings during the public comment period.³²⁷

Following its review, if POST determines that action should be taken against the officer, it will return the matter to POSAD for further proceedings. POSAD will initiate proceedings for a formal hearing before an administrative law judge (ALJ) by filing an Accusation or Statement of Issues with the Office of Administrative Hearings (OAH) for a formal hearing before an administrative law judge.³²⁸ If POST, however, rejects the Accountability Board's recommendation to suspend or revoke a certification, no further action is taken unless additional investigation is requested.³²⁹

8. The Administrative Hearing Before OAH

The administrative hearing before OAH on an officer's certification is conducted by an ALJ in a public hearing.³³⁰ The hearing is similar to a civil court trial, however, in the administrative context. The officer may be represented by counsel and each party is given an opportunity to make an opening statement, call witnesses, and offer other relevant evidence. After all the

³²⁴ Pen. Code § 13510.85, subd. (a)(5).

³²⁵ POST, *Guide to Peace Officer Decertification* at p. 6, <https://post.ca.gov/portals/0/post_docs/resources/sb2/Guide_to_Decertification.pdf> [as of XX, 2024].

³²⁶ Cal. Code Regs. tit. 11, § 1209, subd. (e)(2)(A).

³²⁷ Cal Code Regs. tit. 11, § 1209, subd. (e)(2)(B).

³²⁸ POST, *Guide to Peace Officer Decertification* at p. 8, <https://post.ca.gov/portals/0/post_docs/resources/sb2/Guide_to_Decertification.pdf> [as of XX, 2024]. The hearing is held in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 1150) of part 1 of Division 3 of Title 2 of the Government Code, and is subject to judicial review. (Pen. Code § 13510.85, subd. (a)(6).)

³²⁹ POST, *Peace Officer Decertification Workflow*

<https://post.ca.gov/portals/0/post_docs/resources/sb2/Peace_Officer_Decertification_Workflow.pdf>

³³⁰ Any records introduced during the hearings of the Board and the ALJ and the review by POST are public. These public records may, in the discretion of POSAD, be redacted for the reasons set forth in Penal Code section 832.7, subdivision (b)(6) and (7). This subdivision does not preclude the Accountability Board or POST, or both, from reviewing the unredacted versions of these records in closed session and using them as the basis for any action taken. (Pen. Code § 13510.85, subd. (b).)

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evidence is submitted, the parties may make closing arguments, orally or in writing. In most cases, the ALJ prepares a detailed written decision within 30 days.³³¹

The proposed decision by the ALJ may be adopted by POST as its final decision, or POST may take other action following receipt of the ALJ's proposed decision. Thirty days after it receives the ALJ's proposed decision, POST must file a copy of the proposed decision as a public record and serve a copy on each party and their attorney.³³² POST's act of filing and serving the proposed decision is not deemed an adoption of ALJ's decision.

9. POST's Certification Decision

Within 100 days of receipt of the ALJ's proposed decision, POST may take one of the following actions:

- 1) Adopt the ALJ's proposed decision in its entirety.
- 2) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.
- 3) Make technical or other minor changes in the proposed decision and adopt it as the decision.³³³
- 4) Reject the proposed decision and refer the case to the same ALJ if reasonable available, otherwise to another ALJ, to take additional evidence.³³⁴
- 5) Reject the proposed decision, and decided the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties, the agency may decide the case upon the record without including the transcript. If the agency takes this action, all of the following apply:
 - a. A copy of the record must be made available to the parties. The agency may require payment of fees covering direct costs of making the copy.
 - b. The agency itself may not decide any case without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself, no agency member may vote unless the member heard the additional oral evidence.

³³¹ OAH, About the Office of Administrative Hearings: About OAH: Hearings, <<https://www.dgs.ca.gov/OAH/About>> [as of XX, 2024]; POST, *Guide to Peace Officer Decertification* at p. 8, https://post.ca.gov/portals/0/post_docs/resources/sb2/Guide_to_Decertification.pdf>.

³³² Gov. Code § 11517, subd. (c)(1). ALJs preside over hearings in a manner similar to civil court trials unless local agency rules provide otherwise.

³³³ Action by the agency is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.

³³⁴ If the case is referred to an ALJ, the ALJ must prepare a revised proposed decision, based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the revised proposed decision must be provided to each party and their attorney.

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- c. The authority of the agency itself to decide the case includes authority to decide some but not all issues in the case.
- d. If the agency elects to take this action, the agency must issue its final decision not later than 100 days after rejection of the proposed decision. If the agency elects to take this action and has ordered a transcript of the proceedings before the ALJ, the agency must issue its final decision not later than 100 days after receipt of the transcript. If the agency finds that further delay is required by special circumstance, it must issue an order delaying the decision for no more than 30 days and specifying the reasons therefor. The order is subject to judicial review pursuant to Government Code section 11523.³³⁵

If POST fails to take one of the above actions, within 100 days of receipt of the ALJ's proposed decision, the ALJ's proposed decision will be deemed adopted by the agency.³³⁶ POST must file its decision immediately as a public record and serve a copy on each party and their attorney.³³⁷

POST's decision will be considered final 30 days after the date of service of the decision upon the involved peace officer or their legal representative.³³⁸ POST must publish the names of any peace officer whose certification is suspended or revoked and the basis for the suspension or revocation on the POST website.³³⁹ POST must also notify the National Decertification Index of the International Association of Directors of Law Enforcement Standards and Training of the suspension or revocation.³⁴⁰

Records of an investigation of any person by POST must be retained for 30 years following the date that the investigation is deemed concluded by POST. POST may destroy records before the expiration of the 30-year retention period if the subject is deceased and no action upon the complaint was taken by POST beyond POST's initial intake of the complaint.³⁴¹

³³⁵ Gov. Code § 11517, subd. (c)(2)(A) - (E).

³³⁶ Gov. Code § 11518, subd. (c)(2).

³³⁷ Gov. Code § 11517, subd. (d).

³³⁸ A copy of the written decision must be provided to (1) the Accountability Board, (2) POSAD, (3) the involved peace officer or designated representative, and (4) the head of the agency that employs or employed the involved peace officer. Cal. Code Regs., tit. § 1212, subd. (c)(3).

³³⁹ Cal. Code Regs., tit. 11, § 1212, subd. (d). The list of officers whose certification is suspended or revoked and the basis for the suspension or revocation is available at <https://post.ca.gov/Peace-Officer-Certification-Actions>.

³⁴⁰ Pen. Code § 13510.85, subd. (c); Cal. Code Regs. § 1212, subd. (d).

³⁴¹ Pen. Code § 13510.8, subd. (e).

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C. POST Certification Actions by the Numbers

1. Common Grounds for Certification Actions

According to POST’s online listing of certification actions, the most common ground for decertification related to serious misconduct is egregious or repeated acts that violate the law, followed by physical abuse or excessive force, sexual assault, dishonesty, demonstrating bias, abuse of power, and failure to cooperate.³⁴² As of March 14, 2024, there have been no SB 2 misconduct certification actions relating to participation in a law enforcement gang, or for failure to intercede when present and observing force that is clearly unnecessary.³⁴³ This stands in contrast to the allegations POST receives relating to serious misconduct, where 9,809 allegations of physical abuse or excessive force and 6,686 allegations of bias make up a majority of allegations.³⁴⁴

Basis ³⁴⁵	Allegations Received ³⁴⁶		Certification Actions ³⁴⁷	
	Number	Percent	Number	Percent
Physical Abuse/Excessive Force	9808	40.20%	28	21.21%
Demonstrating Bias	6686	27.40%	7	5.30%
Abuse of Power	2893	11.86%	4	3.03%
Dishonesty	1931	7.91%	9	6.82%
Acts that Violate the Law	1672	6.85%	66	50.00%
Sexual Assault	1029	4.22%	12	9.09%
Other Serious Misconduct	381	1.56%	6	4.55%

³⁴² See POST, *Peace Officer Certification Actions*, <<https://post.ca.gov/Peace-Officer-Certification-Actions>> [as of XX, 2024].

³⁴³ POST, *Peace Officer Certification Actions*, <<https://post.ca.gov/Peace-Officer-Certification-Actions>> [as of XX, 2024]

³⁴⁴ POST, *Penal Code § 13512 Annual Report 2023*, p. 11, <https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf> [as of XX, 2024].

³⁴⁵ The basis of the allegations and the certification actions may include multiple types of misconduct.

³⁴⁶ POST began receiving allegations on January 1, 2023, and this data is current to approximately April 2024. Of all the allegations received, 6,589, or 30 percent, concern conduct occurring on or after January 1, 2023, and 15,375, or 70 percent, concern conduct occurring between January 1, 2020 and January 1, 2023.

³⁴⁷ Certification actions began on January 1, 2023.

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2. SB 2 Top 10 Agencies

As of March 14, 2024, ten law enforcement agencies have had five or more SB 2 certification actions against an officer who was last employed by that agency. Generally, the most common type of serious misconduct is acts that violate the law.³⁴⁸ POST notes that 265, or 43% of California law enforcement agencies, have not submitted any misconduct reports to POST. However, only 23 of the 265 agencies have 50 or more sworn officers.³⁴⁹

Last Employing Agency	SB 2 Actions	Sworn Officers	Most Common Certification Action	Most Common Serious Misconduct
Los Angeles County SD	30	9185	13 Temporary Suspensions	8 Acts that Violate the law
California Highway Patrol	12	6651	8 Temporary Suspensions	7 Physical Assault/Excessive Force
Los Angeles PD	11	9226	5 Ineligible Pursuant to GC 1029	5 Acts that Violate the law
Torrance PD	8	180	8 Temporary Suspensions	5 Demonstrating Bias
Antioch PD	6	101	6 Temporary Suspensions	5 Acts that Violate the law
Alameda County SD	5	1062	4 Temporary Suspensions	3 Acts that Violate the law
Riverside County SD	5	1659	2 Temporary Suspensions & 2 Ineligible Pursuant to GC 1029	2 Acts that Violate the law
San Bernardino County SD	5	1875	3 Ineligible Pursuant to GC 1029	2 Acts that Violate the law
San Francisco PD	5	1942	4 Temporary Suspensions	4 Acts that Violate the law
Tulare County SO	5	502	3 Ineligible Pursuant to GC 1029	1 Sexual Assault

3. Temporary Suspensions

Currently, temporary suspensions make up around half of all certification actions. As of March 14, 2024, there are 78 temporary suspensions related to a pending criminal proceeding. They have been pending for an average of 224 days. Twenty-three temporary suspensions, which do not have a collateral criminal proceeding, have been pending for 260 days on average. Those proceedings are typically related to serious misconduct of a discharged or retired officer. As of March 14, 2024, only 14 temporary suspensions reached a final disposition. Of those 14, four temporary suspensions with related collateral criminal proceedings took an average of 153 days

³⁴⁸ POST, *Peace Officer Certification Actions*, <<https://post.ca.gov/Peace-Officer-Certification-Actions>> [as of XX, 2024].

³⁴⁹ POST, *Penal Code § 13512 Annual Report 2023*, p. 13, <https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf> [as of XX, 2024].

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to resolve. The other 10, the ones without collateral criminal proceedings, took an average of 181 days.³⁵⁰

D. Gaps in the Decertification Process

While SB 2 established a needed statewide process for decertification of officers who engage in serious misconduct, there are still some gaps in the decertification process.

If an officer chooses to voluntarily surrender their certification upon a finding of serious misconduct, an officer could still work as a peace officer in another state. The officer's surrender of their certificate, however, will be entered into the National Decertification Database administered by the International Association of directors of Law Enforcement Standards and Training and the POST website. The officer will also be prohibited from serving as a peace officer in the State of California.

III. CONCLUSION

[Content Under Development]

³⁵⁰ POST, *Peace Officer Certification Actions*, <<https://post.ca.gov/Peace-Officer-Certification-Actions>> [as of XX, 2024].

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AMENDMENTS TO RIPA REGULATIONS

[UNDER DEVELOPMENT]

RELEVANT LEGISLATION ENACTED IN 2024

[UNDER DEVELOPMENT]

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