

CIVILIAN COMPLAINTS

I. CIVILIAN COMPLAINT DATA

A. Overview of Civilian Complaint Data for RIPA Agencies

Each year the RIPA Report highlights trends and data related to complaints by citizens about law enforcement. This data is significant because it shows, on a micro level, trends within individual agencies by complaint type and, on a macro level, demonstrates differences in policies across agencies that may impact the complaint process. In 2023, 526 agencies subject to RIPA's stop data reporting requirements (hereafter RIPA agencies) submitted civilian complaint data. These agencies include municipal and district police departments, county sheriff's departments, the California Highway Patrol, and law enforcement agencies of the University of California, California State Universities, California Community Colleges, District Attorney Offices, as well as K-12 school district police departments.¹ The sections that follow examine only complaint data submitted by RIPA reporting agencies.

The 526 RIPA agencies reported 14,444 complaints across three categories: non-criminal, misdemeanor, and felony. The majority of complaints alleged non-criminal conduct (13,825, or 95.71%), followed by complaints alleging a misdemeanor offense (480, or 3.32%). Complaints alleging conduct that constitutes a felony were the least common (139, or 0.96%).

Roughly three-quarters of RIPA reporting agencies (409, or 77.78%) reported receiving one or more civilian complaint during 2023, while just under one-fourth of agencies did not receive any civilian complaints (117, or 22.24%). A total of 147 RIPA agencies reported receiving civilian complaints alleging racial or identity profiling (28.00% of all RIPA agencies or 35.94% of agencies receiving any complaints). These 147 agencies reported 1,405 complaints alleging racial or identity profiling.

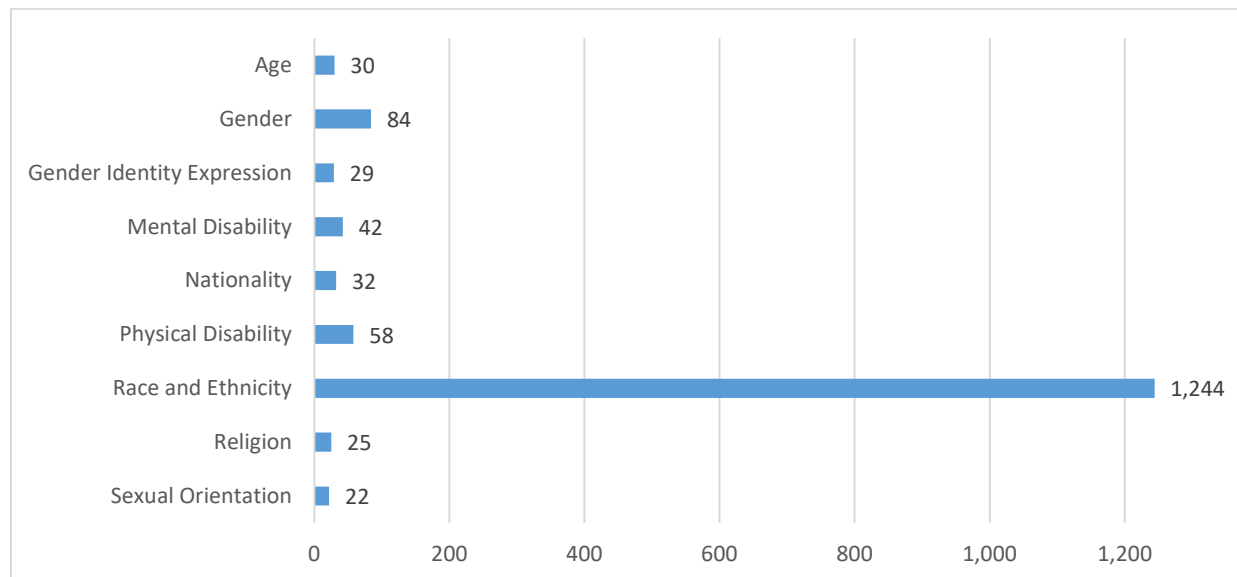
Law enforcement agencies are also required to submit data to the Department of Justice (DOJ) categorizing profiling complaint allegations into nine categories: age, physical disability, sexual orientation, race/ethnicity, mental disability, gender, religion, gender identity/expression, and nationality. RIPA agencies reported 1,405 complaints containing a total of 1,566 allegations with an element, or elements, of racial or identity profiling, constituting 9.73 percent of the total complaints reported in 2023.²

¹ For more information on the law enforcement agencies that are required to report under RIPA, see Cal. Code Regs. tit. 11, § 999.225 <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-final-text-110717.pdf> [as of XX, 2024]

² The total number of racial and identity profiling allegations reported to the DOJ (1,566) exceeds the total number of racial and identity profiling complaints (1,405) due to reported allegations of profiling based on multiple identity group characteristics. For example, a civilian may file a complaint alleging they experienced profiling based on both their age and nationality. This example would count as a single complaint with two types of alleged identity profiling.

Figure 1 displays the number of reported allegations that fell into each of the nine group types.

Figure 1. Total Allegations of Racial and Identity Profiling Reported in 2023



B. Dispositions of Civilian Complaints for RIPA Agencies

In addition to the number of complaints received, RIPA agencies must report the disposition (i.e., outcome) of those complaints to the DOJ. Complaint dispositions are categorized as: “Sustained,” meaning that the investigation disclosed sufficient evidence to prove the truth of the allegation in the complaint by a preponderance of evidence; “Exonerated,” meaning the investigation clearly established that the employee’s actions that formed the basis of the complaint were not a violation of law or policy; “Not Sustained,” meaning the investigation failed to disclose sufficient evidence to clearly prove or disprove the complaint’s allegation; and “Unfounded,” meaning the investigation clearly established that the allegation is not true.³

RIPA agencies reported 14,444 civilian complaints received in 2023. Agencies reported a total of 15,525 complaints that reached a disposition during the calendar year.⁴ Among the 15,525 complaints that reached a disposition in 2023, 1,069 were sustained (6.89%), 6,133 were exonerated (39.50%), 1,129 were not sustained (7.27%), and 7,194 were unfounded (46.34%).

A total of 1,240 racial or identity profiling complaints reached disposition in 2023.⁵ Of these, four were sustained (0.32%), 86 were exonerated (6.94%), 93 were not sustained (7.50%), and

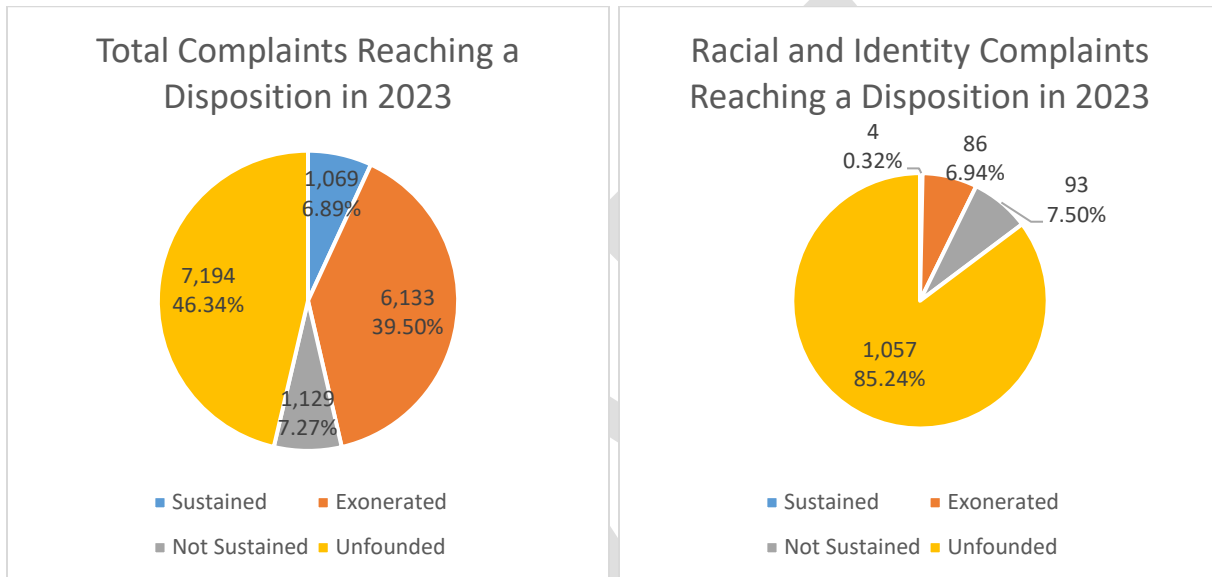
³ Pen. Code, § 13012, subd. (a)(5)(B).

⁴ It is important to note that not every complaint reached disposition during the same year it was initially reported; therefore, with more complaints reaching disposition in 2023 than were reported in 2023, at least some complaints that appeared in the 2023 disposition categories were first reported in 2022 or earlier.

⁵ See note 2.

1,057 were unfounded (85.24%).⁶ Figure 2 displays the distribution of disposition types within the 2023 data for (1) all complaints that reached disposition and (2) complaints of racial and identity profiling that reached disposition.⁷

Figure 2. Disposition Distribution of 2023 Complaints



C. Cross-Year Comparison

A cross-year comparison can aid in monitoring individual agencies from year to year and any policy changes in complaint procedures that may correlate with the changes. For example, radical differences in complaints from year to year should be looked at with particular caution to any connection to policy changes. Also, because complaint procedures are handled differently in each agency and there is not a uniform definition of civilian complaint, it is important to keep in mind when viewing these trends that high numbers of complaints may demonstrate a robust complaint review process, while others may be more indicative of an agency-wide problem.⁸ For these reasons, it is imperative to view this data in relation to policies at individual agencies.

RIPA Complaint Data by Waves

⁶ The 2024 RIPA Board Report analyses were based on racial and identity profiling complaints reported in 2022. For consistency with the accompanying complaint disposition analysis this report's analyses shifted to using racial and identity profiling complaints reaching disposition in 2023 as the denominator.

⁷ For an agency-level breakdown of how many profiling complaints reached each disposition type in 2023, see [Appendix Table X](#).

⁸ See XX of the report for a full discussion on the definition of civilian complaints.

To assist the large and diverse array of individual law enforcement agencies in California in implementing stop data requirements as smoothly as possible, AB 953 structured the collection and reporting of stop and complaint data on a rolling basis, using the number of officers each agency employed in setting the timeline for reporting.⁹ These groupings were informally termed “waves” due to the rolling nature of the data collection timeline.¹⁰ For this year’s report, the Board continues to report the RIPA complaint data using the wave designations.¹¹ This grouping allows for cross-year comparisons by agency size giving an opportunity to observe differences in policies and procedures that may have changed overtime. This also provides an opportunity to compare complaint data with agencies of similar sizes. The section below examines the data in these wave designations.

Figures 3 through 8 display the total number of complaints and the total number of complaints alleging racial and identity profiling submitted by all RIPA reporting agencies in Waves 1 through 3, across five years. Given that Wave 4 is over 400 agencies, aggregate cross-year comparisons are provided in the body of this section and the individual agency counts are provided in an appendix table.

1. Wave 1 Agency Complaints Reported (2019-2023)

In 2023, Wave 1 agencies reported 6,076 civilian complaints. This constituted a 33.42 percent increase relative to the total civilian complaints reported in 2022 (4,554), a 32.03 percent increase from 2021 (4,602), a 27.43 percent increase from 2020 (4,768), and 24.71 percent increase from 2019 (4,872).

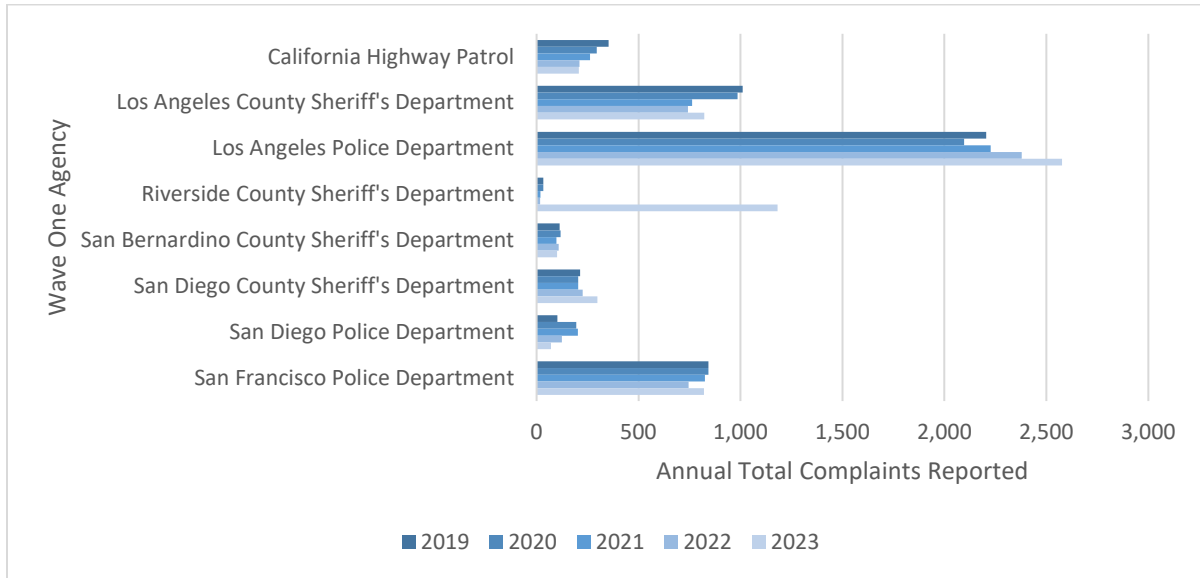
Three out of eight agencies experienced a decrease in the number of civilian complaints reported between 2022 and 2023. The agency that experienced the largest decrease was San Diego Police Department (43.55%, from 124 in 2022 to 70 in 2023), whereas the Riverside County Sheriff’s Department experienced the largest relative increase (6,847.06%, from 17 in 2022 to 1,181 in 2023).

⁹ Gov. Code § 12525.5, subd. (a)(2).

¹⁰ 2019 RIPA Report, p. 14; 2020 RIPA Report, p. 17.

¹¹ Agencies employing more than 1,000 peace officers (“Wave 1”) were first required to begin collecting data, followed by agencies employing 667 or more, but less than 1,000, peace officers (“Wave 2”), agencies employing 334 or more, but less than 667, peace officers (“Wave 3”), and agencies employing 1 or more, but less than 334, peace officers (“Wave 4”). (Cal. Gov. Code § 12525.5, subd. (a)(2); 2019 RIPA Report, p. 14; 2020 Report p. 18; 2021 RIPA Report, pp. 8, 22; 2022 RIPA Report, p. 27; 2023 RIPA Report, pp. 32, 173.) Some agencies assigned to Wave 4 began collecting data early. (See 2022 RIPA Report, pp. 13, 17, 147; 2023 RIPA Report, p. 32.)

Figure 3. Wave 1 Total Annual Complaints Reported 2019-2023

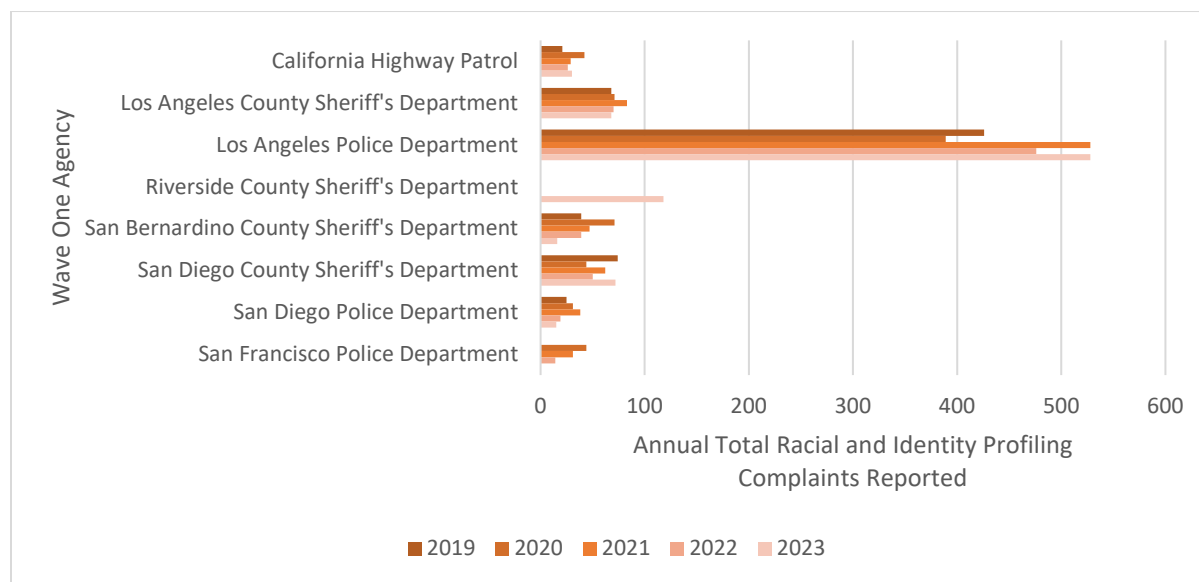


Wave 1 Total Racial and Identity Profiling Complaints (2019-2023)

Figure 4 displays the total number of racial and identity profiling complaints reported by Wave 1 agencies from 2019 to 2023. The total number of racial and identity profiling complaints reported was 847 in 2023, which is a 22.05 percent increase from 2022 (694), a 3.55 percent increase from 2021 (818), a 22.40 percent increase from 2020 (692), and a 29.71 percent increase from 2019 (653).

During the 2023 calendar year, half of Wave 1 agencies (4 out of 8) experienced a reduction in the number of racial and identity profiling complaints reported between 2022 and 2023. The San Francisco Police Department had the largest relative decrease (100.00%, from 14 in 2022 to 0 complaints in 2023), Whereas the Riverside County Sheriff's Department went from not reporting any racial and identity profiling complaints since 2018 to 118 reported in 2023.

Figure 4. Wave 1 Total Racial and Identity Profiling Complaints Reported



2. Wave 2 Agency Total Complaints Reported (2019-2023)

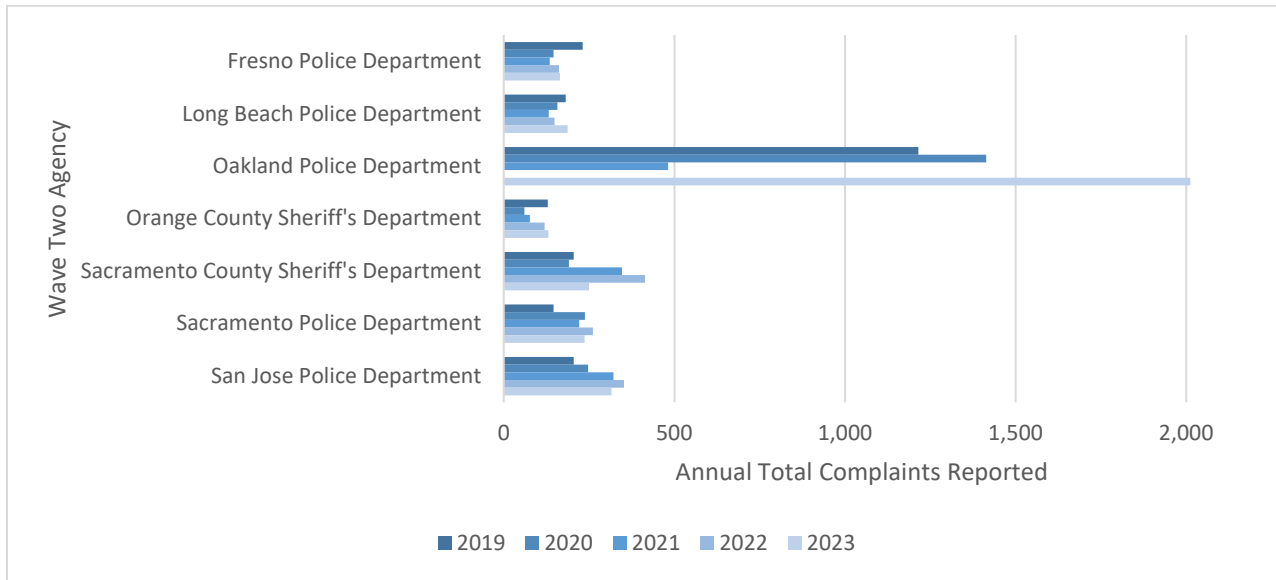
Wave 2 agencies reported 3,298 complaints in 2023, representing a 126.20 percent increase from 2022 (1,458), a 92.30 percent increase from 2021 (1,715), a 34.49 percent increase from 2020 (2,454), and a 42.59 percent increase from 2019 (2,313).

Half of Wave 2 agencies (3 out of 6)¹² experienced an increase in the total number of civilian complaints reported between 2022 and 2023. The agency with that experienced the largest relative increase was the Long Beach Police Department (25.50%, from 149 in 2022 to 187 in 2023). Sacramento County Sheriff's Department experienced the largest relative decrease (39.61%, from 414 in 2022 to 250 in 2023).

It is important to note that the Oakland Police Department was unable to report complaint data within the reporting timeframe for 2022 due to a ransomware attack. Since the 2022 complaint totals for Wave 2 agencies do not include Oakland PD, percent change is not directly comparable. In 2023, Oakland PD reported 2,012 total complaints, accounting for 61.02 percent of complaints for Wave 2 agencies. When excluding Oakland PD data to make 2022 and 2023 more comparable, Wave 2 agencies saw an 11.8 percent decrease from 1,458 complaints in 2022 to 1,286 in 2023.

¹² Oakland Police Department was unable to report civilian complaint data for 2022 within the reporting timeframe due to a ransomware attack.

Figure 5. Wave 2 Total Complaints Reported



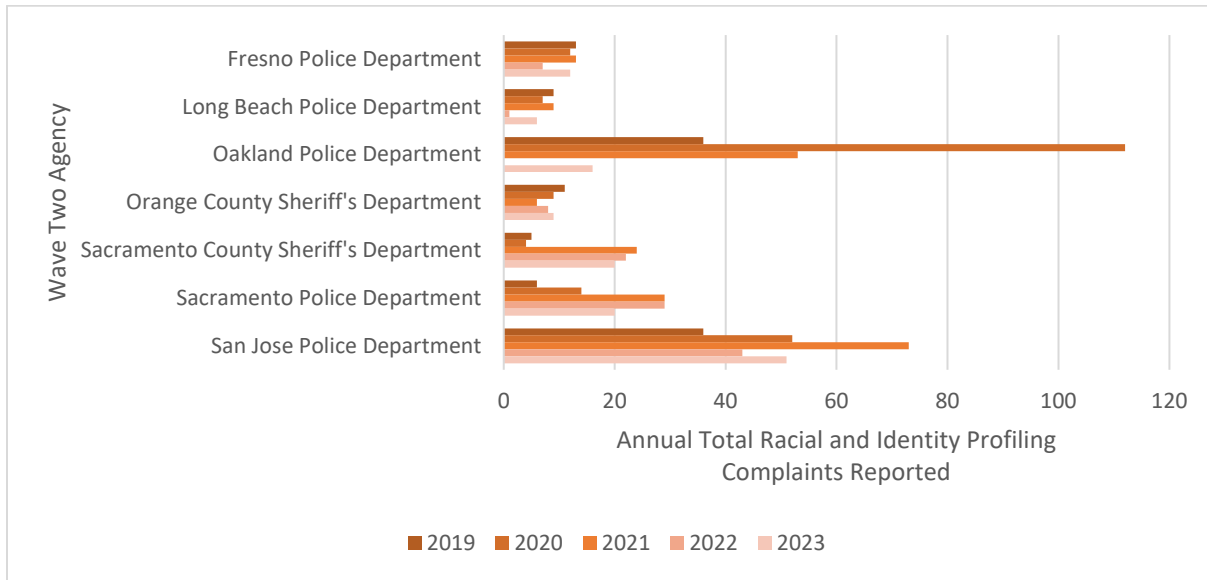
Wave 2 Racial and Identity Profiling Complaints (2019-2023)

Wave 2 agencies reported a 21.82 percent increase in racial and identity profiling complaints from 2022 to 2023 (from 110 in 2022 to 134 in 2023). This also marks a decrease in racial and identity profiling complaints relative to 2021 (down 35.27% from 207) and 2020 (down 36.19% from 210). However, 2023 is an increase from 2019 (up 15.52% from 116).

One third of Wave 2 (2 of 6)⁷ agencies reported a decrease in the number of racial and identity profiling complaints between 2022 to 2023. The Sacramento Police Department experienced the largest relative decrease (31.03%, from 29 in 2022 to 20 in 2023). The Long Beach Police Department experienced the largest relative increase (500.00%, from 1 in 2022 to 6 in 2023).

Oakland Police Department reported 16 racial and identity profiling complaints in 2023, 11.94 percent of Wave 2 complaints. To compare percent change for Wave 2 agencies with 2022, Wave 2 agencies excluding Oakland PD reported 118 racial and identity profiling complaints in 2023 for an increase of 8 complaints or 6.78 percent.

Figure 6. Wave 2 Total Racial and Identity Profiling Complaints Reported

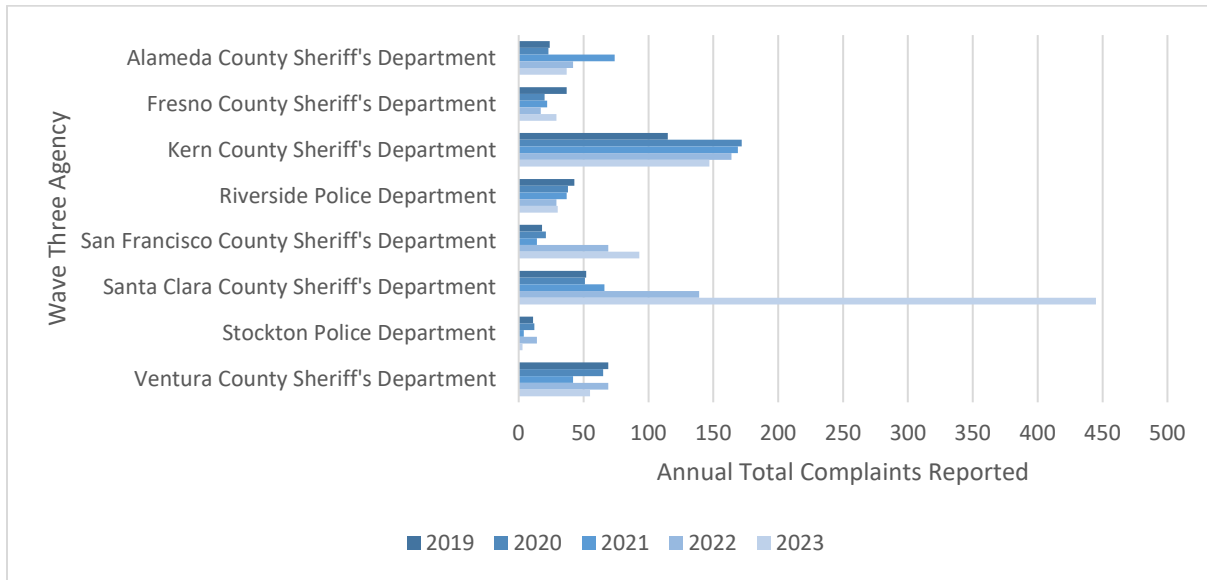


3. Wave 3 Total Complaints Reported (2019-2023)

Wave 3 agencies reported 839 complaints in 2023. This was a 54.51 percent increase from 2022 (543), a 96.03 percent increase from 2021 (428), a 108.71 percent increase from 2020 (402), and a 127.37 percent increase from 2019 (369).

Of the eight Wave 3 agencies, half (4 of 8) experienced a decrease in the total number of civilian complaints reported between 2022 and 2023 while the remaining four experienced an increase in total civilian complaints. The agency that experienced the largest decrease was the Stockton Police Department (78.57%, from 14 in 2022 to 3 in 2023). The Santa Clara County Sheriff's Department experienced the largest relative increase (220.14%, from 139 in 2022 to 445 in 2023).

Figure 7. Wave 3 Total Complaints Reported

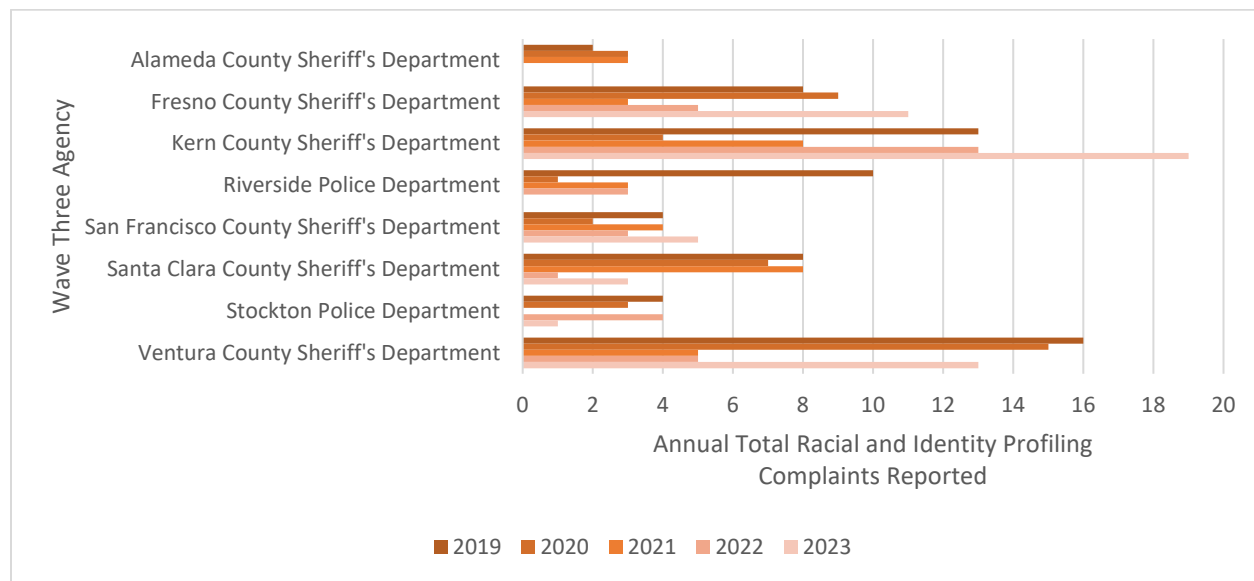


Wave 3 Racial and Identity Profiling Complaints (2019-2023)

Wave 3 agencies reported 52 racial and identity profiling complaints in 2023, a 52.94 percent increase over both 2022 and 2021 (both had 34 total racial and identity profiling complaints), an 18.18 percent increase from 2020 (44), and a 20.00 percent decrease from 2019 (65).

Over half (5 of 8) of Wave 3 agencies experienced an increase in racial and identity profiling complaints between 2022 and 2023, one agency (Alameda County Sheriff’s Department) had no change in profiling complaints with zero reported for both 2022 and 2023. The agency with the largest relative increase was Santa Clara County Sheriff’s Department (200.00%, from 1 in 2022 to 3 in 2023). Riverside Police Department reported a 100.00 percent decrease in racial and identity profiling complaints (from 3 in 2022 to 0 in 2023).

Figure 8. Wave 3 Total Racial and Identity Profiling Complaints Reported



4. Wave 4 Total Complaints Reported (2019-2023)

Wave 4 agencies reported 4,231 complaints in 2023. This was a 17.40 percent increase from 2022 (3,604), a 26.45 percent increase from 2021 (3,346), a 31.72 percent increase from 2020 (3,212), and a 17.95 percent increase from 2019 (3,587).¹³

Wave 4 Racial and Identity Profiling Complaints (2019-2023)

Wave 4 agencies reported a 5.82 percent decrease in racial and identity profiling complaints from 2022 to 2023 (from 395 in 2022 to 372 in 2023). This also constitutes a relative increase from the three preceding years preceding: a 1.09 percent increase from 2021 (368), and an 11.71 percent increase from both 2020 and 2019 (333).¹⁴

The Board will continue to monitor reporting agencies’ complaint data and recommend that agencies adopt policies that allow for a more robust and effective complaint process, including adopting a universal definition of civilian complaint. For more information on best practices and policies regarding complaints please see XX of the Report.

¹³ The number of Wave 4 agencies exceeds 400. Accordingly, complaint counts for all Wave 4 agencies cannot be displayed within a single graphic in the body of this report. Instead, the cross year total complaint and racial and identity complaint totals for individual agencies are contained within **Appendix Tables XX and XX**.

¹⁴ There were five Wave 4 agencies that did not report complaints data in 2022: Arvin Police Department, Irvine Valley College Police Department, Menifee Police Department, Rio Vista Police Department, and Tulelake Police Department. Rio Vista Police Department also did not report complaints data in 2023. The four agencies that did report complaints data in 2023 reported a total of 26 complaints (.61% of all Wave 4 complaints for 2023) and account for 4.15% of the increase in complaints from 2022 to 2023. These four agencies also reported one racial and identity profiling complaint in 2023 (.27% of racial and identity profiling complaints).

II. YOUTH AND CIVILIAN COMPLAINTS

California has over 8.7 million people under 18, the largest of any state.¹⁵ The Board has long recognized that California youth are particularly vulnerable to harm during police interactions.¹⁶ The RIPA data show that youth are vulnerable to the use of force during police interactions. For example, in 2023, officers reported pointing their firearms at 5,369 youths 24 and younger during stops. Many of those stops involved youth 15-17 (1,240 stops) and youth 12-14 (195 stops). Officers also discharged their firearms during stops involving youth with nine of those stops involving youth aged 15-17 and three stops involving youth aged 12-14. Youths perceived to have a disability experienced the use of force during stops at a higher rate than youths with no perceived disabilities across all age groups.

Studies show that it is critical to examine the developmental differences between youth and adults in the goal of reducing negative and unnecessary interactions between youth and law enforcement.¹⁷ As discussed previously, scientists concluded that the brain undergoes a rewiring process that is not complete until approximately 25 years of age, with some researchers viewing 10–24 years as adolescence.¹⁸ Adolescents have a tendency to process information during decision-making by gut-instinct reaction, as compared to the adult brain, which systematically checks impulsivity, and is able to reason through situations, and to rely on logic and experience to make decisions.¹⁹ Given these developmental realities, adolescent researchers recognize the

¹⁵ Statista (2024) Population aged under 18 years in the United States in 2021, by state <<https://www.statista.com/statistics/301928/us-population-under-18-by-state/#statisticContainer>>

¹⁶ 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-andvictimization-in-vulnerable-youth-by-elizabeth-trejos-castillo-angelina-lopoo-and-anamika-dwivedi-december2020>> [as of XX, 2024].

¹⁷ See, e.g., Racial and Identity Profiling Advisory Board *Annual Report* (2024) p. 122 <<https://oag.ca.gov/system/files/media/ripa-board-report-2024.pdf>> [as of XX, 2024].

¹⁸ Arrain et al., *Maturation of the Adolescent Brain* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3621648/>> [as of XX, 2024]

¹⁹ Human Rights Watch, *Thrown Away*. (Feb. 2005), pgs. 24-26 <<https://www.hrw.org/reports/2005/us0205/us0205.pdf>> (citing Elizabeth Scott, Laurence Steinberg, “Blaming Youth,” *Texas Law Review*, Vol. 81, p. 799, 2003); see also, Jeffrey Fagan, “Atkins, Adolescence and the Maturity Heuristic: Rationales for a Categorical Exemption for Juveniles from Capital Punishment,” *New Mexico Law Review*, Vol. 33, p. 207, 2003; Elkhonon Goldberg, *The Executive Brain: Frontal Lobes and the Civilized Mind* (New York: Oxford University Press, 2001), p. 434; Allan L. Reiss et al., “Brain Development, Gender and IQ in Children: A Volumetric Imaging Study,” *Brain*, Vol. 119, p. 1768, 1996; Elizabeth R. Sowell et al., “Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships During Postadolescent Brain Maturation,” *Journal of Neuroscience*, Vol. 21, p. 8821, 2001. One youth and policing expert observed that; “teens are the essential definition of immature – their brains have not completed forming, we’re lucky if it’s done by 25, and some of us are lucky to ever have it happen.” (Lisa Thureau, Executive Director at Strategies for Youth, RIPA Board Full Meeting Presentation - Youth Summit, (June 24, 2024).) Even the United States Supreme Court has reached the conclusion, recognizing that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them. (See *Roper*

importance of understanding the power dynamics of the encounters between police and youth in achieving the goals of reducing negative and harmful interactions, and increasing law enforcement transparency and accountability when harmful interactions occur.²⁰

With this year’s report, the Board remains vigilant in its focus on youth protection. One potential accountability measure that could be used more effectively to monitor the interactions between law enforcement and this vulnerable population is the civilian complaint process. Increased and improved access to the civilian complaint process for police misconduct enhances equitable and accountable policing for all, including youth.²¹ Further, with the enactment of SB 2, communities have an additional accountability tool to address police misconduct, especially misconduct directed at vulnerable youth.

Policy Recommendations:

The Board makes the following policy recommendations with the goals of monitoring civilian complaints filed by or on behalf of youth to allow more precise policymaking to address problematic police practices involving youth and to ensure that police officers who harm this vulnerable population are held accountable.

(1) Currently, RIPA complaint data does not include data specifying whether a complainant is a youth. Tracking that data would provide another data point about the quality of interactions between youth and law enforcement. It would also allow more precise policymaking to address any concerning trends the data reveals. The Board recommends that the Legislature amend Penal Code 13012 to require law enforcement agencies to report the number of civilian complaints reported by youth disaggregated by youth who are 17 and younger and youth who are 18 to 24.²² This reporting requirement would include complaints filed by a third party on behalf of someone 24 or younger.

v. *Simmons* (2005) 543 U.S. 551, 569 [youth “are more vulnerable or susceptible to ... outside pressures” than adults].)

²⁰ Geller and Fagan, *Police Contact and the Legal Socialization of Urban Teens* (2019) 5(1) *The Russell Sage Foundation J. of the Social Sciences*. 27, <<https://www.rsjournal.org/content/5/1/26>> [as of XX, 2024] (citing *Fragile Families and Child Wellbeing Study* (2020) Princeton U. [as of XX, 2024]).

²¹ For example, an analysis of data for six large police departments that provided detailed demographic information on use-of-force incidents, found nearly 4,000 youngsters 17 and under experienced police violence from 2015 through 2020. Almost 800 of the children and teens — roughly a fifth of the total — were Black girls. White girls were involved in about 120 cases, representing only 3 percent of use-of-force incidents involving minors. (Li and Vansickle, *Police Hurt Thousands of Teens Every Year. A Striking Number Are Black Girls*. The Marshall Project (November 2, 2021) <<https://www.themarshallproject.org/2021/11/02/police-hurt-thousands-of-teens-every-year-a-striking-number-are-black-girls>> [as of XX, 2024].)

²² As noted previously at page ____, the Board broadly defines “youth” as inclusive of “transition age youth,” which the federal government defines as persons between 16 and 24 years of age. (Interagency Working Group on Youth Programs, *Transition & Aging Out* (2022) Youth.gov. <https://youth.gov/youth-topics/transition-age-youth> [as of XX, 2024].)

The Board also recommends that municipalities and law enforcement agencies modify their complaint forms to include a drop-down box to record if the complainant is 17 and younger or 18 to 24 years old.

The Board further recommends that POST modify the complaint form used to file complaints under SB 2 to allow the complainant to indicate whether the allegation arises from an incident involving a person 17 and younger or between the ages of 18 and 24.

(2) The Board recommends that the Legislature amend Penal Code section 13510.8 to require consideration of the complainant’s age in determining if a peace officer’s conduct rises to the level of serious misconduct, warranting decertification.

Relatedly, the Board recommends that the POST Commission amend Regulation 1205 to require consideration of the complainant’s age in determining if a peace officer’s conduct rises to the level of serious misconduct that warrants decertification.

III. RENEWED RECOMMENDATIONS AND FOLLOW-UP ON IMPLEMENTATION

A. Adopt Uniform Definition of “Civilian Complaints”

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

Despite the Board’s prior recommendation, in California, there is still no standard definition of “civilian complaint.”²³ California law does not define the term, nor is there a professional or industry-wide standard on what constitutes a “civilian complaint.”²⁴ As a result, law enforcement agencies decide on an agency-by-agency basis what counts as a “civilian complaint,” leading to imbalances and variability in officer accountability across the state.

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 triggers no accountability process. However, another agency could treat same allegation as an event that prompts an internal affairs investigation. Further, variances in the definition and treatment of civilian complaints could also trigger discrepancies in agency reporting of RIPA data, leading some to underreport events that other law enforcement agencies reasonably interpret as complaints.

²³ 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.

²⁴ 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).

This variation in the definition of civilian complaints, coupled with the wide discretion law enforcement agencies have to define the term, results in data collection efforts that are less consistent, producing less reliable data to inform policymaking around the issue of accountability. And, on a more immediate level, where a person’s ability to successfully file a complaint depends on their local police agency’s definition of “complaint,” differences in the definition of “civilian complaint” can also lead to inconsistencies in the public’s ability to access the complaint process.

This lack of consistency, and arguably the lack of accountability, 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.” The specific definition the Board has offered aims not only at providing consistency in complaint procedures across California but also encourage greater accountability:

(1) Complaint means either of the following:

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

(B) disagreement solely with the policies, procedures, or services of the department or agency 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.²⁵

California has yet to adopt the Board’s recommendation or a standard definition of civilian complaint.

B. Remove Deterrent Language from Complaint Forms

1. Basis for Board’s Initial Recommendation

In past reports, the Board has expressed concern that certain language found in civilian complaint forms could deter members of the public from filing complaints.²⁶ Specifically, the Board cautions that complaint forms that require a complainant to sign a written statement acknowledging that an individual may face criminal liability for filing a false complaint could discourage community members from submitting valid complaints.²⁷ For instance, an individual

²⁵ Racial and Identity Profiling Advisory Board, *Annual Report* (2022 Report) p. 229; Racial and Identity Profiling Advisory Board, *Annual Report* (2023 Report), p. 179; Racial and Identity Profiling Advisory Board, *Annual Report* (2024 Report) pp. 195-196.

²⁶ See Racial and Identity Profiling Advisory Board, *Annual Report* (2018 Report) p. __; Racial and Identity Profiling Advisory Board, *Annual Report* (2020 Report) pp. 73-75.

²⁷ Penal Code section 148.6 provides that a law enforcement agency accepting an allegation of misconduct against a peace officer 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

who would prefer to remain anonymous may choose not to file a valid complaint if they are required to sign an acknowledgment. Individuals may also hesitate to file a complaint if there is a risk they could face prosecution for filing it. They may also have reasonable concerns that filing a complaint with the same entity that caused the harm could lead to further victimization. An individual may be hesitant or unwilling to file a complaint alleging what they truthfully believed occurred if there is no known corroborating evidence and there is a risk their allegation could be deemed false, especially in cases where resolving the matter turns on their credibility versus the officer's credibility. This is often the case in matters that depend on an individual's subjective intent such as racial profiling.²⁸

The Board is concerned the advisory language in section 148.6, warning against filing a false complaint, could have a chilling effect on members of the public seeking to file a complaint, especially since there are no statutory limitations on what types of "false" allegations that could result in prosecution (e.g., whether the inclusion of a single, inaccurate allegation that is not material to the claim of misconduct is enough for prosecution). The Board is also concerned that requiring an individual to sign an acknowledgement, in turn requiring a complainant to reveal their identity even if they wish to remain anonymous, could deter members of the public from submitting valid complaints.

Despite these valid concerns, deterrent language remains in many California civilian complaint forms. In its inaugural 2018 Report, the Board reviewed civilian complaint forms of 85 agencies and found that many included the Penal Code section 148.6 advisory language.²⁹ The Board more closely examined complaint forms of the 15 largest California law enforcement agencies in its 2020 and 2021 Reports and found that a slight majority did not include the advisory in their complaint forms, however the advisory was present in 7 agencies' complaint forms.³⁰

As of 2024, a survey of the 15 largest law enforcement agencies in California shows that 5 agencies still include potentially deterrent language, referencing the Penal Code section 148.6 advisory and/or the possibility of legal action for filing a false complaint, on their civilian complaint forms.³¹ Four agencies (Riverside County Sheriff, Sacramento County Sheriff, San Bernardino County Sheriff, San Diego Police Department, and San Diego County Sheriff) have continued to include potentially deterrent language on their complaint forms, and one agency (San Diego Police Department) has added this language to their civilian complaint form since the Board's initial review of their complaint form in 2020. Three agencies (Fresno Police Department, Orange County Sheriff's Department, and San Jose Police Department) have

AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE." (Cal. Pen. Code § 148.6, subd. (a)(2).)

²⁸ Please see Complaint data at p. [redacted] indicating that only 4 out of 1,240 complaints alleging racial or identity profiling that reached a disposition in 2023 were sustained. The remaining profiling complaints that reached a disposition in 2023 were deemed "exonerated," "not sustained," or "unfounded."

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

³⁰ Racial and Identity Profiling Advisory Board, *Annual Report* (2020 Report) pp. 74, 87-90; see Racial and Identity Profiling Advisory Board, *Annual Report* (2021 Report) pp. 129-134; Racial and Identity Profiling Advisory Board, *Annual Report* (2022 Report) pp. 211-226.

³¹ [Cite to Appendix for 2024 Survey of Wave 1 & 2 agencies]

removed deterrent language from their civilian complaint forms since the Board initially reviewed their complaint forms in 2021.

DETERRENT LANGUAGE ON CIVILIAN COMPLAINT FORMS

| Agency | 2020/2021³² | 2024 |
|-------------------------------|-------------------------------|-------------|
| California Highway Patrol | No | No |
| Fresno Police Department | Yes | No |
| Los Angeles Police Dept. | No | No |
| Los Angeles County Sheriff | No | No |
| Long Beach Police Dept. | No | No |
| Oakland Police Dept. | No | No |
| Orange County Sheriff | Yes | No |
| Riverside County Sheriff | Yes | Yes |
| Sacramento Police Dept. | No | No |
| Sacramento County Sheriff | Yes | Yes |
| San Bernardino County Sheriff | Yes | Yes |
| San Diego Police Dept. | No | Yes |
| San Diego County Sheriff | Yes | Yes |
| San Francisco Police Dept. | No | No |
| San Jose Police Dept. | Yes | No |

Given the continued inclusion of the advisory on many agencies’ complaint forms and the potential deterrence of anonymous complaints, the Board previously recommended that the Legislature amend Penal Code section 148.6 to eliminate the criminal sanctions for filing a false complaint and the requirement that a complaint must be signed and in writing.³³ Similarly, the Board has recommended, in each report since 2018, that agencies accept anonymous complaints.³⁴ With these recommendations the Board does not intend to increase the likelihood of frivolous or unwarranted complaints against officers, but rather to encourage more transparency and accountability. A complaint process that helps bring about more complete

³² Complaint forms of the eight largest law enforcement agencies in California (Wave 1) were completed in 2020, while the complaint forms of the next seven largest agencies (Wave 2) were completed in 2021.

³³ Racial and Identity Profiling Advisory Board, *Annual Report* (2020 Report) pp. 74-75; Racial and Identity Profiling Advisory Board, *Annual Report* (2022 Report) p. 232; Racial and Identity Profiling Advisory Board, *Annual Report* (2023 Report) pp. 182-183.

³⁴ Racial and Identity Profiling Advisory Board, *Annual Report* (2019 Report) p. 69; Racial and Identity Profiling Advisory Board, *Annual Report* (2020 Report) pp. 71, 74-75; Racial and Identity Profiling Advisory Board, *Annual Report* (2021 Report) pp. 89, 134; Racial and Identity Profiling Advisory Board, *Annual Report* (2022 Report) p. 231; Racial and Identity Profiling Advisory Board, *Annual Report* (2023 Report) pp. 180; Racial and Identity Profiling Advisory Board, *Annual Report* (2024 Report) p. 177.

information about an agency, its officers, and its policies and practices is in the interest of all stakeholders.

2. Recent Developments Regarding 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 the matter of *Los Angeles Police Protective League v. City of Los Angeles* (Cal. Case No. S275272), indicating a continuing need for legislative clarification and intervention.³⁵ This matter arose after the City of Los Angeles entered into a consent decree with the United States Department of Justice in 2001, which “prohibit[ed] officers from asking or requiring a potential complainant to sign any form that in any manner limits . . . the ability of a civilian to file a police complaint with the [Department] or any other entity” and required the City to accept anonymous complaints.³⁶ LAPD continued these practices after the consent decree expired in 2013.

During the consent decree period, however, California and federal courts reached differing conclusions regarding the enforceability of Penal Code section 148.6. Specifically, the California Supreme Court upheld the statute, while the Ninth Circuit Court of Appeals found it to be an impermissible content-based regulation of speech, in violation of the First Amendment.³⁷

In light of the California opinion upholding Penal Code section 148.6, the Los Angeles Police Protective League filed suit against the City of Los Angeles in 2017, seeking to enforce Penal Code section 148.6 so that complainants must read and sign the advisory statement in a complaint against an LAPD officer.³⁸ The matter is pending before the California Supreme Court, to consider whether: (1) the advisory requirement in Penal Code section 148.6, subdivision (a)(2) constitutes improper viewpoint discrimination in violation of the First Amendment; (2) the advisory requirement imposes an impermissible burden on complainants’ ability to file allegations of misconduct against peace officers; and (3) it is error to compel the City to comply with a statute that has been ruled unconstitutional by the Ninth Circuit Court of Appeals.³⁹

In light of the continued uncertainty regarding the enforceability of section 148.6, the Board reiterates its recommendation, that, pending a ruling in *Los Angeles Police Protective League*, law enforcement agencies accept complaints even when a complainant has not signed the

³⁵ Racial and Identity Profiling Advisory Board, *Annual Report* (2023 Report) pp. 182-83.

³⁶ *Los Angeles Police Protective League v. City of Los Angeles* (May 19, 2022) 78 Cal.App.5th 1081, 1089-90.

³⁷ 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.)

³⁸ *Los Angeles Police Protective League v. City of Los Angeles* (May 19, 2022) 78 Cal.App.5th 1081, 1090.

³⁹ *L.A. Police Protective League v. City of L.A.* (2022) 514 P.3d 892 (review granted).

advisory required by section 148.6.⁴⁰ The Board notes that this recommendation is consistent with the California Attorney General’s 1996 opinion finding, shortly after the enactment of Section 148.6, that law enforcement agencies can investigate allegations of police misconduct even when a complainant did not sign the Penal Code section 148.6 advisory.⁴¹ This recommendation is also consistent with Senate Bill 2, which allows POST to accept anonymous complaints and does not require complainants to identify themselves when attesting to the truthfulness of their allegations.⁴²

Lastly, the Board emphasizes that, if the California Supreme Court upholds section 148.6, legislative action will be necessary to resolve this conflict while also minimizing the potential 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 sought to address the Board’s past recommendations in part by seeking to ensure a “procedurally fair civil complaint process.”⁴³

In part, AB 2923 proposed amending Penal Code section 832.5 to define “civilian complaint.” Additionally, AB 2923 sought to amend Penal Code section 148.6 to add an intent requirement for false complaints, such that a complainant must knowingly and intentionally submit a false statement that is material to the complaint allegations 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 a fact that is not material to the allegation or is simply a mistake of fact.⁴⁴ However, “mistakes over minor details should not bring forth prosecution.”⁴⁵

The Board commends the Legislature for introducing legislation related to the Board’s concerns regarding the lack of a uniform “civilian complaint” definition and the inclusion of potentially deterrent language on civilian complaint forms. However, as no legislative amendments have passed, the Board again reiterates its past recommendations that the Legislature amend Penal Code sections 832.5 and 148.6 in accordance with the discussion above.

⁴⁰ Racial and Identity Profiling Advisory Board, *Annual Report* (2023 Report) p. 183; Racial and Identity Profiling Advisory Board, *Annual Report* (2020 Report) p. 74.

⁴¹ 79 Ops.Cal.Atty.Gen. 163 (1996) p. 3-5 (finding that, although Section 148.6 mandates that agencies require complainants to sign the advisory, it does not establish a penalty that would divest an agency of its jurisdiction to investigate a complaint if the advisory form is not signed).

⁴² See POST Complaint Form, <<https://post.ca.gov/public-complaint-form>> [as of XX, 2024] (indicating that the complainant’s name is not a required field, and only requiring the complainant to acknowledge that they have read the information on the Police Complaints Webpage and the information they alleged is “true and accurate”).

⁴³ Cal. Assem., Public Safety Com. Hearing (Apr. 2, 2024) <<https://www.assembly.ca.gov/media/assembly-public-safety-committee-20240402>> [as of XX, 2024].

⁴⁴ Cal. Assem., Public Safety Com. Hearing (Apr. 2, 2024) <<https://www.assembly.ca.gov/media/assembly-public-safety-committee-20240402>> [as of XX, 2024].

⁴⁵ Cal. Assem., Public Safety Com. Hearing (Apr. 2, 2024) <<https://www.assembly.ca.gov/media/assembly-public-safety-committee-20240402>> [as of XX, 2024].

III. APPLYING ROOT CAUSE ANALYSIS TO CIVILIAN COMPLAINTS

Last year, the Board urged law enforcement agencies to approach complaints as an opportunity to identify areas for improvement within their agency. To that end, the Board began exploring the underlying principles of root cause analysis and encouraged law enforcement agencies to incorporate those principles into their civilian complaint procedures.⁴⁶ Specifically, the Board explored when root cause analysis should be conducted, who should conduct it, and general considerations for how it should be conducted.⁴⁷ This year, the Board continues its exploration of root cause analysis, its application in other industries, and how its use in those industries could inform the application of root cause analysis in developing effective procedures for investigating civilian complaints. The Board hopes to continue this discussion, with input from law enforcement, experts, and members of the public, in future reports to develop specific recommendations on when and how to conduct root cause analysis of civilian complaints.

A. Key Principles of Root Cause Analysis

As discussed in the 2024 Report, root cause analysis is a problem-solving technique aimed at identifying the underlying causes of a negative or unwanted event and implementing changes to reduce the likelihood that a similar event will happen again.⁴⁸ It is usually a part of — or sometimes used interchangeably with — a “sentinel event review.”⁴⁹ The concept of root cause analysis derives from the idea that human errors are the product of multiple factors — both organizational and individual — none of which necessarily caused the unwanted outcome on its own.⁵⁰ Moreover, root cause analysis derives from the recognition that human errors are inevitable, therefore, it is more productive to address systems that contribute to or allow errors — such as staffing, time pressure, equipment failures, fatigue, and inexperience — than it is to address human factors, such as limitations on perception, cognition, or decision-making.⁵¹

⁴⁶ Racial and Identity Profiling Advisory Board, *Annual Report* (2024 Report) pp. 199-203.

⁴⁷ See Racial and Identity Profiling Advisory Board, *Annual Report* (2024 Report) pp. 201-203.

⁴⁸ See Racial and Identity Profiling Advisory Board, *Annual Report* (2024 Report) pp. 199-203; Hollway et al., *Root Cause Analysis: A Tool to Promote Officer Safety and Reduce Officer Involved Shootings Over Time (Root Cause Analysis)* (Dec. 15, 2017) p. 884, 903 <<https://www.law.upenn.edu/live/files/7459-hollway--villanova-rca-for-policing>> [as of XX, 2024].

⁴⁹ See Fagan & Campbell, *Race and Reasonableness in Police Killings* (May 2020) 100 *Boston U. L. Rev.* 951, 1006; Hollway, et al., *Root Cause Analysis: A Tool to Promote Officer Safety and Reduce Officer Involved Shootings Over Time* (Dec. 15, 2017) 62 *Vill. L. Rev.* 883, 889; Hollway and Grunwald, *Applying Sentinel Event Reviews to Policing* (2019) Faculty Scholarship at Penn Law. 2100, p. 1 (sentinel event reviews are a “voluntary, multi-stakeholder, non-punitive review of [] an undesired outcome”).

⁵⁰ See Agency for Healthcare Research and Quality (AHRQ) Patient Safety Network, *Root Cause Analysis* <<https://psnet.ahrq.gov/primer/root-cause-analysis>> [as of XX, 2024] (“A central tenant of root cause analysis is to identify underlying problems that increase the likelihood of errors while avoiding the trap of focusing on mistakes by individuals”).

⁵¹ See Schwartz, *Systems Failures in Policing* (2018) 51 *Suffolk U. L. Rev.* 535, 537, 541.

At its core, root cause analysis is a non-blaming process that allows organizations to learn from unwanted outcomes. It is an accountability measure without a punitive element. This means it should be separate from any administrative or disciplinary investigation process, so that participants will feel comfortable sharing information freely.⁵² Root cause analysis is also a proactive approach to addressing errors or unwanted outcomes, meaning a standard procedure and ground rules for root cause analysis should be decided before an unwanted outcome occurs.⁵³

While specific procedures for root cause analysis may vary from industry to industry,⁵⁴ and even from organization to organization, root cause analysis generally includes the following steps:⁵⁵

[Flowchart of RCA steps]

First, the problem under consideration must be clearly and specifically defined.⁵⁶ The team conducting the root cause analysis must reach an agreement about the specific problem or event under consideration (e.g., the event that happened, the resulting impact, and the scope, extent,

⁵² Fagan & Campbell, Race and Reasonableness in Police Killings (May 2020) 100 Boston U. L. Rev. 951, 1004 (“[Root cause analysis] models are not substitutes for accountability mechanisms but rather provide a constructive component with which officers can update and internalize alternatives available for future situations”); Aguirre, Beyond Bad Apples: Adopting Sentinel Event Reviews in Nevada’s Criminal Justice System (Spring 2018) 18 Nev. L.J. 1059, 1067 (sentinel event reviews do not replace liability procedures).

⁵³ See Agency for Healthcare Research and Quality (AHRQ) Patient Safety Network, Root Cause Analysis <<https://psnet.ahrq.gov/primer/root-cause-analysis>> [as of XX, 2024] (“RCAs should generally follow a prespecified protocol”). For the Board’s prior discussion of ground rules for root cause analysis, please see the 2024 RIPA Report, p. 200-203.

⁵⁴ Raper, et al., Using Root Cause Analysis to Study Prosecutorial Error: A Collaboration Between the Montgomery County (Pennsylvania) District Attorney’s Office and the Quattrone Center for the Fair Administration of Justice (2017) 62 Vill. L. Rev. Tolle Lege 13, 38 (“[T]he process of performing a [] [root cause analysis] lacks standardization from organization to organization”).

⁵⁵ See Agency for Healthcare Research and Quality (AHRQ) Patient Safety Network, Root Cause Analysis <<https://psnet.ahrq.gov/primer/root-cause-analysis>> [as of XX, 2024] (“RCAs should generally follow a prespecified protocol that begins with data collection and reconstruction of the event in question through record review and participant interviews. A multidisciplinary team should then analyze the sequence of events leading to the error, with the goals of identifying how the event occurred (through systematic identification and analysis of latent errors).”); Bressler, The Sentinel Event Policy: A Response by the Joint Commission (Summer 2000) 33 HOSPLW 519 (noting that a reduction of medical errors depends on identification of errors that occur, analysis of each error to determine the underlying factors, compilation of data about error frequency and the type and root causes of these errors, dissemination of information about these errors and their root causes, and periodic assessment of the effectiveness of efforts taken to reduce the risk of errors); Flanders & Saint, Getting to the Root of the Matter (June 1, 2005) AHRQ <<https://psnet.ahrq.gov/web-mm/getting-root-matter>> [as of XX, 2024] (analyzing the root causes of a wrong-dose event by implementing a multidisciplinary team, gathering data, analyzing the contributing factors, and developing systems-oriented solutions); National Commission on Forensic Science, Root Cause Analysis (RCA) in Forensic Science (Jan. 27, 2017) <<https://perma.cc/5YWD-G8YZ>> [as of XX, 2024] (identifying steps to conduct root cause analysis of forensic science errors, including identifying the problem (what went wrong), identifying the root cause and contributing factors (why it went wrong), prioritizing the factors that contributed to the harm, and developing interventions that conform with the prioritization and likelihood of various factors repeating).

⁵⁶ See Root Cause Analysis and Problem Solving (April 2014) IAQG, p. 35 <<https://perma.cc/LC7T-YQNB>> [as of XX, 2024].

and significance of the problem).⁵⁷ This definition should be based in objective evidence, not subjective perception.⁵⁸

Once the problem is defined, the team should gather and review all available evidence related to the event under consideration. The team will then use that information to develop a timeline of events, leading up to the outcome under discussion. Each step in the timeline should derive from the preceding event.

Next, the team should discuss each step leading to the event under consideration, with the intent of understanding why each step occurred the way that it did. This is the core of root cause analysis. The goal is to understand what factors caused the event, and what factors contributed to or allowed the event to unfold as it did. Here, teams should use structured analysis to identify all causes that did or may have generated or contributed to the undesirable event under consideration and select the most critical causes and contributing factors that need to be addressed.⁵⁹ It is important to focus on objective causes and minimize “bad apple” theories of causation during these discussions, when possible.⁶⁰

Once the underlying causes and contributing factors have been identified, the team should develop and implement corrective actions to address them, with the goal of preventing the same outcome in the future.⁶¹ Corrective actions that address underlying causes and contributing factors – such as improving staffing levels or organizational resources — are generally thought to be stronger than training. Information learned during the analysis of the event should be widely disseminated throughout the organization.⁶² The team should prioritize the factors that contributed to the harm, evaluating their severity and the probability that they will cause harm in the future, then develop interventions/corrective actions based on the prioritization and likelihood that the various factors will recur.⁶³

Finally, once the corrective actions have been implemented, it is important to monitor their efficacy and make revisions if they are not working.⁶⁴

B. Root Cause Analysis in Aviation and Healthcare

⁵⁷ See Root Cause Analysis and Problem Solving (April 2014) IAQG, pp. 35, 36, 38 <<https://perma.cc/LC7T-YQNB>> [as of XX, 2024].

⁵⁸ See Root Cause Analysis and Problem Solving (April 2014) IAQG, p. 36 <<https://perma.cc/LC7T-YQNB>> [as of XX, 2024].

⁵⁹ See Root Cause Analysis and Problem Solving (April 2014) IAQG, p. 53 <<https://perma.cc/LC7T-YQNB>> [as of XX, 2024].

⁶⁰ See National Commission on Forensic Science, Root Cause Analysis (RCA) in Forensic Science (Jan. 27, 2017) <<https://perma.cc/5YWD-G8YZ>> [as of XX, 2024].

⁶¹ See Root Cause Analysis and Problem Solving (April 2014) IAQG, p. 65 <<https://perma.cc/LC7T-YQNB>> [as of XX, 2024].

⁶² See Root Cause Analysis and Problem Solving (April 2014) IAQG, p. 73 <<https://perma.cc/LC7T-YQNB>> [as of XX, 2024].

⁶³ National Commission on Forensic Science, Root Cause Analysis (RCA) in Forensic Science (Jan. 27, 2017) <<https://perma.cc/5YWD-G8YZ>> [as of XX, 2024].

⁶⁴ See Root Cause Analysis and Problem Solving (April 2014) IAQG, p. 68 <<https://perma.cc/LC7T-YQNB>> [as of XX, 2024].

Root cause analysis has been successfully applied in complex settings, such as aviation healthcare, by developing a culture of learning to minimize the likelihood of unwanted outcomes. In recent years, law enforcement has begun to draw from lessons learned in these industries to implement root cause analysis after certain events, such as officer shootings and in-custody deaths. The Board provides a summary of root cause analyses in each of these industries to demonstrate how law enforcement can benefit from information learned through civilian complaints.

1. Aviation

Aviation is widely regarded as the poster child of successful root cause analysis.⁶⁵ Commercial aviation has experienced significant improvements to safety over time due, in part, to systematic review of accidents and “close call” incidents.⁶⁶ Two primary systems drive root cause analysis in aviation: the National Transportation Safety Board (NTSB), and the Aviation Safety Reporting System (ASRS).

The NTSB conducts after-action reviews of all aviation accidents in the United States.⁶⁷ The NTSB learns of these events through required notifications from transportation providers, as well as from publicly available reports and state and local authorities.⁶⁸ The NTSB then “investigates everything from aircraft hardware to weather to pilot decision-making in order to determine what happened,”⁶⁹ identify the probable cause(s) of the incident, and then determine what measures would best tend to prevent similar incidents in the future.⁷⁰ The investigation begins with a visit to the crash site and may include witness interviews conducted under oath and sometimes public hearings.⁷¹ This process can take months.⁷² Once the investigation concludes, the team drafts a report that includes proposed findings of probable cause and safety recommendations.⁷³ The NTSB then issues recommendations.

⁶⁵ See Armacost, *Police Shootings: Is Accountability the Enemy of Prevention?* (2019) 90 Ohio St. L.J. 907, 926; Rossmo & Pollock, *Confirmation Bias and Other Systemic Causes of Wrongful Convictions: A Sentinel Events Perspective* (Summer 2019) 11 Ne. U. L. Rev. 790 (“The best-known example of the sentinel event approach is the after-action reviews by the National Transportation Safety Board”).

⁶⁶ Armacost, *Police Shootings: Is Accountability the Enemy of Prevention?* (2019) 90 Ohio St. L.J. 907, 927; Rossmo & Pollock, *Confirmation Bias and Other Systemic Causes of Wrongful Convictions: A Sentinel Events Perspective* (Summer 2019) 11 Ne. U. L. Rev. 790 (“As a result [of NTSB after-action reviews], the aviation industry has experienced significant increase in safety”).

⁶⁷ Armacost, *Police Shootings: Is Accountability the Enemy of Prevention?* (2019) 90 Ohio St. L.J. 907, 927.

⁶⁸ Tobin & Tochen, *The Anatomy of an NTSB Accident Investigation: A Guide for “Parties-to-the-Investigation” & Their Lawyers* (April 2013) NTSB, p. 2 <<https://perma.cc/3MSD-7677>> [as of XX 2024].

⁶⁹ Rossmo & Pollock, *Confirmation Bias and Other Systemic Causes of Wrongful Convictions: A Sentinel Events Perspective* (Summer 2019) 11 Ne. U. L. Rev. 790.

⁷⁰ Tobin & Tochen, *The Anatomy of an NTSB Accident Investigation: A Guide for “Parties-to-the-Investigation” & Their Lawyers* (April 2013) NTSB, p. 2 <<https://perma.cc/3MSD-7677>> [as of XX 2024].

⁷¹ Tobin & Tochen, *The Anatomy of an NTSB Accident Investigation: A Guide for “Parties-to-the-Investigation” & Their Lawyers* (April 2013) NTSB, p. 2 <<https://perma.cc/3MSD-7677>> [as of XX 2024].

⁷² Tobin & Tochen, *The Anatomy of an NTSB Accident Investigation: A Guide for “Parties-to-the-Investigation” & Their Lawyers* (April 2013) NTSB, p. 2 <<https://perma.cc/3MSD-7677>> [as of XX 2024].

⁷³ Tobin & Tochen, *The Anatomy of an NTSB Accident Investigation: A Guide for “Parties-to-the-Investigation” & Their Lawyers* (April 2013) NTSB, p. 2 <<https://perma.cc/3MSD-7677>> [as of XX 2024]; Armacost, *Police Shootings: Is Accountability the Enemy of Prevention?* (2019) 90 Ohio St. L.J. 907, 927

Similarly, the Aviation Safety Reporting System (ASRS) was designed by the FAA to analyze voluntarily submitted incident reports from pilots, air traffic controllers, dispatchers, cabin crew, maintenance crew, and other, identify hazardous or dangerous conditions recognized by ground-level practitioners and experts as posing risks to safety.⁷⁴ ASRS reviews de-identified information gathered through voluntary reporting,⁷⁵ then issues reports and observations regarding the cause(s) of aviation incidents after the incident is reviewed by aviation safety experts (including experienced pilots, air traffic controllers, and mechanics).⁷⁶ However, unlike the NTSB, the ASRS does not issue corrective actions itself; it provides information to other authorities, such as the FAA, who can then take corrective actions.⁷⁷

Beyond these national organizations, individual agencies within the transportation industry have also developed varying procedures to conduct root cause analysis.⁷⁸

2. Healthcare

Root cause analysis is also routinely used in the medical field⁷⁹ to address a broad range of incidents, like operations on the wrong patient,⁸⁰ incorrect medication orders and/or dosages,⁸¹ and infant abductions.⁸²

The Joint Commission, an organization that regulates and accredits hospitals in the United States, mandates that hospitals use root cause analysis to analyze sentinel events.⁸³ After an event results in death or harm to a patient, hospitals must use root cause analysis to identify the reasons it occurred and corrective measures for improvement.⁸⁴ Once corrective measures are

⁷⁴ Armacost, Police Shootings: Is Accountability the Enemy of Prevention? (2019) 90 Ohio St. L.J. 907, 928-29.

⁷⁵ Armacost, Police Shootings: Is Accountability the Enemy of Prevention? (2019) 90 Ohio St. L.J. 907, 928-29.

⁷⁶ See Plantz, The Patient Safety and Quality Improvement Act: A Total Eclipse (Spring 2019) 87 UMKC L. Rev. 751, 771-72; Armacost, Police Shootings: Is Accountability the Enemy of Prevention? (2019) 90 Ohio St. L.J. 907, 929.

⁷⁷ See Plantz, The Patient Safety and Quality Improvement Act: A Total Eclipse (Spring 2019) 87 UMKC L. Rev. 751, 771-772 (comparing root cause analysis procedures of Boeing and Airbus).

⁷⁸ See Root Cause Analysis and Problem Solving (April 2014) IAQG, p. 19 <<https://perma.cc/LC7T-YQNB>> [as of XX 2024]

⁷⁹ Agency for Healthcare Research and Quality (AHRQ) Patient Safety Network, Root Cause Analysis <<https://psnet.ahrq.gov/primer/root-cause-analysis>> [as of XX, 2024] (root cause analysis is now “widely deployed as an error analysis tool in health care”).

⁸⁰ Chassin & Becher, The Wrong Patient (June 4, 2002) 136 Annals of Internal Medicine 11 <<https://www.acpjournals.org/doi/10.7326/0003-4819-136-11-200206040-00012>> [as of XX 2024]

⁸¹ Flanders & Saint, Getting to the Root of the Matter (June 1, 2005) AHRQ <<https://psnet.ahrq.gov/web-mm/getting-root-matter>> [as of XX 2024]

⁸² Baum Goodwin, Striving for a Secure Environment: A Closer Look at Hospital Security Issues Following the Infant Abduction at Loyola University Medical Center (2001) 10 Ann. Health L. 245.

⁸³ Agency for Healthcare Research and Quality (AHRQ) Patient Safety Network, Root Cause Analysis <<https://psnet.ahrq.gov/primer/root-cause-analysis>> [as of XX 2024]; Aguirre, Beyond Bad Apples: Adopting Sentinel Event Reviews in Nevada’s Criminal Justice System (Spring 2018) 18 Nev. L.J. 1059, 1067; Kellogg, et al., Our current approach to root cause analysis: is it contributing to our failure to improve patient safety? (2017) 26 BMJ Quality & Safety 381 <<https://qualitysafety.bmj.com/content/26/5/381.citation-tools>> [as of XX 2024] (noting that most hospitals use root cause analysis, which has been mandated by the Joint Commission since 1997).

⁸⁴ Mulholland, Unanticipated Consequences of Unanticipated Outcomes Disclosures (Spring 2002) 35 HOSPLW 211.

implemented, hospitals must monitor whether they are working.⁸⁵ Hospitals are encouraged to report sentinel events that result in death or serious injury to the Joint Commission, along with the root cause analysis and corrective actions, so that the Joint Commission can identify trends requiring industry-wide recommendations.⁸⁶

While some question the efficacy of root cause analysis,⁸⁷ this may be due, in part, to the types of corrective actions generated by many root cause analysis procedures.⁸⁸ For example, one study found that less than half of the root cause analyses reviewed included recommendations directed at “robust, system-level improvements,” meaning that many corrective actions still focus on addressing individual errors rather than system-wide improvements.⁸⁹ Thus, the challenges encountered in the healthcare industry may not be due to inefficacy of root cause analysis, but rather may be attributed to cultural resistance to organizational learning culture and the implementation of weaker corrective actions. In general, stronger corrective actions aim to design changes that remove the hazard, while the next most impactful actions physically guard against the hazard, and the least impactful merely warn personnel of the hazard.⁹⁰

C. Root Cause Analysis in Law Enforcement

As in the medical field, the traditional approach to problem events in policing focuses on individual actions and blame through administrative investigations and discipline. Like aviation and the medical field, the theory underlying root cause analysis — that bad outcomes in complex systems are rarely the result of one person’s mistake, but rather result from the combination of multiple errors that are exacerbated by underlying weaknesses in the organization — can be successfully applied to policing.

The decision-making processes of police are often similar to those of doctors or pilots. Like pilots and healthcare professionals, officers must make “split-second, life or death decisions under conditions of uncertainty,” requiring them to process large amounts of information in little time. “Each decision point can lead to errors out of mere negligence or institutional errors.” Thus, it is unrealistic to expect that there will be no errors in police responses. Instead, these

⁸⁵ Mulholland, Unanticipated Consequences of Unanticipated Outcomes Disclosures (Spring 2002) 35 HOSPLW 211.

⁸⁶ Mulholland, Unanticipated Consequences of Unanticipated Outcomes Disclosures (Spring 2002) 35 HOSPLW 211.

⁸⁷ See Kellogg, et al., Our current approach to root cause analysis: is it contributing to our failure to improve patient safety? (2017) 26 BMJ Quality & Safety 381 <<https://qualitysafety.bmj.com/content/26/5/381.citation-tools>> [as of XX 2024] (noting that the adverse event rate in healthcare has remained essentially the same over time, despite efforts to increase patient safety).

⁸⁸ Kellogg, et al., Our current approach to root cause analysis: is it contributing to our failure to improve patient safety? (2017) 26 BMJ Quality & Safety 381 <<https://qualitysafety.bmj.com/content/26/5/381.citation-tools>> [as of XX 2024] (“Safety scientists believe that the lack of improvement in adverse event rates in healthcare is largely because our methods of approaching change are ineffective”).

⁸⁹ Kellogg, et al., Our current approach to root cause analysis: is it contributing to our failure to improve patient safety? (2017) 26 BMJ Quality & Safety 381 <<https://qualitysafety.bmj.com/content/26/5/381.citation-tools>> [as of XX 2024].

⁹¹ NIJ, Mending Justice: Sentinel Event Reviews (Sept. 2014) <> [as of XX, 2024].

errors present an opportunity for law enforcement agencies to “respond, change course, and improve outcomes.”

Many academics have considered the applicability of root cause analysis to policing over the past decade. For example, the National Institute of Justice has been exploring the feasibility of using sentinel event reviews in the criminal legal system since 2011. Root cause analyses have also been conducted to understand sentinel events such as wrongful convictions, police shootings, and deaths or self-harm in detention facilities.

Some law enforcement agencies have already implemented root cause analysis in assessing sentinel events to identify areas for improvement. In a 2024 survey, twelve of the 15 largest law enforcement agencies in California stated that they conduct root cause analysis for some events. The Board suggests that law enforcement agencies consider extending root cause analysis to their complaint procedures as well.

Like aviation and healthcare, there is no single, best procedure to follow for successful root cause analysis in policing. For example, the National Institute of Justice argues for a broad understanding of which events should trigger root cause analysis: “Sentinel events can also include episodes that are ‘within policy’ but disastrous in terms of community relations (such as the arrest of Harvard professor Henry Louis Gates), whether or not everyone agrees that the event should be classified as an ‘error.’ ... In fact, anything that stakeholders can agree should not happen again could be considered a sentinel event.”⁹¹ A different policing organization states that it is “imperative that agencies collect adequate data on critical incidents involving police officers,” and, to that end, provides more specific guidance that agencies should collect “information about suspect and officer demographics as well as the location, time, date, and other relevant contextual factors,” and analyze this data “on a recurring basis to identify any problematic trends.”⁹² On the other hand, one scholar encourages law enforcement agencies to consider, more generally, “the ways in which both systemic racism and institutional racism are part of the analysis of root causes of a civilian death.”⁹³

However, some general challenges have been identified with respect to root cause analysis in policing. These include the need to balance incident liability and risk management, the role of internal disciplinary processes, the role of confidentiality protections, and a general lack of data regarding the “frequency, nature, or causes of policing errors.”⁹⁴

⁹¹ NIJ, *Mending Justice: Sentinel Event Reviews* (Sept. 2014) <> [as of XX, 2024].

⁹² Koper, et al., *An Evidence-Assessment of the Recommendations of the President’s Task Force on 21st Century Policing – Implementation and Research Priorities* (2016) Center for Evidence-Based Crime Policy, George Mason University, International Association of Chiefs of Police, p. 19.

⁹³ Fagan and Campbell, *Race and Reasonableness in Police Killings* (May 2020) 100 *Boston U. L. Rev.* 951, 1004.

⁹⁴ Doyle, *Sentinel Events Initiative: Looking Back to Look Forward* (Dec. 5, 2013) NIJ <<https://nij.ojp.gov/topics/articles/sentinel-events-initiative-looking-back-look-forward>> [as of XX, 2024]; Schwartz, *Systems Failures in Policing* (2018) 51 *Suffolk U. L. Rev.* 535, 558.

Considering this, experts in the criminal justice field believe that root cause analysis reviews should have their own features unique to their jurisdiction.⁹⁵

D. Root Cause Analysis and Civilian Complaints

Civilian complaints provide a wealth of information for law enforcement agencies to identify and address areas for improvement. For example, an allegation of discourteous conduct can help an agency understand what types of actions the public perceives as problematic. An investigatory interview of the officer involved in the discourteous conduct allegation might reveal what factors caused the officer to act as they did. For example, the agency might learn that the officer was working overtime during the incident, revealing potential morale and staffing issues within the department. Thus, a single complaint could reveal factors beyond the feelings or circumstances of the individual officer involved in the complaint, which may demonstrate the likelihood that similar unwanted outcomes (i.e. negative interactions with the public that result in civilian complaints) will occur in the future.

Therefore, the Board strongly encourages law enforcement agencies to analyze the root cause(s) of civilian complaints. Agencies may choose to analyze individual complaints and/or trends among aggregated complaint data. In other words, an agency could choose to analyze the root cause(s) of each complaint it receives. Alternatively, it could choose to conduct a root cause analysis of a random sample of complaints alleging racial or identity-based profiling. Or the agency could choose to do both. What is important is that agencies use information learned through civilian complaints to identify areas for improvement within their organization and develop corrective actions to reduce the likelihood of unwanted outcomes in the future.

The Board hopes to develop more specific recommendations in future reports, based on existing complaint and root cause analysis procedures, best practices, and community input, to help law enforcement agencies implement this practice.

[Area for discussion: Are there law enforcement agencies, organizations, or representatives the Board would like to consult during the next subcommittee meeting to develop these recommendations?]

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 public. 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. The Board encourages law enforcement agencies, experts, and members of the public to provide public comments regarding these topic areas for discussion in future reports.

⁹⁵ Doyle, Sentinel Events Initiative: Looking Back to Look Forward (Dec. 5, 2013) NIJ <<https://nij.ojp.gov/topics/articles/sentinel-events-initiative-looking-back-look-forward>> [as of XX, 2024].