

POLICY FOCUSED DATA ANALYSIS

I. Evolving Issues Regarding Pretextual Stops

A. Introduction

Many calls to end pretextual stops have focused on disparities in enforcement and who is stopped or searched by the police. Although it is important to examine the disparities in stop and search rates, they only tell part of the story of individuals subjected to pretextual stops and the impact on their lives. A pretext stop occurs when an officer stops someone for a lawful traffic violation or minor infraction, intending to use the stop to investigate a hunch regarding a different crime that by itself would not amount to reasonable suspicion or probable cause.¹ During pretextual stops, a person may be searched or handcuffed and could have force used against them.

In prior Reports, the Board examined new policies emerging in California and throughout the nation to address pretextual stops and searches. The Reports discussed policies by law enforcement agencies, district attorneys' offices, and states aimed at reducing or eliminating pretextual stops. The Board will now begin to examine the effectiveness of these policies, the impact they are having on racial and identity disparities observed in the data, and any lessons learned from their implementation.

Previous Board Reports have reviewed data regarding the reasons for stop, actions taken during stops, and results of stops. This year, the Board delves deeper into the results of stops, including stops where field interview cards are completed or when the stopped individual is charged with resisting arrest. These results of stops show notable disparities, and the data indicates the results may have little to no connection to the original reasons for the stop, such as traffic infractions. This year the Board also takes a first look at officer assignment type and discusses how the assignment type – such as specialized units – and other specific policing strategies may increase the opportunities for pretextual stops.

B. Analysis of Successes and Lessons Learned from New Pretext Policies

¹ The amended RIPA regulations, which will be effective in 2024, define “reasonable suspicion” as requiring a set of specific facts that would lead a reasonable person to believe that the stopped person is committing a crime, recently committed a crime, or is about to commit a crime. Reasonable suspicion cannot be based solely on a hunch or instinct. “Reasonable suspicion” requires a lesser standard of proof than “probable cause to arrest or search.” Cal. Code Regs., tit. 11, § 999.224, subd. (a)(16) <<https://oag.ca.gov/system/files/media/RIPA%202022%20Rulemaking%20Final%20Text%20of%20Regulations.pdf>> [as of XXX]; “Probable cause to arrest or search” is defined in the amended RIPA regulations as a set of specific facts that would lead a reasonable person to objectively believe and strongly suspect that a crime was committed by the person to be arrested. “Probable cause to arrest” requires a higher standard of proof than “reasonable suspicion.” Cal. Code Regs., tit. 11, § 999.224, subd. (a)(14)-(15) <<https://oag.ca.gov/system/files/media/RIPA%202022%20Rulemaking%20Final%20Text%20of%20Regulations.pdf>> [as of XXX]; See also Asirvatham and Frakes, *Are Constitutional Rights Enough? An Empirical Assessment of Racial Bias in Police Stops* (Aug. 2020) Duke L. School Pub. L. & Legal Theory Series No. 2020- 56, p. 5 <<http://dx.doi.org/10.2139/ssrn.3673574>> [as of XXX].

In its examination of policies to address pretextual stops and searches, the Board reviewed two different policy approaches. The Los Angeles Police Department (LAPD) limits all traffic stops unless there is a public safety concern, while Virginia specifically identifies and prohibits stops for several low-level traffic violations. Since many of the policies are still new, the data on their effectiveness is still evolving, but the data may provide some information regarding the potential impact of these policies.

1. New Pretext Policies – Two Test Cases: LAPD and Virginia

LAPD was one of the first law enforcement agencies in California to implement a new policy in 2022 reducing the use of pretextual stops.² The new policy restricts pretext stops in two ways: (1) limits the circumstances in which traffic stops can be made by officers; and (2) requires officers to articulate a reason to believe the person stopped has committed a serious crime.³ Specifically, the new LAPD policy allows officers to make traffic stops only if the violation significantly interferes with public safety or if they have information to suspect the person has committed a serious crime.⁴ The policy states: “[P]retextual stops shall not be conducted unless officers are acting upon articulable information in addition to the traffic violation, which may or may not amount to reasonable suspicion, regarding a serious crime (i.e., a crime with potential for great bodily injury or death).”⁵ Advocates have expressed concerns that because the policy gives officers wide discretion to determine if a stop is for public safety, the policy may not be effective at curbing disparities.⁶ Indeed, studies show more discretion can lead to an increased opportunity for bias.⁷ LAPD has been collecting RIPA data since July 1, 2018. Although we only have approximately six months of RIPA data reported in 2022 under the new policy, the Board will take a preliminary look at LAPD’s stop data to see if there are any changes in search and yield rates or any reduction in disparities.

² L.A. Police Dept., Limitation on Use of Pretextual Stops: 1/240.06 (“LAPD Limitation on Pretextual Stops”) (Mar. 2022) p. 1.

³ L.A. Police Dept., Limitation on Use of Pretextual Stops: 1/240.06 (“LAPD Limitation on Pretextual Stops”) (Mar. 2022) p. 1.

⁴ L.A. Police Dept., Limitation on Use of Pretextual Stops: 1/240.06 (“LAPD Limitation on Pretextual Stops”) (Mar. 2022) p. 1.

⁵ L.A. Police Dept., Limitation on Use of Pretextual Stops: 1/240.06 (“LAPD Limitation on Pretextual Stops”) (Mar. 2022) p. 1.

⁶ PushLA Public Comment Letter to Police Commission, Opposition Relative to policy revision regarding pretextual stops (“PushLA Opposition to pretext stop policy revision”) (Feb. 2022) pp. 4-6 <<https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2022/02/Public-Comment-Regarding-Pretextual-Stops-BOPC-22-023-Part-II.pdf>> [as of XXX].

⁷ Ridgeway, *Assessing the Effect of Race Bias in Post-Traffic Stop Outcomes Using Propensity Scores* (2006) 22 J. Quant. Criminol. 1 <<https://www.rand.org/pubs/reprints/RP1252.html>> [as of XXX] (analyzing discretionary actions taken after traffic stops in Oakland, California and finding that police were more likely to subject Black drivers to pat-down searches and probable cause searches, as compared to White drivers); Eberhardt, *How racial bias works -- and how to disrupt it* (June 2020) TED <https://www.ted.com/talks/jennifer_1_eberhardt_how_racial_bias_works_and_how_to_disrupt_it/transcript?language=en> [as of XXX]; Quattlebaum, *Let’s Get Real: Behavioral Realism, Implicit Bias, and the Reasonable Police Officer* (2018) 14 Stan. J. C.R. & C.L. 1, 17 <<https://law.stanford.edu/publications/lets-get-real-behavioral-realism-implicit-bias-and-the-reasonable-police-officer/>> [as of XXX] (citing Casey et al., *Addressing Implicit Bias in the Courts* (2013) 49 Ct. Rev. 64, 67).

In 2020, Virginia was one of the first states to enact a law reducing pretext stops and creating a new traffic enforcement system.⁸ The policy established what is known as a primary and secondary traffic enforcement system, where an officer can only stop someone for a primary public safety violation and not solely for a defined secondary violation, such as an expired registration.⁹ Virginia’s policy identifies six secondary traffic violations, including driving “(i) without a light illuminating a license plate, (ii) with defective and unsafe equipment, (iii) without brake lights or a high mount stop light, (iv) without an exhaust system that prevents excessive or unusual levels of noise, (v) with certain sun-shading materials and tinting films, and (vi) with certain objects suspended in the vehicle.”¹⁰ Similar to California, officers in the state of Virginia are required to collect data on their stops and searches under the state’s Community Policing Act.¹¹ Virginia officers began reporting their data in July of 2020 and the new state law became effective in March of 2021, which provides several months of data before and after the new law took effect.

Preliminarily, it appears the policies contributed to an overall reduction in stops and searches,¹² and LAPD data indicates there is a higher likelihood of contraband discovered when searches were conducted.¹³ Despite the reduction in stops and searches overall in Virginia, disparities still persist in who is stopped and searched.¹⁴ LAPD data analyzed below shows similarly an overall reduction in stops and searches, a slight increase in discovery rates, and a slight decrease in disparities of persons stopped who were perceived to be Black.

The Board provides a brief review of the relevant data and lessons other agencies or states should consider in crafting or amending new policies.

i. Reduction in Overall Stops and Searches

Both policies have seen similar results in reducing the number of overall stops and searches. The Los Angeles Police Department (LAPD) pretext policy went into effect March 1, 2022. Police practices may vary by time of year due to crime trends, tourism, holidays, weather, or other unknown factors. In particular, the COVID-19 pandemic-related shutdowns were widespread when they began in 2020, making that year of RIPA data unique in many aspects. For these reasons, we summarized differences in stop totals and characteristics between the months of

⁸ H 5058, Va. Acts of Assembly (2020 Special Sess.)

⁹ H 5058, Va. Acts of Assembly (2020 Special Sess.)

¹⁰ H 5058, Va. Acts of Assembly (2020 Special Sess.)

¹¹ Code of Va. § 52-30.2. Prohibited practices; collection of data.

¹² Jany and Poston, *Minor police encounters plummet after LAPD put limits on stopping drivers and pedestrians* (Nov. 2022) L.A. Times <<https://www.latimes.com/california/story/2022-11-14/minor-traffic-stops-plummet-in-months-after-lapd-policy-change>> [as of XXX]; Oliver, *Virginia’s traffic stops decline, but disparities persist* (Oct. 2022) Axios <<https://www.axios.com/local/richmond/2022/10/12/virginia-traffic-stops-disparities>> [as of XXX].

¹³ Jany and Poston, *Minor police encounters plummet after LAPD put limits on stopping drivers and pedestrians* (Nov. 2022) L.A. Times <<https://www.latimes.com/california/story/2022-11-14/minor-traffic-stops-plummet-in-months-after-lapd-policy-change>> [as of XXX].

¹⁴ Report on Analysis of Traffic Stop Data Collected under Virginia’s Community Policing Act (Sept. 2022) Va. Dept. of Crim. J. Services <<https://rga.lis.virginia.gov/Published/2022/RD533/PDF>> [as of XXX].

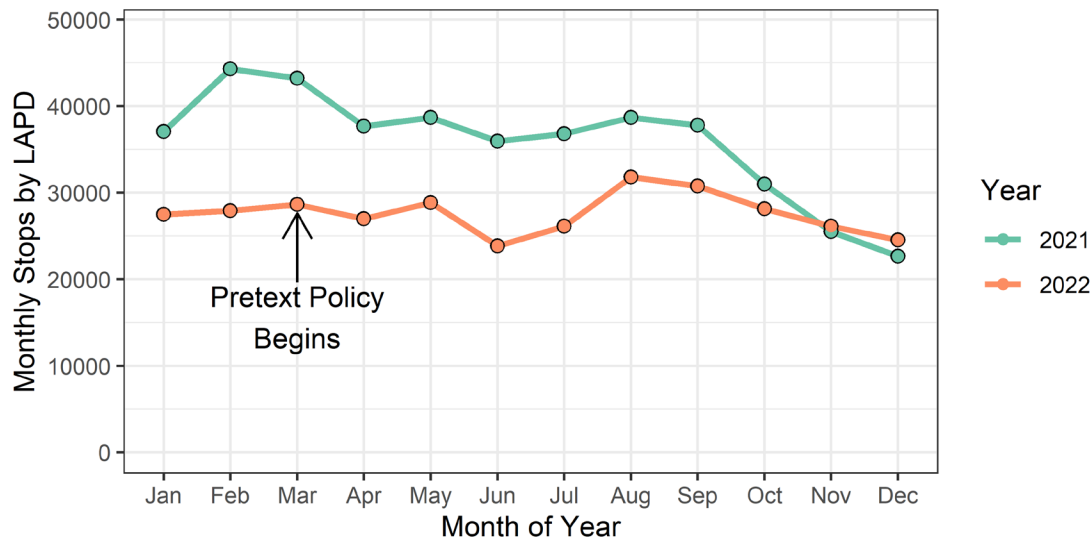
March and December in 2021 (before the pretext policy) and March and December 2022 (after the pretext policy). We refer to this comparison as the “comparison period”.

1. Total Stops

There were 20.8 percent fewer stops in 2022 between the months of March and December compared to the comparable period in 2021.

Figure XX

Monthly Stop Totals for Los Angeles Police Department 2021 and 2022

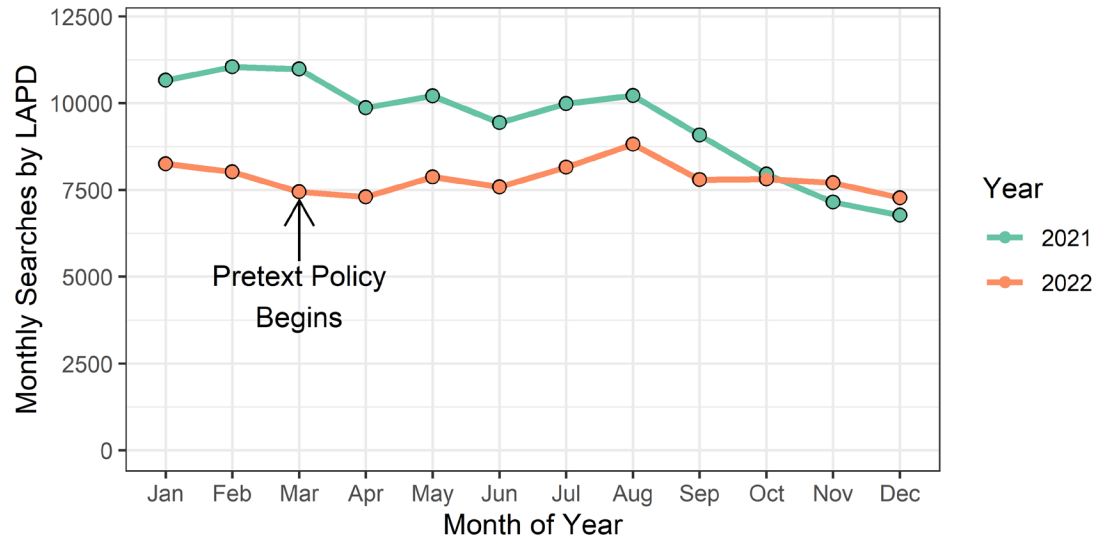


2. Total Searches

The LAPD performed 15.2 percent fewer searches after the pretext policy was in place between the months of March and December 2022 compared to the same period during 2021.

Figure XX

Monthly Search Totals for Los Angeles Police Department 2021 and 2022



3. Reasons for Stop

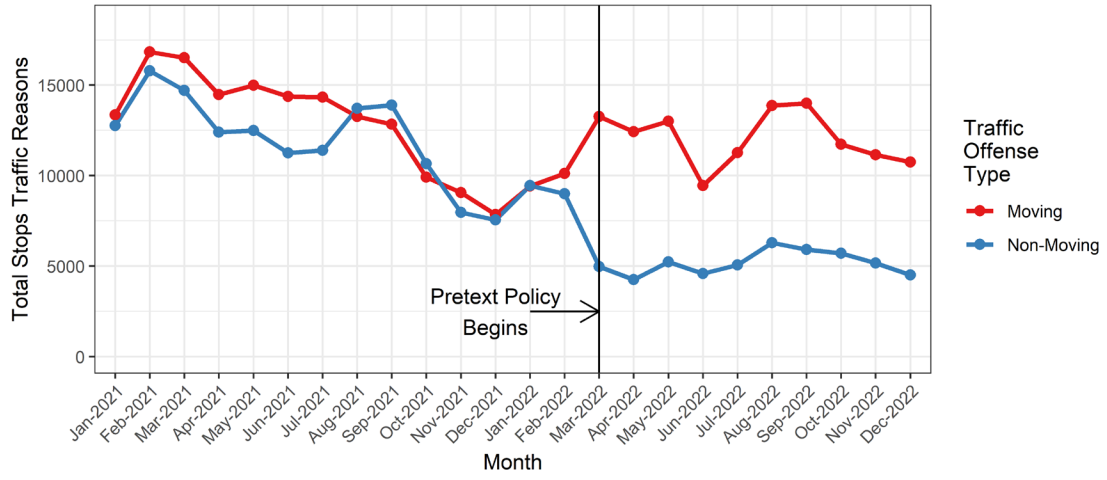
Following the implementation of the pretext policy (vertical line), the total number of stops for common moving violations increased, while the total number of stops for common non-moving violations decreased. Common LAPD traffic violations were identified as vehicle or penal codes that were among the top 100 most frequent codes reported by LAPD officers (2018-2022). These top 100 traffic reasons for stop account for more than 95 percent of all LAPD stops for traffic violations. The top 100 vehicle and penal codes were then classified as either moving or non-moving.¹⁵ Non-moving violations were further separated into equipment violations, bicycle-related, local ordinance, suspicion of engaging in criminal activity (e.g. operating vehicle without owner’s consent), pedestrian roadway offenses, and other non-moving violations (e.g. double parking, etc).¹⁶

Figure XX

Total Traffic Moving and Non-Moving Violation Stops (common violation codes)

¹⁵ For the purpose of these analyses, moving violations are defined as a violation of the traffic laws regulating driver behavior while operating a vehicle, such as speeding or failing to signal before a turn. For the purpose of these analyses, all of the top 100 most common offense codes for traffic violations that did not meet the definition of a moving violation were classified as non-moving violations.

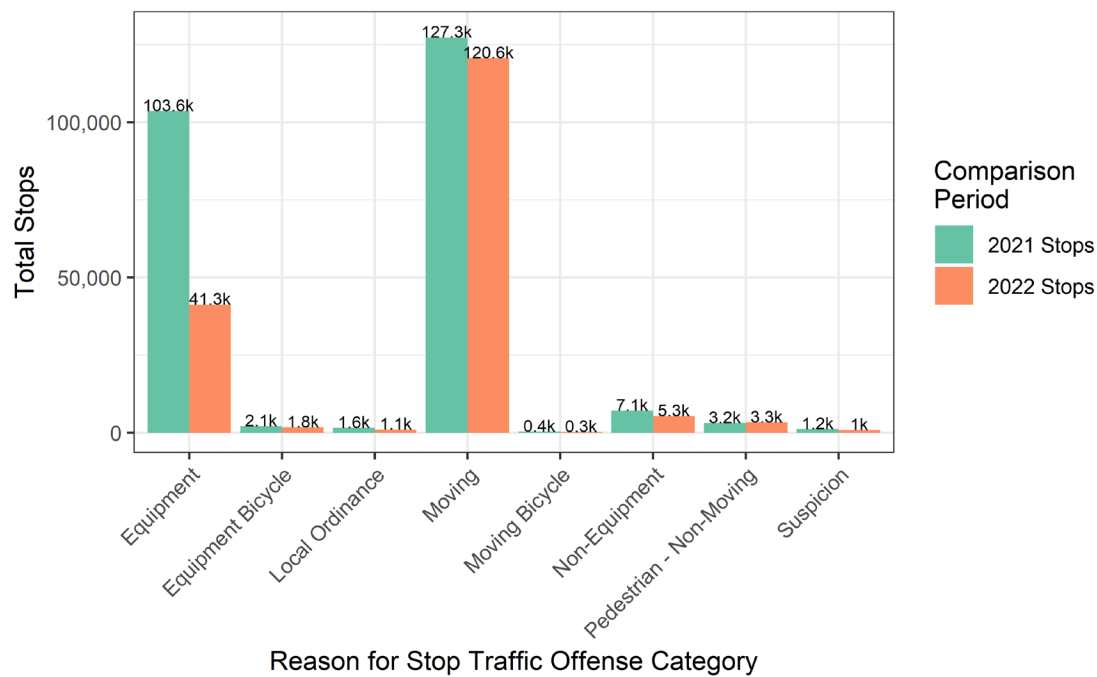
¹⁶ Appendix Table XX displays how each of the top 100 most common traffic violation offense codes was coded within these categories.



A dramatic reduction in the number of traffic violation stops for common equipment violations occurred after the LAPD pretext policy was implemented (60.2% reduction in total stops for equipment violations between 2022 and 2021 comparison periods). The number of traffic stops for reasons in other traffic violation categories saw lesser reductions (16.6% reduction equipment bicycle, 32% reduction local ordinance, 5.2% reduction moving, 21.6% reduction moving bicycle, 24.8% reduction non-equipment, 4.4% increase pedestrian non-moving, 19.9% reduction suspicion).

Figure XX

Before and After Pretext Policy – Number of Stops by Type of Common Traffic Offenses



A study conducted by the L.A. Times showed as well that initial data from LAPD had overall reduction in stops and searches during stops for minor offenses.¹⁷ Prior to the new policy being implemented, 21% of all stops were for minor infractions. Under the new policy, minor infractions accounted for 12% of all traffic and pedestrian stops.¹⁸ There has also been a reduction in consent searches, or searches where an officer requests to search without having an

¹⁷ Jany and Poston, *Minor police encounters plummet after LAPD put limits on stopping drivers and pedestrians* (Nov. 2022) L.A. Times <<https://www.latimes.com/california/story/2022-11-14/minor-traffic-stops-plummet-in-months-after-lapd-policy-change>> [as of XXX].

¹⁸ Jany and Poston, *Minor police encounters plummet after LAPD put limits on stopping drivers and pedestrians* (Nov. 2022) L.A. Times <<https://www.latimes.com/california/story/2022-11-14/minor-traffic-stops-plummet-in-months-after-lapd-policy-change>> [as of XXX].

articulable suspicion a crime has been committed (from 30% to 24% of all searches).¹⁹ In Virginia, under the new policies, the overall number of stops was reduced by 7.5% and stops that resulted in a search decreased from 3.8% to 2.4%.²⁰

These new policies may be effective at focusing police resources and time on more serious offenses.²¹ Indeed, research shows that these pretextual stops or stops for minor infractions more generally are costly to communities.²² A review of RIPA data demonstrated that officers in 2019 spent nearly 80,000 hours on traffic stops that led to no enforcement action – not even writing a ticket or giving a warning.²³ Of those hours, 28,000 were associated with stops for non-moving violations, such as expired registration.²⁴ These stops also cost communities and police departments a significant amount of money.²⁵ A review of data estimated that Sacramento County Sheriff’s Department spent \$35.5 million and San Diego County Sheriff’s Department spent \$43.9 million annually on enforcing traffic violations that resulted in a warning or no action taken.²⁶

The Board will continue to monitor the effects of reducing stops for minor infractions and the cost savings to communities. Below the Board begins to examine the effect of these new policies on the recovery of contraband. Both the costs savings and the discovery of contraband may be a way to test the overall effectiveness of these policies.

¹⁹ Jany and Poston, *Minor police encounters plummet after LAPD put limits on stopping drivers and pedestrians* (Nov. 2022) L.A. Times <<https://www.latimes.com/california/story/2022-11-14/minor-traffic-stops-plummet-in-months-after-lapd-policy-change>> [as of XXX].

²⁰ Oliver, *Virginia’s traffic stops decline, but disparities persist* (Oct. 2022) Axios <<https://www.axios.com/local/richmond/2022/10/12/virginia-traffic-stops-disparities>> [as of XXX].

²¹ Reimagining Community Safety in California: From Deadly and Expensive Sheriffs to Equity and Care-Centered Wellbeing (“Reimagining Community Safety in California”) (Oct. 2022) Catalyst Cal. and ACLU of Southern Cal. <https://catalyst-ca.cdn.prismic.io/catalyst-ca/756c4775-6bc1-448b-8447-e609133951ed_CATALYST+CA+%26+ACLU+-+REIMAGINING+COMMUNITY+SAFETY+2022.pdf> [as of XXX].

²² Reimagining Community Safety in California: From Deadly and Expensive Sheriffs to Equity and Care-Centered Wellbeing (“Reimagining Community Safety in California”) (Oct. 2022) Catalyst Cal. and ACLU of Southern Cal. <https://catalyst-ca.cdn.prismic.io/catalyst-ca/756c4775-6bc1-448b-8447-e609133951ed_CATALYST+CA+%26+ACLU+-+REIMAGINING+COMMUNITY+SAFETY+2022.pdf> [as of XXX].

²³ Lofstrom et al., *Racial Disparities in Traffic Stops (“Traffic Stops”)* (Oct. 2022) PPIC <<https://www.ppic.org/publication/racial-disparities-in-traffic-stops/>> [as of XXX].

²⁴ Lofstrom et al., *Racial Disparities in Traffic Stops (“Traffic Stops”)* (Oct. 2022) PPIC <<https://www.ppic.org/publication/racial-disparities-in-traffic-stops/>> [as of XXX].

²⁵ Reimagining Community Safety in California: From Deadly and Expensive Sheriffs to Equity and Care-Centered Wellbeing (“Reimagining Community Safety in California”) (Oct. 2022) Catalyst Cal. and ACLU of Southern Cal. <https://catalyst-ca.cdn.prismic.io/catalyst-ca/756c4775-6bc1-448b-8447-e609133951ed_CATALYST+CA+%26+ACLU+-+REIMAGINING+COMMUNITY+SAFETY+2022.pdf> [as of XXX].

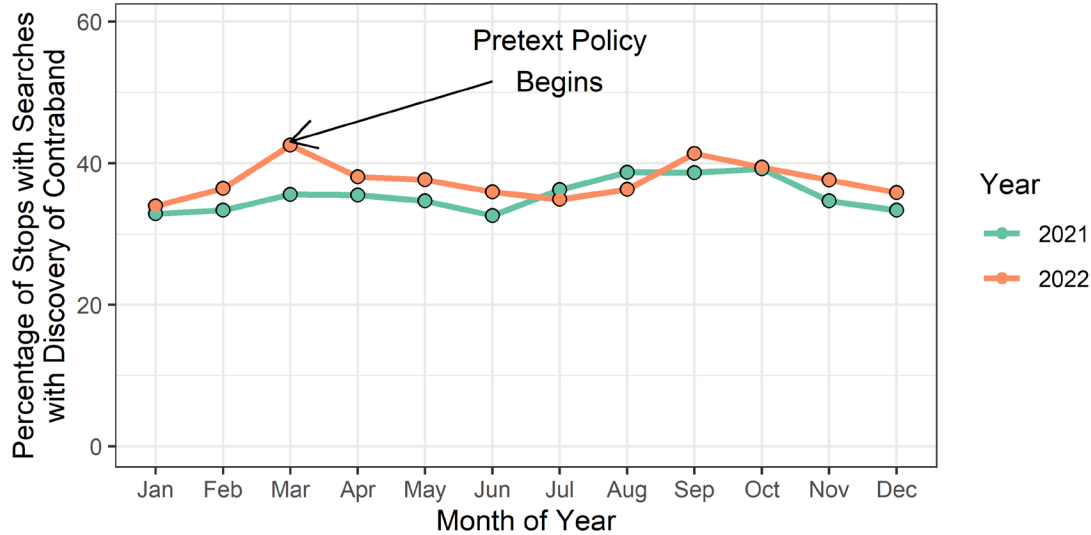
²⁶ Reimagining Community Safety in California: From Deadly and Expensive Sheriffs to Equity and Care-Centered Wellbeing (“Reimagining Community Safety in California”) (Oct. 2022) Catalyst Cal. and ACLU of Southern Cal. <https://catalyst-ca.cdn.prismic.io/catalyst-ca/756c4775-6bc1-448b-8447-e609133951ed_CATALYST+CA+%26+ACLU+-+REIMAGINING+COMMUNITY+SAFETY+2022.pdf> [as of XXX].

ii. Increase in Finding Contraband

The LAPD discovered contraband during a higher percentage of RIPA reported stops with searches after the pretext policy was in place March through December 2022 (37.9% discovery rate) compared to the same time period in 2021, before the pretext policy was in place (36.0% discovery rate).

Figure XX

Discovery Rate of Stops with Searches for Los Angeles Police Department 2021 and 2022



Other researchers working with the RIPA data discovered that stops and searches associated with pretextual stops (such as consent searches) do not often result in the discovery of evidence or contraband, and that reducing stops for minor infractions actually increases the probability that contraband will be found.²⁷ The Public Policy Institute of California (PPIC) found that searches during traffic stops are less likely to lead to the discovery of contraband rather than stops for reasonable suspicion.²⁸

Consistent with these findings, data indicates that under the new policy, LAPD officers are more successful in locating contraband when conducting a search.²⁹ In a 2022 study of RIPA data, the

²⁷ Lofstrom et al., *Racial Disparities in Law Enforcement Stops (“Law Enforcement Stops”)* (Oct. 2021) Public Policy Inst. of Cal. (PPIC) <<https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/>> [as of XXX].

²⁸ Lofstrom et al., *Racial Disparities in Law Enforcement Stops (“Law Enforcement Stops”)* (Oct. 2021) Public Policy Inst. of Cal. (PPIC) <<https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/>> [as of XXX].

²⁹ Jany and Poston, *Minor police encounters plummet after LAPD put limits on stopping drivers and pedestrians* (Nov. 2022) L.A. Times <<https://www.latimes.com/california/story/2022-11-14/minor-traffic-stops-plummet-in-months-after-lapd-policy-change>> [as of XXX].

L.A. Times showed that officers found illegal contraband in 26% of their searches, which marked a slight increase in the discovery rates.³⁰

Researchers have theorized that because LAPD officers are more purposeful in who they stop and search, there are higher success rates from those searches.³¹ These data may indicate in part that these policies can “strike an effective balance between keeping the public safe and respecting the rights of individuals.”³² In an interview of an LAPD Sergeant, they noted “What we’re doing is we’re explaining ourselves more and identifying the reasoning behind it, instead of, ‘Well, I just had a hunch. I saw the guy and he looked like he might have been doing something. He gave me that look.’”³³

iii. Addressing Disparities

Another consideration in assessing the effectiveness of these policies is if there is an impact on disparities observed in stops and searches.

1. Racial or Ethnic Composition of Stops Compared to Los Angeles Residential Population

The figure below compares the racial or ethnic composition of stops during 2021 (before, shown in teal), and 2022 (after, shown in orange) pretext policy comparison periods with the racial or ethnic composition of the residential population of the City of Los Angeles (shown in blue, American Community Survey, 5-year, 2021). Black, Hispanic/Latine(x), and Pacific Islander individuals were overrepresented in stops in between the 2021 and 2022 comparison periods relative to their percentage of the city population. White, Asian, and Multiracial individuals represented a lower percentage of stops in both 2021 and 2022 relative to their percentage of the city population. The disparity in stop numbers for individuals perceived as Black (difference between percentage of stops and percentage of residents) was reduced slightly in 2022 after the pretext policy was implemented. The disparity in stop numbers for individuals perceived as Hispanic/Latine(x) (difference between percentage of stops and percentage of residents) slightly increased in 2022 after the pretext policy was implemented.

Figure XX

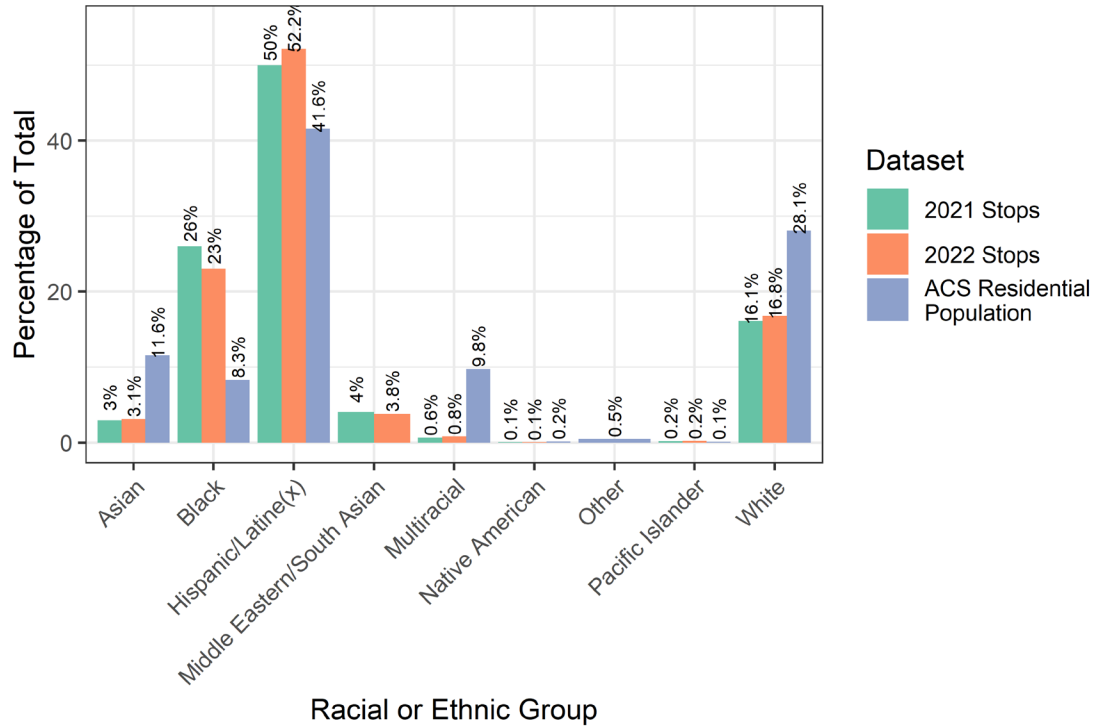
³⁰ Jany and Poston, *Minor police encounters plummet after LAPD put limits on stopping drivers and pedestrians* (Nov. 2022) L.A. Times <<https://www.latimes.com/california/story/2022-11-14/minor-traffic-stops-plummet-in-months-after-lapd-policy-change>> [as of XXX].

³¹ Jany and Poston, *Minor police encounters plummet after LAPD put limits on stopping drivers and pedestrians* (Nov. 2022) L.A. Times <<https://www.latimes.com/california/story/2022-11-14/minor-traffic-stops-plummet-in-months-after-lapd-policy-change>> [as of XXX].

³² Jany and Poston, *Minor police encounters plummet after LAPD put limits on stopping drivers and pedestrians* (“LAPD puts limit on stopping drivers and pedestrians”) (Nov. 2022) L.A. Times <<https://www.latimes.com/california/story/2022-11-14/minor-traffic-stops-plummet-in-months-after-lapd-policy-change>> [as of XXX].

³³ Jany and Poston, *Minor police encounters plummet after LAPD put limits on stopping drivers and pedestrians* (“LAPD puts limit on stopping drivers and pedestrians”) (Nov. 2022) L.A. Times <<https://www.latimes.com/california/story/2022-11-14/minor-traffic-stops-plummet-in-months-after-lapd-policy-change>> [as of XXX].

Before and After Pretext Policy – LAPD Racial or Ethnic Composition Compared to Los Angeles City Residential Population

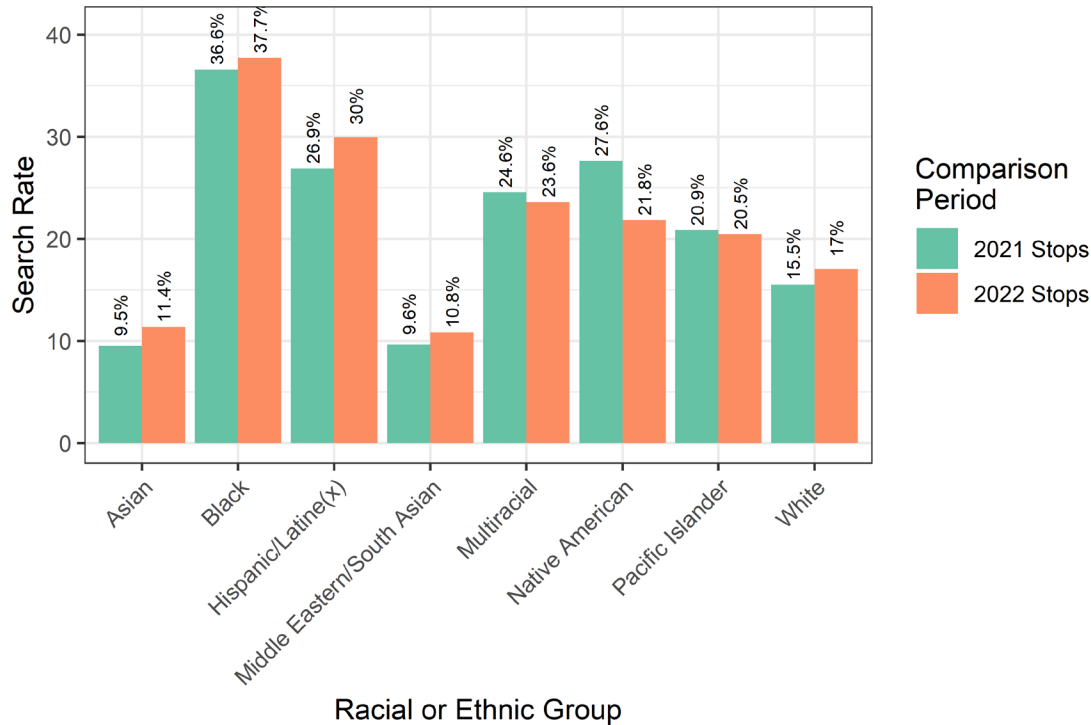


2. Percentage of Stops with Searches and Total Searches

The overall percentage of LAPD stops with searches increased between 2021 and 2022 comparison periods (26.3% of stops with searches 2021 and 28.2% of stops with searches 2022). Overall, individuals perceived as Black or Hispanic/Latine(x) had higher search rates than average (Black individuals - 36.6% in 2021, 37.7% in 2022, and Hispanic/Latine(x) individuals – 26.9% in 2021, 30% in 2022). Individuals perceived as Asian, White, Middle Eastern/South Asian, Multiracial, and Pacific Islander were searched during a lower percentage of stops than average for both comparison periods. Individuals perceived as Native American exceeded the annual average in 2021, but not during the 2022 comparison period. A majority of groups (Asian, Black, Hispanic/Latine(x), Middle Eastern/South Asian, and White) were searched during a slightly higher percentage of stops during the comparison periods in 2022 compared to 2021.

Figure XX

Before and After Pretext Policy – LAPD Percentage of Stops with Searches by Racial or Ethnic

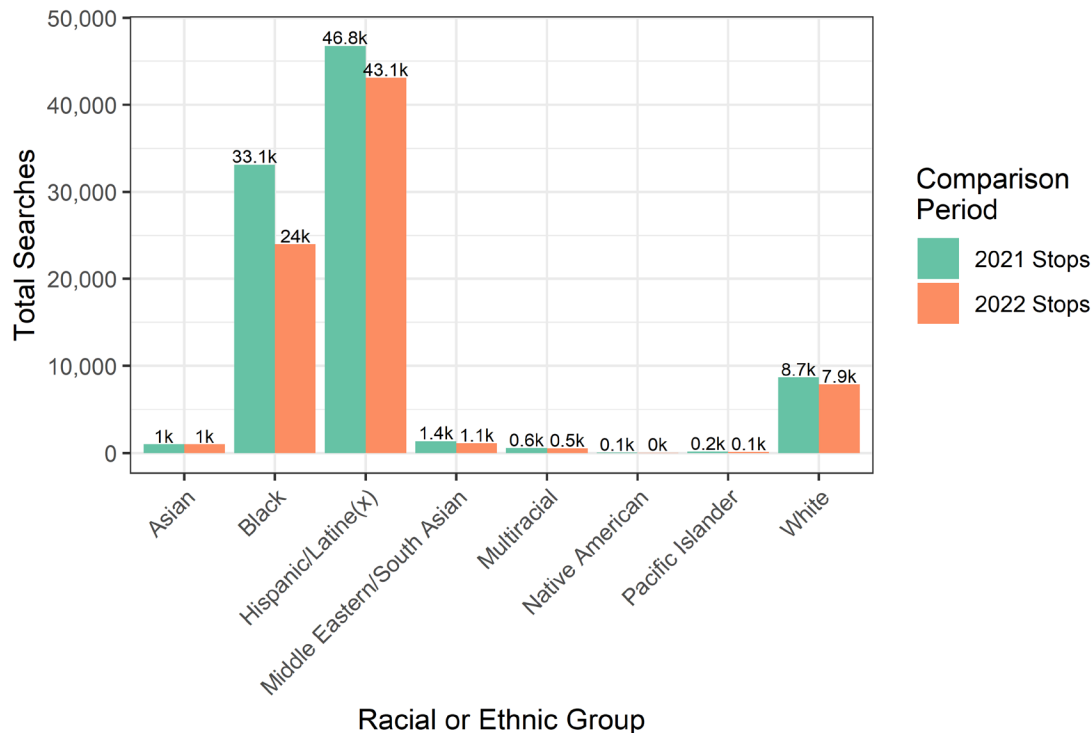


The overall number of LAPD stops with searches decreased between 2021 (91,661 total searches) and 2022 (77,769) comparison periods, leading to a 15.2 percent decline in total searches. The largest decrease in searches between comparison periods by racial or ethnic group occurred among individuals perceived as Black (9,145 fewer searches of individuals perceived as Black, a 27.6% decrease in total searches of individuals perceived as Black). Individuals perceived as Hispanic/Latine(x) were searched 3,655 fewer times total (46,772 searches in 2021 compared to 43,117 searches during the 2022 comparison periods), a 7.8 percent decrease. Individuals perceived as White were searched 789 fewer times total during the comparison periods (8,678 searches in 2021 compared to 7,889 searches in 2022), a 9.1 percent decrease. Other perceived racial and ethnic groups account for smaller total reductions in the number of searches between the 2021 and 2022 comparison periods.³⁴

Figure XX

Before and After Pretext Policy – Total Number of Searches by Racial or Ethnic Group

³⁴ During the 2022 comparison period, there were 225 fewer searches of Middle Eastern/South Asian individuals, 33 fewer searches of Multiracial individuals, 17 fewer searches of Native American individuals, 29 fewer searches of Pacific Islander individuals, and one more search of individuals perceived as Asian compared to the 2021 comparison period.



In Virginia, there is also evidence of a slight decrease in searches of Black drivers from 5.2% to 2.8%.³⁵ However, despite the reduction in stops and racial disparities during searches, disparities remained virtually the same in terms of who was stopped.³⁶ Advocacy organizations in Virginia have argued that additional measures are needed to reduce these disparities, including (1) prohibiting consent searches in traffic stops, (2) creating a civilian traffic enforcement agency, and (3) identifying overly-enforced misdemeanors.³⁷

Similarly, in Los Angeles, advocates and the Los Angeles Police Protective League (a police union) also recommended further reforms to traffic enforcement.³⁸ Advocates proposed expanding the pretext stop policy to “eliminate enforcement of non-moving and equipment-related traffic violations by police;[and] remove police enforcement of moving violations that do

³⁵ *Report on Analysis of Traffic Stop Data Collected under Virginia’s Community Policing Act* (Sept. 2022) Va. Dept. of Crim. J. Services <<https://rga.lis.virginia.gov/Published/2022/RD533/PDF>> [as of XXX]; Oliver, *Virginia’s traffic stops decline, but disparities persist* (Oct. 2022) Axios <<https://www.axios.com/local/richmond/2022/10/12/virginia-traffic-stops-disparities>> [as of XXX].

³⁶ *Report on Analysis of Traffic Stop Data Collected Under Virginia’s Community Policing Act* (Sept. 2022) Va. Dept. of Crim. J. Services <Report on Analysis of Traffic Stop Data Collected under Virginia’s Community Policing Act – September 2022> [as of XXX]; Oliver, *Virginia’s traffic stops decline, but disparities persist* (Oct. 2022) Axios <<https://www.axios.com/local/richmond/2022/10/12/virginia-traffic-stops-disparities>> [as of XXX].

³⁷ Oliver, *Virginia’s traffic stops decline, but disparities persist* (Oct. 2022) Axios <<https://www.axios.com/local/richmond/2022/10/12/virginia-traffic-stops-disparities>> [as of XXX].

³⁸ City of Los Angeles Traffic Enforcement Study and Outreach Report (Apr. 2023) p. 65 <https://ens.lacity.org/ladot/enforce_reports/ladotenforce_reports3669170610_04102023.pdf> [as of XXX]; Citing, L.A. Police Dept., *Limitation on Use of Pretextual Stops: 1/240.06* (“LAPD Limitation on Pretextual Stops”) (Mar. 2022) p. 1.

not demonstrably increase safety based on evidence-based best practices.”³⁹ The union also argued that certain types of calls for service “may not necessitate an armed response.”⁴⁰

These data and proposed reforms ultimately raise questions concerning the additional steps that must be taken to reduce profiling beyond prohibiting certain types of stops and searches. The RIPA Board and many leaders throughout the state and country are calling for changes in the law to reduce the types of stops and searches officers can conduct, but also broader policy reforms, such as implementing civilian traffic enforcement programs or ending the use of specialized teams that may rely more heavily on pretext stops.

iv. Public Safety Considerations under New Pretext Policies

The potential impact these policies have on public safety is still unknown; however there are studies conducted by the National Highway and Safety Transportation Board (NHTSA) addressing some ways to improve public safety by reducing certain types of traffic stops. NHTSA is a government agency whose mission is “[reduce] deaths, injuries and economic losses from motor vehicle crashes”⁴¹

In its 2023 Report, the Board highlighted two studies conducted by NHTSA related to traffic safety. The first study relied upon stop data from the Stanford Open Policing Project and found that state patrol traffic stops are not associated with reducing motor vehicle deaths, nor is there a significant association between increased stops and reducing risk of motor vehicle deaths.⁴²

The second study, released in 2022, discussed “high visibility enforcement” – when agencies increase their presence and use media campaigns to target certain types of traffic violations.⁴³ The study concluded that increased police presence as well as the use of media education and outreach plans were effective at reducing the number of seatbelt violations, but there was no measurable difference for campaigns related to distracted driving, driving under the influence,

³⁹ City of Los Angeles Traffic Enforcement Study and Outreach Report (Apr. 2023) p. 65 <https://ens.lacity.org/ladot/enforce_reports/ladotenforce_reports3669170610_04102023.pdf> [as of XXX]; Citing, Zahniser, D., *LAPD Should Stop Handling Many Non-Emergency Calls, Police Union Says* (2023) The Los Angeles Times <<https://www.latimes.com/california/story/2023-03-01/lapd-officers-want-to-stop-responding-to-nonviolent-calls>> [as of XXX];

⁴⁰ *Alternative Unarmed Response to Certain Calls for Service* (Mar. 2023) Los Angeles Police Protective League <https://mcusercontent.com/6a0707887484bfcead01dcf9d/files/673f0eaa-11ca-0de9-ae6a-a3c69a787978/Alternative_Response_to_911_Calls_for_Service_1_.pdf> [as of XXX]; See generally, City of Los Angeles Traffic Enforcement Study and Outreach Report (Apr. 2023) p. 65 <https://ens.lacity.org/ladot/enforce_reports/ladotenforce_reports3669170610_04102023.pdf> [as of XXX]; Citing, Zahniser, D., *LAPD Should Stop Handling Many Non-Emergency Calls, Police Union Says* (2023) The Los Angeles Times <<https://www.latimes.com/california/story/2023-03-01/lapd-officers-want-to-stop-responding-to-nonviolent-calls>> [as of XXX].

⁴¹ National Highway and Traffic Safety Administration (NHTSA), About <<https://www.nhtsa.gov/about-nhtsa>> [as of XXX].

⁴² Reducing Speeding-Related Crashes Involving Passenger Vehicles (2017) Nat. Transportation Safety Board, NTSB/SS17/01 <<https://www.nts.gov/safety/safety-studies/Pages/DCA15SS002.aspx>> [as of XXX].

⁴³ Taylor et al., *Synthesis of Studies That Related Amount of Enforcement to Magnitude of Safety Outcomes* (June 2022) Nat. Highway Traffic Safety Admin, p. 14 <<https://rosap.nhtsa.gov/view/dot/62379>> [as of XXX].

speeding, and aggressive driving.⁴⁴ Given these findings, particularly the lack of association between increased stops and reducing motor vehicle deaths, NHTSA recommends agencies consider alternative approaches to policing including the use of automated speed enforcement technology. Advocates have cautioned that these approaches to public safety should not increase surveillance or biased enforcement where they are placed in communities. If these changes are implemented, advocates recommend that they are coordinated with the communities most impacted by inequitable traffic enforcement and only if they are a part of a package of reforms.⁴⁵ Because of this, agencies and legislatures may wish to consider additional public safety approaches that are not associated with increased patrols.

There are several proposed alternatives. The first alternative is to improve infrastructure by creating road features that naturally slow traffic and discourage traffic violations.⁴⁶ A second idea is to reduce fines and fees to allow for community members to make needed repairs to their vehicles instead of imposing fines that may reduce a person's financial abilities to make the repairs.⁴⁷ A third approach, outlined above, is to shift certain responsibilities to civilian traffic personnel so officers can focus on more serious calls.⁴⁸ The Los Angeles Police Protective League points out that creating a civilian traffic enforcement program would "free up officers to focus more on violent crime, solve more cases, and improve officer morale."⁴⁹ Moving forward, communities and the legislature should consider how these alternative approaches to traffic enforcement could address public safety concerns.

5. Calls for Additional Measures to Address Pretextual Stops

In previous Reports, the Board has called upon the Legislature, community leaders, and law enforcement agencies to end the use of pretextual stops, consider using alternative approaches to traffic that do not involve armed peace officers, and to use data as a way to create transparency and establish policies to reduce disparities. Since then, the California Legislature has proposed two new laws to address pretextual stops. Similarly, the U.S. House of Representatives also considered a new bill that would financially support cities in developing a civilian traffic enforcement system.

i. Legislative Efforts

⁴⁴ Taylor et al., *Synthesis of Studies That Related Amount of Enforcement to Magnitude of Safety Outcomes* (June 2022) Nat. Highway Traffic Safety Admin, p. 14 <<https://rosap.nhtsa.gov/view/doc/62379>> [as of XXX].

⁴⁵ City of Los Angeles Traffic Enforcement Study and Outreach Report (Apr. 2023) p. 63 <https://ens.lacity.org/ladot/enforce_reports/ladotenforce_reports3669170610_04102023.pdf> [as of XXX].

⁴⁶ City of Los Angeles Traffic Enforcement Study and Outreach Report (Apr. 2023) p. 63 <https://ens.lacity.org/ladot/enforce_reports/ladotenforce_reports3669170610_04102023.pdf> [as of XXX].

⁴⁷ City of Los Angeles Traffic Enforcement Study and Outreach Report (Apr. 2023) p. 64 <https://ens.lacity.org/ladot/enforce_reports/ladotenforce_reports3669170610_04102023.pdf> [as of XXX].

⁴⁸ *Alternative Unarmed Response to Certain Calls for Service* (Mar. 2023) Los Angeles Police Protective League <https://mcusercontent.com/6a0707887484bfcead01dcf9d/files/673f0eaa-11ca-0de9-ae6a-a3c69a787978/Alternative_Response_to_911_Calls_for_Service_1_.pdf> [as of XXX].

⁴⁹ Zahniser, D., *LAPD Should Stop Handling Many Non-Emergency Calls, Police Union Says* (2023) The Los Angeles Times <<https://www.latimes.com/california/story/2023-03-01/lapd-officers-want-to-stop-responding-to-nonviolent-calls>> [as of XXX].

a. Senate Bill 50 (SB 50)

California SB 50 was proposed in 2023 to restrict stops for certain minor traffic infractions. The Board discusses this legislative effort to address pretextual stops since it may inform future legislation. Building on the work of the RIPA Board, SB 50 was proposed to address pretextual stops and searches by (1) restricting officers from conducting stops for specific traffic violations and (2) amending the California Penal Code to allow for the creation of civilian traffic enforcement programs.⁵⁰ The bill prohibited stops for certain infractions unless there is a separate, independent basis to initiate the stop.⁵¹ Specifically, the original text of the bill prohibited stops for:

- (1) Registration⁵²
- (2) Positioning of a license plate⁵³
- (3) Lighting equipment “illuminating, if the violation is limited to a single brake light, headlight, rear license plate, or running light, or a single bulb in a larger light of the same.”⁵⁴
- (5) Bumper equipment⁵⁵ and
- (6) Bicycle equipment.⁵⁶

Even though officers would be prohibited from making a stop for these violations, the bill would allow an officer to mail a ticket to the registered owner. Finally, the bill would permit “officers or other government employees” to conduct traffic stops.⁵⁷ The bill author noted that “research shows that pretext stops do not significantly benefit public safety, yet used valuable resources that could be directed to more effective public safety approaches.”⁵⁸

The Prosecutors Alliance of California, one of the bill’s sponsors, argued that pretext stops fail to meaningfully improve public safety and result in profiling of individuals.⁵⁹ They expressed concern that pretext stops are not effective in locating contraband and result in the disparate treatment of individuals.⁶⁰

Although the Los Angeles Police Protective League has not supported the bill as of yet, they have also proposed that certain types of calls for service do not necessitate an armed response. The union has identified 28 types of calls that would be appropriate to be handled by a sworn

⁵⁰ Sen. Bill No. 50 (2023-2024 Reg. Sess.)

⁵¹ Sen. Bill No. 50 (2023-2024 Reg. Sess.)

⁵² Sen. Bill No. 50 (2023-2024 Reg. Sess.)

⁵³ Sen. Bill No. 50 (2023-2024 Reg. Sess.)

⁵⁴ Sen. Bill No. 50 (2023-2024 Reg. Sess.)

⁵⁵ Sen. Bill No. 50 (2023-2024 Reg. Sess.)

⁵⁶ Sen. Bill No. 50 (2023-2024 Reg. Sess.)

⁵⁷ Sen. Bill No. 50 (2023-2024 Reg. Sess.)

⁵⁸ Sen. Com. On Pub. Safety Analysis of Sen. Bill No. 50 (2023-2024 Reg. Sess.) as amended March 24, 2023, p. 5.

⁵⁹ Sen. Com. On Pub. Safety Analysis of Sen. Bill No. 50 (2023-2024 Reg. Sess.) as amended March 24, 2023, p. 9.

⁶⁰ Sen. Com. On Pub. Safety Analysis of Sen. Bill No. 50 (2023-2024 Reg. Sess.) as amended March 24, 2023, p. 9.

officer and would not necessitate a law enforcement response.⁶¹ The union noted that such changes would free up officers to fight violent crimes.⁶²

Those arguing in opposition of the bill expressed concern that by reducing pretextual stops, officers could lose the ability to detain a person to investigate an unrelated hunch and potentially discover contraband.⁶³ They also pointed to several individual cases where narcotics or weapons were seized.⁶⁴ Finally, they expressed concern that notifying a driver of a violation by mail may not address an urgent issue with the vehicle.⁶⁵

In a letter of support for the bill, the RIPA Board encouraged the Legislature to eliminate all pretextual stops and searches rather than just limiting when a person can be stopped for specific traffic infractions.⁶⁶ The Board explained:

The issue of pretextual stops is much more pervasive than eliminating enforcement of the Vehicle Code sections identified in SB 50. Without prohibiting the conduct entirely, community members remain vulnerable to pretextual stops; for example, an officer may stop someone for speeding pretextually in order to investigate an unrelated hunch.⁶⁷

The Board hopes the Legislature will consider eliminating all pretextual stops and searches in addition to limiting stops for specific traffic codes.⁶⁸

[As of September 8th, 2023 the bill was ordered to a third reading]

b. AB 93

⁶¹The proposed limitations include: non-criminal and/or non-violent homeless and quality of life related calls, non-criminal mental health calls, non-violent juvenile disturbance or juveniles beyond parental control (will not go to school), calls to schools unless the school administration initiates a call for an emergency police response or makes a mandatory reporting notification, public health order violations, non-violent calls for service at City parks, under the influence calls (alcohol and/or drugs) where there is no other crime in progress, welfare checks, non-fatal vehicle accidents, parking violations, driveway tow, abandoned vehicles, person dumping trash, vicious and dangerous dog complaints where there is no attack, calls for service for loud noise or party calls where there is no victim, landlord/tenant disputes, loitering/trespassing with no indication of danger, some alarm responses, syringe disposal, DOT standby, homeless encampment clean-ups, panhandling, illegal vending, gambling, fireworks, urinating in public, drinking in public, 927-D where no indication of foul play. *Alternative Unarmed Response to Certain Calls for Service* (Mar. 2023) Los Angeles Police Protective League

<https://mcusercontent.com/6a0707887484bfcead01dcf9d/files/673f0eaa-11ca-0de9-ae6a-a3c69a787978/Alternative_Response_to_911_Calls_for_Service_1_.pdf> [as of XXX]

⁶² *Alternative Unarmed Response to Certain Calls for Service* (Mar. 2023) Los Angeles Police Protective League <https://mcusercontent.com/6a0707887484bfcead01dcf9d/files/673f0eaa-11ca-0de9-ae6a-a3c69a787978/Alternative_Response_to_911_Calls_for_Service_1_.pdf> [as of XXX]

⁶²

⁶³ Sen. Com. On Pub. Safety Analysis of Sen. Bill No. 50 (2023-2024 Reg. Sess.) as amended March 24, 2023, pp. 9-10.

⁶⁴ Sen. Com. On Pub. Safety Analysis of Sen. Bill No. 50 (2023-2024 Reg. Sess.) as amended March 24, 2023, pp. 9-10.

⁶⁵ Sen. Com. On Pub. Safety Analysis of Sen. Bill No. 50 (2023-2024 Reg. Sess.) as amended March 24, 2023, pp. 9-10.

⁶⁶ See Appendix XX.

⁶⁷ See Appendix XX.

⁶⁸ See RIPA Report 2023, p. 89.

Another bill proposed in the California Legislature would have ended the use of consent only searches. As introduced, AB 93 was consistent with the Board’s prior recommendation to eliminate consent searches. The legislation provided that “[t]he consent of a person given to a peace officer to conduct a search shall not constitute lawful justification for a search. A warrantless search conducted solely on the basis of a person’s consent is a violation of that person’s rights under this section.”⁶⁹

Even though the bill did not pass in the 2023 legislative session, it is important to discuss the positive aspects of the legislation as it was proposed, because of the importance of eliminating consent searches that can be explicitly or implicitly racially motivated. The author of the bill noted that consent searches are inherently vulnerable to bias because they are not based on objective criteria, and police have full discretion to choose when and whom to search.⁷⁰ Citing the RIPA Report 2023, the author noted the RIPA data “reveals that Black individuals were four times as likely and Latino individuals were 2.4 times as likely to be asked for a consent search during a traffic stop as White individuals. During stops where officers perform consent searches, officers are least likely to find contraband in the possession of those who are Black.”⁷¹ The author also asserted that “[l]imiting consent searches will help stop unjustifiable police interactions that lead to more intrusive and at worst lethal encounters with communities of color.”⁷²

Those in opposition to the bill argued: (1) it removes a law enforcement tool; (2) it removes a person’s free choice to be searched by an officer; (3) and the bill would stop searches based on reasonable suspicion.⁷³ However, the text of the bill only addresses consent searches but does not end consensual encounters.⁷⁴ Searches would still be permitted if there is another independent legal basis for the search, such as reasonable suspicion.⁷⁵

In a letter to the Legislature, the RIPA Board expressed its support for the bill. The Board asserted: (1) data show suspicionless searches are a significant source of disparities because there is no objective criteria of who to search and why, making these stops vulnerable to the biases of the officers; and (2) data show that consent searches are not an effective law enforcement tool compared to intelligence-led stops.⁷⁶ The Board also explained that the California Highway Patrol (CHP), the largest law enforcement agency in the state, rarely uses consent searches compared to other agencies.⁷⁷ CHP’s policy restricting consent searches began in 2001 after a lawsuit lead by the ACLU. During the lawsuit, data was presented showing CHP rarely conducted consent searches⁷⁸ and when they did, Black individuals were twice as likely to be

⁶⁹ Assm. Bill No. 93 (2023-2024 Reg. Sess.)

⁷⁰ Assm. Floor Analysis, 3d reading of Assm. Bill No. 93 (2023-2024 Reg. Sess.) Feb. 23, 2023.

⁷¹ Assm. Floor Analysis, 3d reading of Assm. Bill No. 93 (2023-2024 Reg. Sess.) Feb. 23, 2023.

⁷² Assm. Floor Analysis, 3d reading of Assm. Bill No. 93 (2023-2024 Reg. Sess.) Feb. 23, 2023.

⁷³ Assm. Floor Analysis, 3d reading of Assm. Bill No. 93 (2023-2024 Reg. Sess.) Feb. 23, 2023.

⁷⁴ Assm. Floor Analysis, 3d reading of Assm. Bill No. 93 (2023-2024 Reg. Sess.) Feb. 23, 2023.

⁷⁵ Assm. Floor Analysis, 3d reading of Assm. Bill No. 93 (2023-2024 Reg. Sess.) Feb. 23, 2023.

⁷⁶ Assm. Floor Analysis, 3d reading of Assm. Bill No. 93 (2023-2024 Reg. Sess.) Feb. 23, 2023.

⁷⁷ See Appendix XX for a copy of the Board’s March 16, 2023 letter to the Legislature in support of AB 93.

⁷⁸ CHP officers had conducted 1,370 consent searches, a small fraction of the 3 million stops CHP conducted in

searched and those who are Latine(x) were three times as likely to be searched than those who were perceived to be White.⁷⁹ As a result of these findings, CHP issued a moratorium on using consent searches from 2001-2006.⁸⁰ Since then, CHP has implemented policies that continue to restrict consent searches and allow for them only under certain circumstances, discussed in more detail below.⁸¹

Presently, RIPA data shows that in 2021 CHP reported asking for consent to search a person or their property during roughly 0.1 percent of stops, whereas the other 57 law enforcement agencies that collected data in 2021 reported asking for consent to perform searches during 7.7 percent of stops.⁸² CHP also conducted consent only searches during approximately 0.01 percent of stops, whereas the other reporting agencies reported conducting consent only searches during 2.7 percent of stops.⁸³ Similarly, in 2022 CHP reported asking for consent to search a person or their property during roughly 0.04 percent of stops, whereas the other 534 enforcement agencies that collected data in 2022 reported asking for consent to perform searches during 8.2 percent of stops. CHP also conducted consent only searches during approximately 0.01 percent of stops, whereas the other reporting agencies reported conducting consent only searches during 3.1 percent of stops.

CHP's policy itself distinguishes two different types of consent searches: (1) protective consent searches and (2) investigatory consent searches.⁸⁴ A protective consent search is allowed under the policy if the officer can articulate a need to protect themselves or others.⁸⁵ An investigatory consent search is permitted if the search is based on a reasonable suspicion evidence of criminal activity.⁸⁶ The policy further limits uniformed employees from asking for consent to search without supervisor approval unless they have reasonable suspicion or probable cause a crime has been committed.⁸⁷ Finally, CHP requires that the officer must obtain written consent from the person if they are going to conduct a consent search.⁸⁸ The Board has recommended eliminating the practice of consent searches entirely but CHP's approach could serve as a model of the successes of limiting consent searches.

In its letter to the Legislature regarding AB 93, the Board encouraged the Legislature to take an additional step to eliminate all suspicionless searches, including probation or supervision searches. When an individual is placed on supervision, often a term of that probation is allowing officers to search the individual any time of the day or night, with or without a warrant or the

2000. See California Highway Patrol Bans Consent Searches Following Review of Data Collection Showing Discriminatory Pattern (Apr. 2001) ACLU <<https://www.aclu.org/press-releases/california-highway-patrol-bans-consent-searches-following-review-data-collection>> [as of XXX].

⁷⁹ California Highway Patrol Bans Consent Searches Following Review of Data Collection Showing Discriminatory Pattern (Apr. 2001) ACLU <<https://www.aclu.org/press-releases/california-highway-patrol-bans-consent-searches-following-review-data-collection>> [as of XXX].

⁸⁰ California Highway Patrol Bans Consent Searches Following Review of Data Collection Showing Discriminatory Pattern (Apr. 2001) ACLU <<https://www.aclu.org/press-releases/california-highway-patrol-bans-consent-searches-following-review-data-collection>> [as of XXX].

⁸¹ California Highway Patrol, General Order: Search and Seizure Policy, 100.91 (Aug. 2019).

⁸² See Appendix XX for a copy of the Board's March 16, 2023 letter to the Legislature in support of AB 93.

⁸³ See Appendix XX for a copy of the Board's March 16, 2023 letter to the Legislature in support of AB 93.

⁸⁴ California Highway Patrol, General Order: Search and Seizure Policy, 100.91 (Aug. 2019).

⁸⁵ California Highway Patrol, General Order: Search and Seizure Policy, 100.91 (Aug. 2019).

⁸⁶ California Highway Patrol, General Order: Search and Seizure Policy, 100.91 (Aug. 2019).

⁸⁷ California Highway Patrol, General Order: Search and Seizure Policy, 100.91 (Aug. 2019).

⁸⁸ California Highway Patrol, General Order: Search and Seizure Policy, 100.91 (Aug. 2019).

consent of the individual.⁸⁹ In order to conduct the search, the officer only needs to have knowledge the person is on probation and has a search condition; the officer does not need to suspect the person has committed a crime.⁹⁰

Those arguing against this change have (1) expressed that these probation searches are an important tool to know if a person is dangerous and (2) proposed these stops and searches are good for the person on parole because it keeps them accountable. However, in support of its position, the Board explains, RIPA data shows supervision searches generally are not as effective at yielding contraband than intelligence-led searches;⁹¹ and there are concerning disparities in who is subjected to these searches.^{92,93} Studies instead demonstrate that “what does make a difference increasing public safety is engaging with those on supervision as community members rather than potential offenders.”⁹⁴

The effect of probation searches on keeping a person accountable is also suspect, given the known disparities in enforcement of probation violations. Annually California spends \$ 2 billion to re-incarcerate people for technical violations, for example missing an appointment with a probation officer.⁹⁵ These technical violations have been seen as a tripwire that contributes to mass incarceration that severely impacts communities of color.⁹⁶ The RIPA Board instead has advocated “one way to help break this cycle is to stop making assumptions that an individual is engaged in criminal activity simply because they may have a criminal history.”⁹⁷ Moving forward, the Board hopes the Legislature will consider additional measures to end probation inquiries and any probation searches, instead requiring probable cause or reasonable suspicion to search.

c. Prior Board Recommendations

The Board hopes their recommendations eventually will be adopted by the Legislature and agencies in their entirety, including:

⁸⁹ See *People v. Sanders* (2003) 31 Cal. 4th 318, 333; *People v. Reyes* (1998) 19 Cal. 4th 743, 750-754; In re Jaime P. (2006) 40 Cal. 4th 128.

⁹⁰ See *People v. Sanders* (2003) 31 Cal. 4th 318, 333; *People v. Reyes* (1998) 19 Cal. 4th 743, 750-754; In re Jaime P. (2006) 40 Cal. 4th 128.

⁹¹ Racial and Identity Profiling Advisory Board, Annual Report (2023), p. 73.

⁹² Racial and Identity Profiling Advisory Board, Annual Report (2023), p. 73.

⁹³ See Appendix XX for a copy of the Board’s March 16, 2023 letter to the Legislature in support of AB 93.

⁹⁴ See White, *Probation Conditions Relaxed During the Pandemic. Some Say They Should Stay That Way (“Probation Conditions Relaxed”)* (June 2020) The Appeal <<https://theappeal.org/coronavirus-probation-parole-technical-violations/>> [as of XXX];

⁹⁵ See Sen. Com. on Public Safety, analysis of Assem. Bill No. 1950 (2019-2020 Reg. Sess.) p. 4, citing The Council of State Governments Justice Center, *Confined and Costly: How Supervision Violations are Filling Prisons and Burdening Budgets* (2019) <<https://csgjusticecenter.org/publications/confined-costly/?usState=CA#primary>> [as of XXX].

⁹⁶ See Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010) pp. 12-15

⁹⁷ Racial and Identity Profiling Report (2022) p. 118 <<https://oag.ca.gov/system/files/media/ripa-board-report-2022.pdf>> [as of XXX].

- (1) Identifying and taking action to limit enforcement of traffic laws and minor offenses that pose a low risk to public safety and show significant disparities in the rate of enforcement.⁹⁸ (Addressed in part in SB 50)
- (2) Limit armed law enforcement responses to traffic enforcement by allowing for stops only if there is a concern for public safety, and explore amending the Vehicle Code to move traffic enforcement out of law enforcement’s purview (e.g., to a civilian traffic unit).⁹⁹ (Addressed in part in SB 50)
- (3) Prohibiting certain searches, such as consent searches or supervision searches, during traffic stops and instead requiring probable cause for any search.¹⁰⁰ (Addressed in part in AB 93)
- (4) Eliminating all pretextual stops and subsequent searches and ensuring that a stop or search is based on reasonable suspicion or probable cause, respectively.¹⁰¹ (Not yet addressed by the state Legislature)

This year and in future Reports, the Board will continue to monitor the RIPA data to inform the Legislature and communities of ways to make policing safer and more equitable.

d. Federal Legislation

Another bill proposed this year, H.R. No. 852, the “Investing in Safer Traffic Stops Act,” addressed the creation of civilian traffic enforcement programs. This bill would establish a grant program that would aid communities trying to establish a civilian traffic enforcement system.¹⁰² The U.S. Attorney General would be responsible for creating the program and awarding grantees from local, state, or tribal governments to help create them.¹⁰³ The grant would award \$100,000,000 for each fiscal year from 2024-2029.¹⁰⁴ The bill also defines civilian for purposes of the program as a person who is not a law enforcement officer.¹⁰⁵

The bill’s author explained the bill was a direct response to the death of Tyre Nichols, who was beaten to death by police officers in 2023 after a stop for a minor traffic violation. The author stated, “What happened to Tyre Nichols could happen to any Black person in America . . . We have the power to prevent traffic stops from taking a deadly turn by putting enforcement where it belongs – in the hands of civilians or cameras.”¹⁰⁶

⁹⁸ Racial and Identity Profiling Advisory Board, Annual Report (2023), p. 89.

⁹⁹ Racial and Identity Profiling Advisory Board, Annual Report (2023), p. 89.

¹⁰⁰ Racial and Identity Profiling Advisory Board, Annual Report (2023), p. 89.

¹⁰¹ Racial and Identity Profiling Advisory Board, Annual Report (2023), p. 89.

¹⁰² H.R. No. 852, 118th Cong., 1st Sess. (2023).

¹⁰³ H.R. No. 852, 118th Cong., 1st Sess. (2023).

¹⁰⁴ H.R. No. 852, 118th Cong., 1st Sess. (2023).

¹⁰⁵ H.R. No. 852, 118th Cong., 1st Sess. (2023).

¹⁰⁶ Holder, *Proposal Would Reward Cities That Take Cops Out of Traffic Stops* (Feb. 2023) Bloomberg <<https://www.bloomberg.com/news/articles/2023-02-08/bill-in-congress-rewards-removing-police-from-traffic-stops>> [as of XXX].

[Board is monitoring the progress of this bill]

**e. Federal Policies: U.S. Department of Justice Settlement
– Minneapolis Police Department**

After the murder of George Floyd, the United States Department of Justice (U.S. DOJ) launched a pattern and practice investigation into whether the Minneapolis Police Department (MPD) engaged in a pattern or practice of constitutional violations¹⁰⁷ The investigation found that MPD engaged in pretextual traffic stops, consent searches, and used field interview cards in a discriminatory manner that deprived citizens of their constitutional rights.¹⁰⁸

As a result of these findings, the City of Minneapolis and the U.S. DOJ entered into a settlement agreement requiring MPD to change some of its policies. First, the required new policies prohibit certain types of traffic stops¹⁰⁹ and instead require MPD to mail notice for those violations to the registered owner.¹¹⁰ The policy makes an exception for commercial vehicles, similar to SB 50 discussed above.¹¹¹ The policy does allow for officers to stop or detain a driver for “operating a vehicle in an unsafe manner or creating an imminent hazard to safety, even if they are engaged in one or more of the non-citable offenses.”¹¹² However, the mere fact someone has engaged in multiple violations does not mean they constitute an imminent safety hazard; instead officers must articulate a danger based on the “totality of the circumstances.”¹¹³ In addition to limiting

¹⁰⁷ Minnesota Department of Human Rights v. City of Minneapolis, Settlement Agreement (Mar. 2023) <<https://lims.minneapolismn.gov/Download/FileV2/30804/MDHR-v-City-of-Minneapolis-Settlement-Agreement.pdf>> [as of XXX].

¹⁰⁸ Minnesota Department of Human Rights v. City of Minneapolis, Settlement Agreement (Mar. 2023) <<https://lims.minneapolismn.gov/Download/FileV2/30804/MDHR-v-City-of-Minneapolis-Settlement-Agreement.pdf>> [as of XXX].

¹⁰⁹ Failure to display registration tabs or driving with expired registration; failure to illuminate license plate; rim or frame obscuring license plate; driving with only one functioning and visible headlight, break light, or tail light, driving with only one functional side view mirror present, driving without a rearview mirror, with the rearview mirror obstructed, or with an item dangling from the rear view mirror, driving without working windshield wipers, failure to signal a lane change or turn, unless the driver is operating the vehicle in an unsafe manner, obstructed window, and window tint unless it creates an imminent hazard to safety. Minnesota Department of Human Rights v. City of Minneapolis, Settlement Agreement (Mar. 2023) <<https://lims.minneapolismn.gov/Download/FileV2/30804/MDHR-v-City-of-Minneapolis-Settlement-Agreement.pdf>> [as of XXX].

¹¹⁰ Minnesota Department of Human Rights v. City of Minneapolis, Settlement Agreement (Mar. 2023) <<https://lims.minneapolismn.gov/Download/FileV2/30804/MDHR-v-City-of-Minneapolis-Settlement-Agreement.pdf>> [as of XXX].

¹¹¹ Minnesota Department of Human Rights v. City of Minneapolis, Settlement Agreement (Mar. 2023) <<https://lims.minneapolismn.gov/Download/FileV2/30804/MDHR-v-City-of-Minneapolis-Settlement-Agreement.pdf>> [as of XXX].

¹¹² Minnesota Department of Human Rights v. City of Minneapolis, Settlement Agreement (Mar. 2023) <<https://lims.minneapolismn.gov/Download/FileV2/30804/MDHR-v-City-of-Minneapolis-Settlement-Agreement.pdf>> [as of XXX].

¹¹³ Minnesota Department of Human Rights v. City of Minneapolis, Settlement Agreement (Mar. 2023) <<https://lims.minneapolismn.gov/Download/FileV2/30804/MDHR-v-City-of-Minneapolis-Settlement-Agreement.pdf>> [as of XXX].

traffic stops, the U.S. DOJ settlement also prohibits the use of consent searches during a pedestrian or vehicle stop.¹¹⁴

The settlement also addresses the use of field interview cards, discussed in detail below.¹¹⁵ The policy requires officers conducting a field interview to inform the individual they do not need to respond to the officer's questions and they are free to leave.¹¹⁶ The officer is also required to explain the reason for the encounter and that the individual does not need to provide identification to the officer.¹¹⁷ The policy further prescribes that an officer may not use a person's choice to walk away and not answer questions as the basis for forming reasonable suspicion.¹¹⁸

These data-driven policy changes developed by U.S. DOJ may provide a road map to improve policing in agencies and create legislative reforms throughout the state of California. Many of these recommendations have previously been made by the RIPA Board, and the Board is encouraged to see some of those changes being adopted around the country.

f. Additional Calls to End Pretext Stops by Advocates and Victims of Police Violence

In 2023, the killing of Tyre Nichols again brought a national spotlight to the grave consequences of a pretext traffic stop escalating to an officer using deadly force. Tyre Nichols, a young Black man from Memphis, lost his life after being brutally beaten, Tased, and pepper sprayed after a pretextual traffic stop for a minor infraction.¹¹⁹ Mr. Nichols was driving home after photographing the sunset when he was pulled over for "reckless driving."¹²⁰ It is still unclear why Mr. Nichols was stopped or what conduct led the officers to believe he was driving

¹¹⁴ Minnesota Department of Human Rights v. City of Minneapolis, Settlement Agreement (Mar. 2023) <<https://lims.minneapolismn.gov/Download/FileV2/30804/MDHR-v-City-of-Minneapolis-Settlement-Agreement.pdf>> [as of XXX].

¹¹⁵ A field interview card is a document law enforcement officers can elect to fill out during a contact with an individual. These cards can contain information on who the person is with, what they are wearing, any social media accounts, or nicknames of the person.

¹¹⁶ Minnesota Department of Human Rights v. City of Minneapolis, Settlement Agreement (Mar. 2023) <<https://lims.minneapolismn.gov/Download/FileV2/30804/MDHR-v-City-of-Minneapolis-Settlement-Agreement.pdf>> [as of XXX].

¹¹⁷ Minnesota Department of Human Rights v. City of Minneapolis, Settlement Agreement (Mar. 2023) <<https://lims.minneapolismn.gov/Download/FileV2/30804/MDHR-v-City-of-Minneapolis-Settlement-Agreement.pdf>> [as of XXX].

¹¹⁸ Minnesota Department of Human Rights v. City of Minneapolis, Settlement Agreement (Mar. 2023) <<https://lims.minneapolismn.gov/Download/FileV2/30804/MDHR-v-City-of-Minneapolis-Settlement-Agreement.pdf>> [as of XXX].

¹¹⁹ *What we know about Tyre Nichols' death and the Memphis officers charged with his murder* (Feb. 2023) CBS News <<https://www.cbsnews.com/news/tyre-nichols-death-investigation-memphis-police-officers-charges-what-we-know/>> [as of XXX].

¹²⁰ *What we know about Tyre Nichols' death and the Memphis officers charged with his murder* (Feb. 2023) CBS News <<https://www.cbsnews.com/news/tyre-nichols-death-investigation-memphis-police-officers-charges-what-we-know/>> [as of XXX].

recklessly, but according to investigators, the stop was pretextual in nature.¹²¹ Investigators examining the case noted they were unable to verify that Mr. Nichols violated any laws prior to the stop being initiated.¹²² At some point during the stop, Mr. Nichols fled on foot, pursued by officers.¹²³

Mr. Nichols was pursued by multiple deputies who were part of a specialized unit whose focus was on “high-crime neighborhoods” or “hot-spots.”¹²⁴ The unit was created to address specific crimes, such as gang offenses or drug trafficking, and had a history of abusing constitutional rights of individuals, including excessive force, illegal searches, and discriminatory policing.¹²⁵ Studies have shown/evidence has demonstrated that specialized teams such as this unit have been found to use aggressive policing tactics and particularly traffic stops as a pretext to investigate other crimes.¹²⁶

Mr. Nichols’ brutal killing raises ongoing questions about law enforcement’s involvement in traffic stops, particularly pretextual stops that do not serve a public safety purpose. After his

¹²¹ *What we know about Tyre Nichols’ death and the Memphis officers charged with his murder* (Feb. 2023) CBS News <<https://www.cbsnews.com/news/tyre-nichols-death-investigation-memphis-police-officers-charges-what-we-know/>> [as of XXX].

¹²² *What we know about Tyre Nichols’ death and the Memphis officers charged with his murder* (Feb. 2023) CBS News <<https://www.cbsnews.com/news/tyre-nichols-death-investigation-memphis-police-officers-charges-what-we-know/>> [as of XXX].

¹²³ *What we know about Tyre Nichols’ death and the Memphis officers charged with his murder* (Feb. 2023) CBS News <<https://www.cbsnews.com/news/tyre-nichols-death-investigation-memphis-police-officers-charges-what-we-know/>> [as of XXX].

¹²⁴ Lopez, *Policing the Wrong Way: Memphis’s Scorpion is the latest special police unit to come under scrutiny* (Feb. 2023) N.Y. Times <<https://www.nytimes.com/2023/02/01/briefing/memphis-scorpion-unittyre-nichols-death.html>> [as of XXX].

¹²⁵ Lopez, *Policing the Wrong Way: Memphis’s Scorpion is the latest special police unit to come under scrutiny* (Feb. 2023) N.Y. Times <<https://www.nytimes.com/2023/02/01/briefing/memphis-scorpion-unittyre-nichols-death.html>> [as of XXX].

¹²⁶ Lopez, *Policing the Wrong Way: Memphis’s Scorpion is the latest special police unit to come under scrutiny* (Feb. 2023) N.Y. Times <Memphis’s Scorpion Unit Is the Latest Special Unit to Come Under Fire - The New York Times (nytimes.com)> [as of XXX]; A report to the Los Angeles Board of Police Commissioners concerning the operations, policies, and procedures of the Los Angeles Police Department in the wake of the Rampart scandal (Nov. 2000) Rep. of the Rampart Independent Review Panel <<https://exonerations.newkirkcenter.uci.edu/groups/sites/default/files/2020-06/OTH%20Rampart%20independent%20review%20panel.pdf>> [as of XXX]; *Christopher Commission: Report of the Independent Commission on Los Angeles Police Department* (1991) <<https://ia600302.us.archive.org/5/items/ChristopherCommissionLAPD/Christopher%20Commission%20LAPD.pdf>> [as of XXX]; Leonard, *Judge Finds Three LAPD Officers ‘Factually Innocent’ of Filing False Gang Reports* (May 2022) NBC L.A. <<https://www.nbclosangeles.com/investigations/lapd-false-gang-innocent-calgang/2902392/>> [as of XXX]; *Baltimore City Police Department, et. al. v. Ivan Potts*, Brief of Amici Curiae Victims of the Baltimore Police Department in Support of Appellee (Dec. 2019) Supreme Ct. of the U.S. <<https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2020/01/Potts-Md.-BGL-Amicus-Brief.pdf>> [as of XXX]; Watkins, *N.Y.P.D. Disbands Plainclothes Units Involved in Many Shootings* (June 2020) N.Y. Times <<https://www.nytimes.com/2020/06/15/nyregion/nypd-plainclothes-cops.html>> [as of XXX].

¹²⁶ Barns, *Police-Community Relations: A Study of Racial Disparity and the Effects of Hot Spots Policing Leadership Strategies* (2018) N.C. A&T State U. <doi:10751787> [as of XXX]; Guariglia, *Police Use of Artificial Intelligence 2021 in Review* (Jan. 2022) Electronic Frontier Foundation <Police Use of Artificial Intelligence: 2021 in Review | Electronic Frontier Foundation (eff.org)> [as of XXX].

death, Mr. Nichols’ family expressed that they wish to: “[I]mprove police-data transparency, end the use of armed officers for traffic enforcement, abandon pretextual stops, and disband all specialty task forces.”¹²⁷ This year, the Board examines these issues and sheds light on factors that contribute to pretextual stops as well as increased use of force incidents.

C. Driving Factors Associated with Pretext Stops: Specific Results of Stop and Assignment Type

During pretextual stops and searches, officers stop the person with the purpose of investigating an unrelated suspicion or hunch. The data can provide guidance on certain stop outcomes that may be connected to pretextual stops. By looking at the results of stop, agencies, municipalities, and communities can examine enforcement actions that result in disparate treatment of individuals and address some of the root causes of pretextual stops. Similarly, assessing the data on use of force rates associated with these outcomes can illuminate the experiences of those stopped and help communities identify the impact of specific types of stops. The data also helps communities examine the impact of specialized policing teams whose primary focus is on certain stop outcomes, such as gang enforcement or narcotics enforcement.

1. Pretextual Policing and the Results of Stop: Resisting Arrest and the Use of Field Interview Cards

Disparate treatment related to certain stop outcomes or actions taken during a stop offer opportunities to see how these stops unfold and may provide guidance as to policing strategies that may drive disparities. This year the Board reviews data for two types of stop outcomes: (1) when someone is charged with resisting arrest only; and (2) when a field interview card is completed at the end of a stop.

i. Resisting Arrest

Examining the result of stop where someone is charged with resisting arrest and no other underlying violation may be an indicator of a pretext stop because the individual does not receive a citation for the original reason for stop, such as a broken tail light. The U.S. DOJ conducted several investigations of law enforcement departments and

Former Supreme Court Justice Powell cautioned that “an overbroad code ordinance tends to be invoked only where there is no other valid basis for arresting an objectionable or suspicious person...and that the opportunity for abuse is... self-evident” – Powell, J. concurring opinion Cf. Lewis v. City of New Orleans, 415 U.S. 130, 136.

¹²⁷ Lowery, *Why There Was No Racial Reckoning* (Feb. 2023) The Atlantic <<https://www.theatlantic.com/ideas/archive/2023/02/tyre-nichols-death-memphis-george-floyd-police-reform/672986/>> [as of XXX].

specifically examined resisting arrest charges.¹²⁸ DOJ found racial disparities in who was alleged to be resisting arrest. Data also showed that in these incidents, there was likely no evidence to stop the person in the first place, since they were not arrested or ticketed for the underlying basis for the stop.¹²⁹

In California, resisting arrest can be charged as a misdemeanor and with or without accompanying charges.¹³⁰ During a resisting arrest incident, an officer may allege they received an injury during the encounter. In this particular analysis, the Board looks specifically at misdemeanor resisting arrest charges where there is no alleged injury charged as a part of the crime and the sole charge is resisting arrest.

Penal Code section 148, subdivision (a) provides the following elements the prosecution must prove beyond a reasonable doubt to convict a person of a resisting arrest:

- (1) The person was a peace officer lawfully performing or attempting to perform their duties as a peace officer;¹³¹
- (2) The person willfully resisted, obstructed, or delayed a peace officer in the performance or attempted performance of those duties;¹³² and
- (3) When the person acted they knew, or reasonably should have known, that the person was a peace officer performing or attempting to perform their duties.¹³³

The law further explains that an officer is not “lawfully performing their duties” if they are unlawfully arresting or detaining someone, including using unreasonable or excessive force.¹³⁴

The reason why the law allows for a person to be charged solely with this offense is because resisting also includes obstructing or delaying an officer in the performance of their duties.¹³⁵ For example, if a person is stopped for a traffic violation and refuses to exit their vehicle at the demand of an officer, the person could be charged with delaying or obstructing the officer during

¹²⁸ Investigation of the Louisville Metro Police Department and Louisville Metro Government (Mar. 2023) U.S. Dept. of Justice Civil Rights Division; Investigation of the Ferguson Police Department (Mar. 2015) U.S. Dept. of Justice Civil Rights Division; Investigation of the Baltimore Police Department (Aug. 2016) U.S. Dept. of Justice Civil Rights Division.

¹²⁹ Investigation of the Louisville Metro Police Department and Louisville Metro Government (Mar. 2023) U.S. Dept. of Justice Civil Rights Division; Investigation of the Ferguson Police Department (Mar. 2015) U.S. Dept. of Justice Civil Rights Division; Investigation of the Baltimore Police Department (Aug. 2016) U.S. Dept. of Justice Civil Rights Division.

¹³⁰ Cal. Crim. Jury Inst. No. 2656 (2022 edition) Resisting Peace Officer, Public Officer, or EMT (Pen. Code, § 148(a).)

¹³¹ Cal. Crim. Jury Inst. No. 2656 (2022 edition) Resisting Peace Officer, Public Officer, or EMT (Pen. Code, § 148(a).)

¹³² Cal. Crim. Jury Inst. No. 2656 (2022 edition) Resisting Peace Officer, Public Officer, or EMT (Pen. Code § 148(a).)

¹³³ Cal. Crim. Jury Inst. No. 2656 (2022 edition) Resisting Peace Officer, Public Officer, or EMT (Pen. Code, § 148(a).)

¹³⁴ Cal. Crim. Jury Inst. No. 2656 (2022 edition) Resisting Peace Officer, Public Officer, or EMT (Pen. Code, § 148(a)); *People v. White* (1980) 101 Cal.App.3d 161, 167.

¹³⁵ Pen. Code, § 148(a); Cal. Crim. Jury Inst. No. 2656 (2022 edition) Resisting Peace Officer, Public Officer, or EMT (Pen. Code § 148(a)); *People v. White* (1980) 101 Cal.App.3d 161, 167.

the performance of their duties. Below, the Board investigates the link between pretextual policing and resisting arrest, with a specific focus on the type of stop, disparities in enforcement, and use of force rates.

a. RIPA Data Analysis

1. Scope and Reasons for Stop

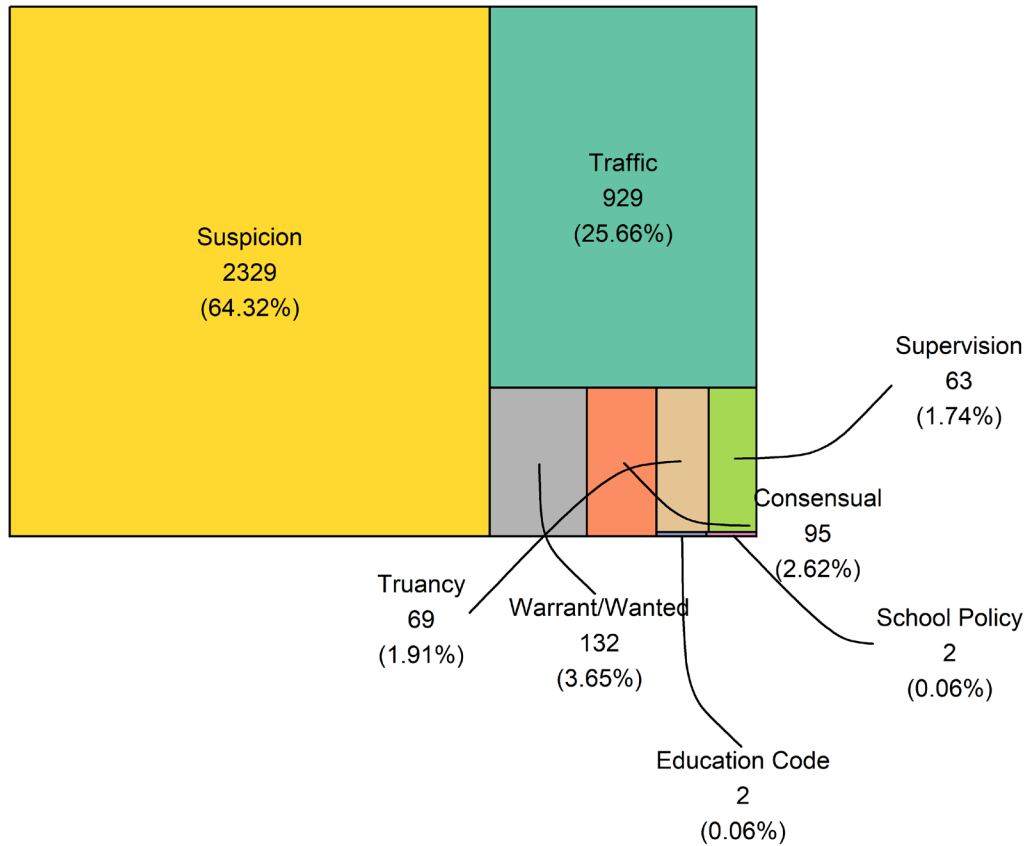
Stops that involved stand-alone, or sole, resisting, obstructing, or delaying an officer (commonly referred to under California law as resisting arrest) arrest charges were identified by three criteria. These criteria included: 1) the stop included a result of custodial arrest without a warrant; 2) Penal Code § 148(A)(1)¹³⁶ was listed as the offense code for the custodial arrest; and 3) the officer listed no other offenses under the result of stop (warnings, citations, other custodial arrest results, in-field cite and release results). The number of stops that met these criteria –sole resisting arrest stops – totaled 3,621 in 2022 (0.08%).

The largest portion of these sole resisting arrest stops were initiated for reasonable suspicion of criminal activity (2,329, 64.3% of sole resisting arrest stops), followed by traffic violations (929, 25.7%). The remaining sole resisting arrest stops were initiated for knowledge of a warrant/wanted person (132), consensual encounters resulting in a search (95), known supervision status (63), truancy (69), suspected education code violations (2), and suspected school policy violations (2).

¹³⁶ Resisting arrest is defined in California law to include when a person is alleged to resist, obstruct, or delay an officer in the performance of their duties. On page **XX**, the Report reviews the legal requirements under Pen. Code Section 148(a).

Figure XX

Reasons for Stop among Sole Resisting Arrest Stops – Total and Percent

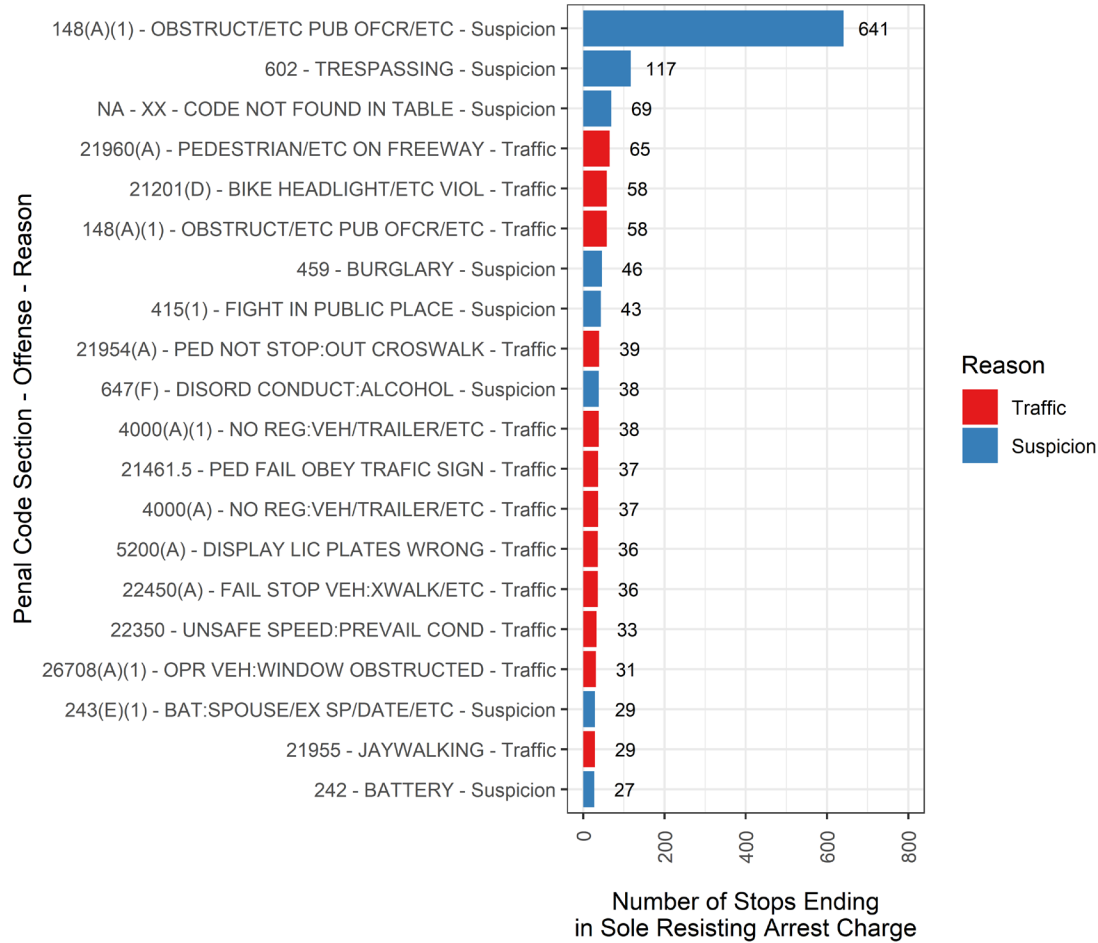


Among sole resisting arrest stops, the most common reason for stop was a suspected violation of Pen. Code § 148(a)(1) (641, 17.7% of sole resisting arrest stops). Traffic violations comprised 12 of the top 20 reasons for stops resulting in a sole resisting arrest charge. These traffic violations include four include pedestrian violations, a bicycle-related violation, and four equipment violations.¹³⁷

¹³⁷ Veh. Code § 21960(A), 21954(A), 21461.5, 21955 were identified as pedestrian related traffic violations. Veh. Code § 21201(D) was identified as a bicycle-related violation. Veh. Code § 4000(A), 4000(A)(1), 5200(A), and 26708(A)(1) were identified as equipment violations.

Figure XX

fTop 20 Reasons for Stop among Sole Resisting Arrest Stops¹³⁸



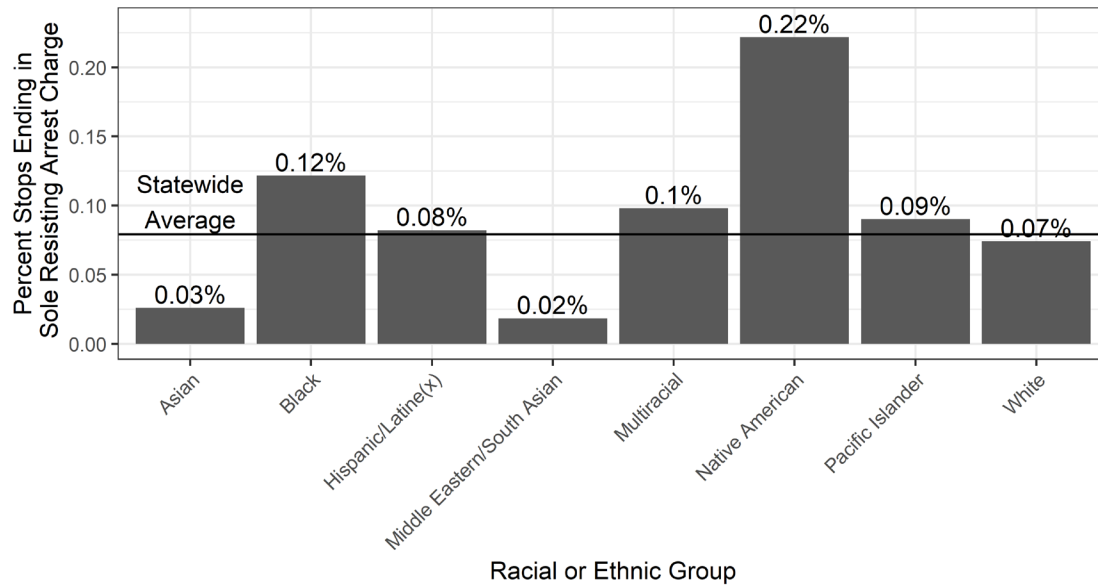
¹³⁸ Many of the narrative fields addressing the reason for stop described stopping the person for resisting without further explanation. Other narrative fields involved allegations of obstructing an officer in the performance of their duties; for example some fields stated “obstructed officers during traffic stop” or “running from an officer” although they did not report any reasonable suspicion the person had committed a crime. (*Illinois v. Wardlow* (2000) 528 U.S. 119, 124) The final grouping involves stops for traffic offenses that resulted in a resisting arrest charge. These entries raise questions because officers may be making stops for resisting arrest without reasonable suspicion and the data shows disparities in who is arrested for these offenses. (Cal. Pen. Code 148(a).)

2. Per Resident Resisting Arrest by Identity Group

In 2022, there were 3,621 stops resulting in sole resisting arrest charge among a total of 4,575,725 stops, a statewide average of 0.08 percent of stops. Individuals perceived as Native American had the highest percentage of stops that resulted in a sole resisting arrest charge among perceived racial or ethnic groups (0.22%, 2.8 times the state average). Other racial or ethnic groups with above average percentages of stops resulting in sole resisting arrest charges include individuals perceived as Black (0.12% of stops), Multiracial (0.1%), Pacific Islander (0.09%) and Hispanic/Latine(x) (0.08%). Groups with below average percentages of stops resulting in sole resisting arrest charges are individuals perceived as Middle Eastern/South Asian (0.02%), Asian (0.03%), and White (0.07%).

Figure XX

Percent of Stops Resulting in Sole Resisting Arrest by Racial or Ethnic Group

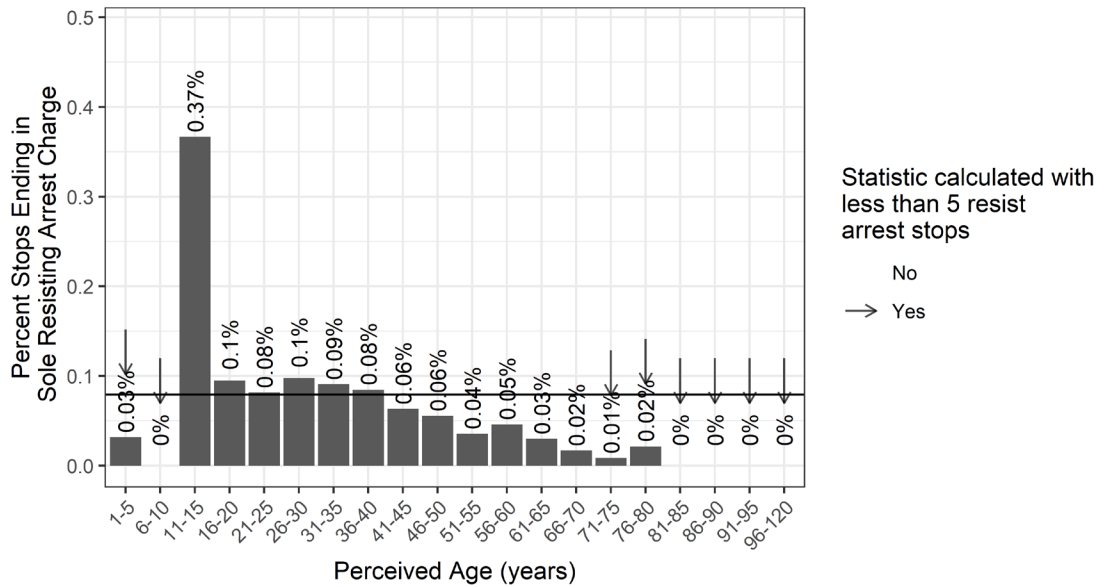


Individuals perceived as being between the ages of 11 and 15 had the highest percentage of stops that resulted in a sole resisting arrest charge among perceived age groups (0.37%, 94 total, 4.6 times the state average). All perceived age groups between 11 years and 40 years exceeded the state average (16-20 (0.1%, 433 stops total), 21-25 (0.08%, 603 stops), 26-30 (0.1%, 818 total),

31-35 (0.09%, 529 total), and 36-40 (0.08%, 496 total). All other groups had lower percentages of stops than the statewide average.

Figure XX

Percent of Stops Resulting in Sole Resisting Arrest by Age Group

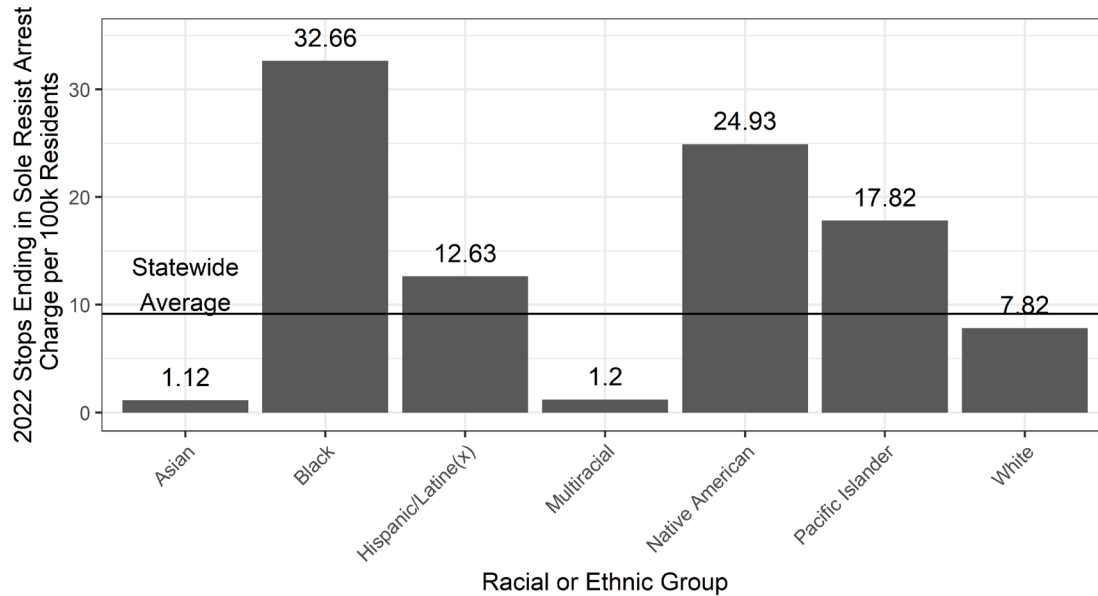


Based on the number of stops resulting in sole resisting arrest charges and the number of estimated California residents from the 2021 5-year American Community Survey, an average of 9.2 stops per 100,000 residents resulted in a sole charge of resisting arrest in the state (line on Figure XX below). Individuals perceived as Black had the highest per capita rate of stops that resulted in a sole charge of resisting arrest (32.7 stops per 100,000 residents, 3.3 times the statewide average). Individuals perceived as Black accounted for 19.2% of all stops that resulted in a sole charge of resisting arrest, while accounting for only 5.4% of the California residential population. Other racial or ethnic groups with higher than average per capita occurrences of stops resulting in a sole resisting arrest charge include individuals perceived as Native American (24.9 per 100,000), Pacific Islander (17.8 per 100,000), and Hispanic/Latine(x) (12.6 per 100,000). Racial or ethnic groups that had below average occurrence of stops that result in sole

resisting arrest charges were individuals perceived as Asian (1.1 per 100,000), Multiracial (1.2 per 100,000), and White (7.8 per 100,000).

Figure XX

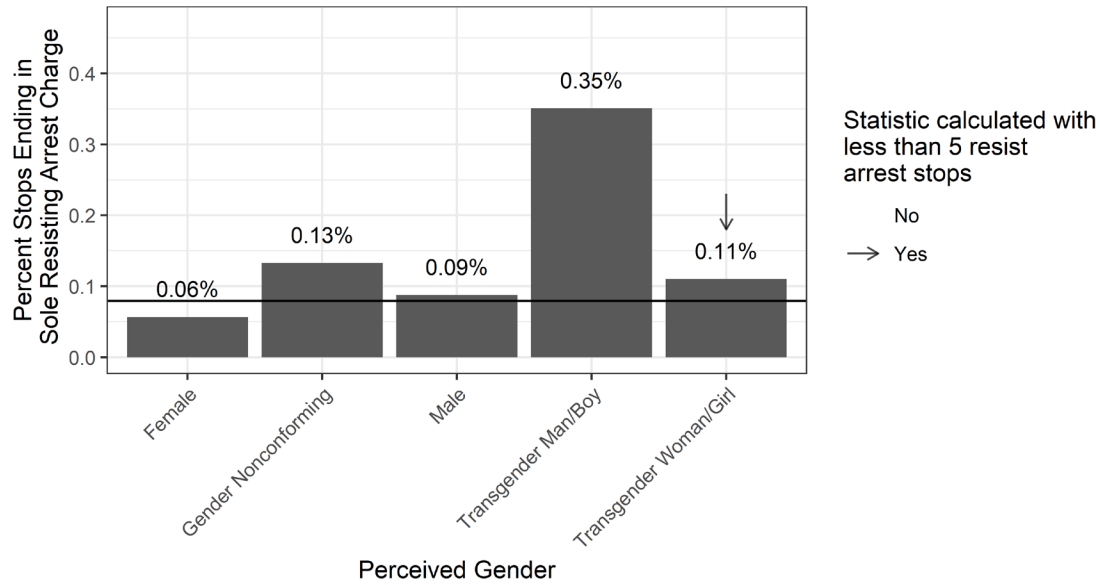
Occurrence of Sole Resisting Arrest Stops among Racial or Ethnic Groups per 100k California Residents in 2022



Individuals perceived as Transgender Men/Boys had the highest percentage of stops resulting in a sole resisting arrest charge among perceived gender groups (0.35%, 4.4 times the state average). Other perceived gender identities with above average percentages of stops that result in sole resisting arrest charges include individuals perceived as Gender Nonconforming (0.13% of stops), Transgender Woman/Girl (0.1% - less than 5 stops total), and Male (0.09%). Individuals perceived as Female had below average percentages of stops that resulted in sole resisting arrest charges (0.06%).

Figure XX

Percent of Stops Resulting in Sole Resisting Arrest by Perceived Gender

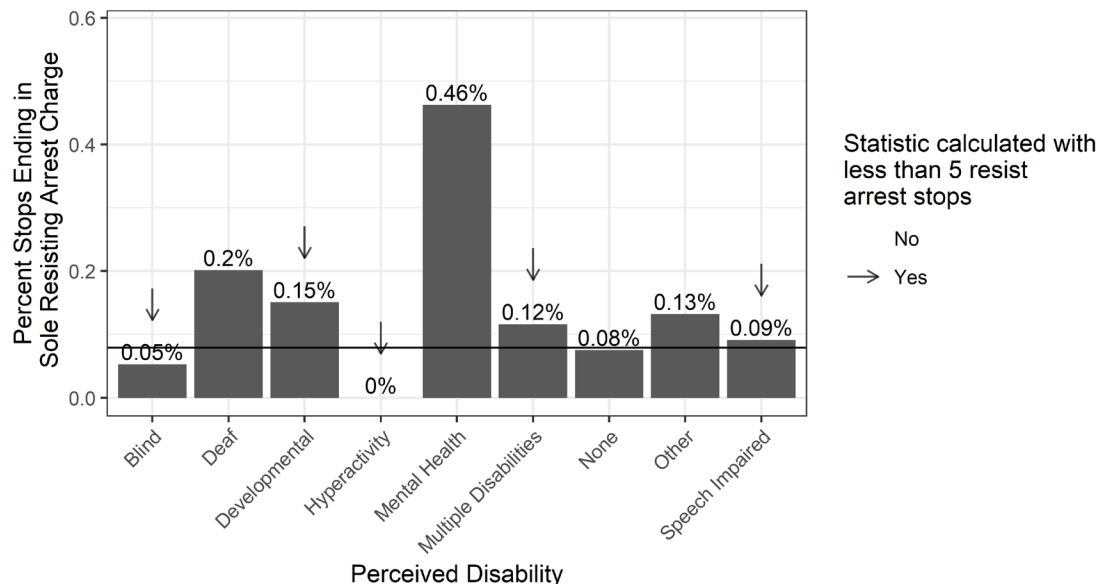


Individuals perceived to have a mental health disability had the highest percentage of stops that resulted in a sole resisting arrest charge among perceived or known disability groups (0.46%, 5.7 times the state average). Individuals perceived as deaf also had the second highest percentage of stops result in a sole resisting arrest charge (0.2%, 2.5 times the statewide average). When no disability was perceived, the percentage of stops with resisting arrest as the sole charge was very slightly below the statewide average (0.08%). Individuals with perceived disabilities of speech impaired, blind, developmental, hyperactivity, and multiple disabilities all had below five total

stops with resisting arrest as the sole charge. Collectively, perceived disabilities listed as “other” had a higher than average percentage of stops resisting arrest as the sole charge.

Figure XX

Percent of Stops Resulting in Stand-Sole Resisting Arrest by Perceived Disability



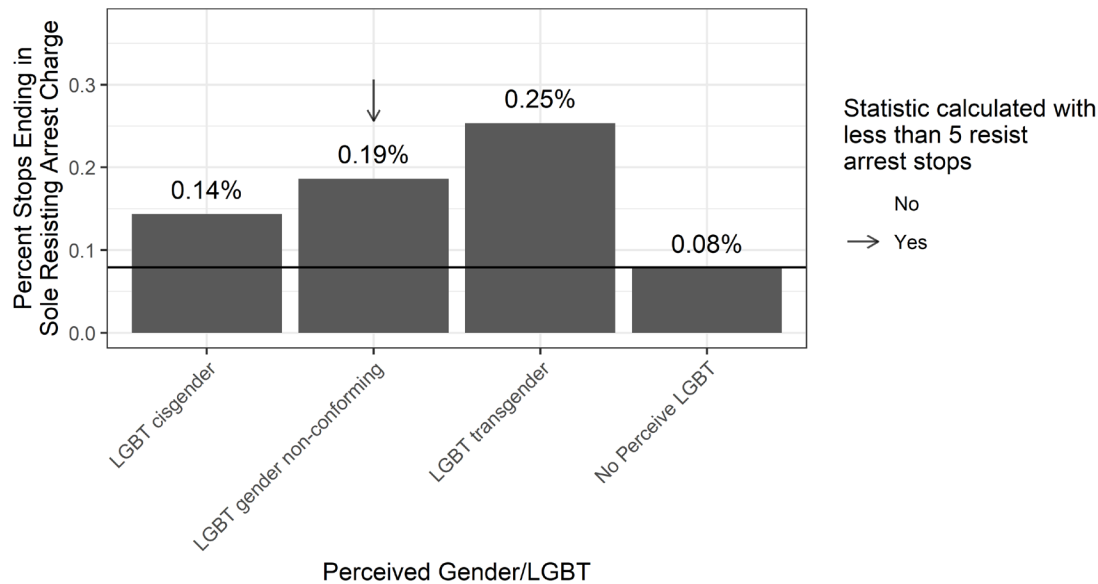
Officers record their perception of a stopped person’s gender and whether they perceive the person to be LGBT under two different fields. However, governing regulations specify that when officers indicate that they perceive an individual to be transgender, the officer must also indicate they perceive the person to be LGBT.¹³⁹ Accordingly, a substantial portion (17.3%) of individuals perceived to be LGBT were also perceived to be transgender. As displayed in Figure XX, transgender individuals experienced a percentage of stops that resulted in a sole resisting charge. Accordingly, Figure XX examines sole resisting arrests across the intersections of the LGBT and gender identity characteristics.¹⁴⁰ Among these intersectional RIPA identity categories, individuals perceived as LGBT and transgender had the highest percentage of stops resulting in sole resisting arrest charges (0.25%, 3 times the statewide average). Individuals perceived as both LGBT and gender non-conforming had a higher than average percentage of stops resulting in sole resisting arrest charges (0.19%, less than 5 total sole resisting arrest only stops). Individuals perceived as LGBT and cisgender also had a higher than average percentage of stops resulting in sole resisting arrest charges (0.14%). Individuals perceived as non-LGBT represent the majority of the stops in the dataset, and were slightly below the statewide average of the percentage of stops resulting in sole resisting arrest charges (0.08%).

¹³⁹ Cal. Code of Regs. § 999.226(a)(6)

¹⁴⁰ Within the 2022 RIPA stops four individuals were perceived as either of the two transgender gender categories but not perceived as LGBT. Given that the entries for these four stops did not align with the requirements set for under Cal. Code of Regs. § 999.226(a)(6), they were removed from this particular analysis.

Figure XX

Percent of Stops Resulting in Sole Resisting Arrest by Perceived Gender and LGBT



b. Recommendations

Several district attorneys’ offices in California have created policies to restrict the use of standalone resisting arrest charges. In 2020, Los Angeles created a policy requiring deputy district attorneys to dismiss standalone resisting arrest charges or charges where resisting arrest is charged in conjunction with trespass, disturbing the peace, driving without a valid license or a suspended license, simple drug possession, minor in possession of alcohol, drinking in public, under the influence of a controlled substance, public intoxication, or loitering.¹⁴¹ This particular policy reflects some of the findings in the RIPA data – e.g., trespass is one of the most frequently alleged reasons for stop when the result of stop is resisting arrest.

The goal of this policy ultimately is to protect public safety by focusing resources on combating serious crimes and diverting some misdemeanor cases from the criminal legal system to treatment providers.¹⁴² The policy notes the prosecution of low-level offenses should be guided in part by data-driven reforms.¹⁴³ Through their own analysis, the L.A. District Attorney found that over 47% of those incarcerated for misdemeanors have a mental health disability, 60% have substance use disorder, and 20% of all arrests involve individuals who are unhoused.¹⁴⁴ The policy also explains that misdemeanor convictions can have serious consequences by creating “difficulties with employment, housing, education, government benefits, and immigration for non-citizens and citizens alike.”¹⁴⁵ Such convictions also are accompanied with heavy fines that force some people to choose between necessities such as rent and paying these fines.¹⁴⁶ The

¹⁴¹ L.A. District Attorney’s Off., Special Directive: Misdemeanor Case Management (Dec. 2020).

¹⁴² L.A. District Attorney’s Off., Special Directive: Misdemeanor Case Management (Dec. 2020).

¹⁴³ L.A. District Attorney’s Off., Special Directive: Misdemeanor Case Management (Dec. 2020).

¹⁴⁴ L.A. District Attorney’s Off., Special Directive: Misdemeanor Case Management (Dec. 2020).

¹⁴⁵ L.A. District Attorney’s Off., Special Directive: Misdemeanor Case Management (Dec. 2020).

¹⁴⁶ L.A. District Attorney’s Off., Special Directive: Misdemeanor Case Management (Dec. 2020).

policy concludes: Despite the immense social costs, studies show that prosecution of the offenses driving the bulk of misdemeanor cases have minimal, or even negative, long-term impacts on public safety.¹⁴⁷

In Santa Clara, there is also a 2020 policy that restricts district attorneys from filing resisting arrest cases and requires deputies to review body worn camera footage prior to filing any charges.¹⁴⁸ The policy discourages deputies from filing standalone resisting arrest cases unless extraordinary circumstances exist.¹⁴⁹ District attorneys shall also provide feedback to officers on the positive and negative effects of resisting arrest charges. The agency's stated purpose for this policy change is to reduce the use of excessive force, build community trust, and reduce disparities in enforcement.¹⁵⁰ The department notes in the policy the importance of having robust independent review of these charges and reducing excessive use of force incidents and their goal of increasing trust between law enforcement and "all racial and ethnic groups within our community."¹⁵¹

Based on the RIPA data and a review of the impacts of evolving district attorneys' policies, the Board makes several recommendations to agencies, municipalities, district attorneys, and the Legislature.

[Recommendations for RIPA Board's Consideration]

- (1) Prohibit district attorneys from filing and law enforcement agencies from submitting to the district attorney's office for review misdemeanor criminal filings on standalone resisting arrest charges¹⁵² if it is the sole charge listed at the time of arrest and is not accompanied by other citable offenses.¹⁵³
- (2) Prohibit filings on standalone misdemeanor resisting arrest charges or charges where resisting arrest is charged in conjunction with trespass, disturbing the peace, driving without a valid license or a suspended license, simple drug possession, minor in possession of alcohol, drinking in public, under the influence of a controlled substance, public intoxication, or loitering.¹⁵⁴
- (3) Require officers to notify law enforcement supervisors prior to making an arrest for resisting arrest and have supervisors review any case where resisting arrest is alleged in a report.¹⁵⁵
- (4) Direct district attorneys to review body worn camera footage in any case that involves a resisting arrest allegation prior to filing charges.¹⁵⁶

¹⁴⁷ L.A. District Attorney's Off., Special Directive: Misdemeanor Case Management (Dec. 2020).

¹⁴⁸ Santa Clara District Attorney's Off., Bend the Arc Reforms: Community Initiatives (2020).

¹⁴⁹ Santa Clara District Attorney's Off., Bend the Arc Reforms: Community Initiatives (2020).

¹⁵⁰ Santa Clara District Attorney's Off., Bend the Arc Reforms: Community Initiatives (2020).

¹⁵¹ Santa Clara District Attorney's Off., Bend the Arc Reforms: Community Initiatives (2020).

¹⁵² Cal. Pen. Code 148(a)

¹⁵³ L.A. District Attorney's Off., Special Directive: Misdemeanor Case Management (Dec. 2020).

¹⁵⁴ L.A. District Attorney's Off., Special Directive: Misdemeanor Case Management (Dec. 2020).

¹⁵⁵ US v. City of Ferguson (2018) Consent Decree, p. 23; US v. City of Baltimore, p. 22

¹⁵⁶ Santa Clara District Attorney's Off., Bend the Arc Reforms: Community Initiatives (2020).

- (5) Eliminate or severely limit arrests and charges filed for resisting arrest during consensual encounters
- (6) Prohibit arrest and filing of charges against individuals stopped for community caretaking or experiencing a mental health crisis, or if the alleged resisting stems from a disability that affects the person's ability to understand the officer or communicate with them.

Given the disparities demonstrated by the data, the Board hopes these recommendations can serve as guidance to communities wishing to address these inequities.

ii. Field Interview (FI) Cards

Another result of stop that may be connected to pretext stops is when a field interview card is completed by a law enforcement officer. A field interview card is a document law enforcement officers can elect to fill out during a contact with an individual. These cards can contain information on who the person is with, what they are wearing, any social media accounts, or nicknames of the person.

Many of these field interview cards are entered into criminal databases, such as CalGang, which are used by law enforcement to share the data collected in these interviews.¹⁵⁷ The practice of field interviews varies agency by agency, so not every FI card from a police contact is submitted into a database. CalGang is a database created over two decades ago to track police contacts with alleged gang members. However, in a 2015 report, the State Auditor found that the data was not always accurate and the database violated the privacy rights of individuals, making the system ineffective for fighting gang-related crimes.¹⁵⁸ For example, the audit found over 42 individuals who were entered into CalGang who were younger than one year old, and the database indicated 28 of those individuals admitted to being gang members.¹⁵⁹

In 2017, in response to this report, the state Legislature passed AB 90, which required the California Attorney General's Office to routinely audit the database and issue regulations to help improve accuracy in the database.¹⁶⁰ The new law also required agencies to provide notice to an individual when they are entered into the database.¹⁶¹ Since its implementation, there have been 6 reports issued by the Department on CalGang.

Even under the new regulations, questions about the accuracy of the information in the database persist, and there are still ongoing concerns about how youth are criminalized by this practice.

¹⁵⁷ Attorney General's Annual Report on CalGang (2022) p. 10 <oag.ca.gov/system/files/media/ag-annual-report-calgang-2022.pdf> [as of XXX].

¹⁵⁸ Cal. State Auditor Report 2015-130, The CalGang Criminal Intelligence System: As the Result of its Weak Oversight Structure It Contains Questionable Information That May Violate Individuals' Privacy Rights, Report (Aug. 2016) p. 23 <<https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>> [as of XXX].

¹⁵⁹ Cal. State Auditor Report 2015-130, The CalGang Criminal Intelligence System: As the Result of its Weak Oversight Structure It Contains Questionable Information That May Violate Individuals' Privacy Rights, Report (Aug. 2016) p. 39 <<https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>> [as of XXX].

¹⁶⁰ Assem. Bill No. 90 (2017-2018 Reg. Sess.).

¹⁶¹ Assem. Bill No. 90 (2017-2018 Reg. Sess.).

For example, children as young as 13 years old can still be entered into this database.¹⁶² In 2020, the Department restricted all users of CalGang from using data entered by the LAPD – the largest agency making entries into CalGang – compromising almost 25% of all entries into the system.¹⁶³ These concerns arose after an internal audit revealed significant misuse of the tracking system, including entering false information or information without reasonable suspicion the person was involved in criminal gang-related activity.¹⁶⁴

Specifically, it was alleged that more than a dozen officers entered false reports into the system labeling innocent drivers or pedestrians as gang members.¹⁶⁵ These issues were brought to light when a mother made a complaint after she was notified her son’s name had been erroneously added to the CalGang Database.¹⁶⁶ The complaint eventually led to a larger investigation into the officers and department’s practices.¹⁶⁷ The internal investigation found that officers from the LAPD Metro Division had falsified numerous records falsely labeling individuals as gang members.¹⁶⁸

One of the deputies accused of falsifying reports claimed that the contacts documented on field interview cards were a result of pressure from commanders in LAPD to increase gang contacts and an unwritten policy encouraging officers to meet quotas.¹⁶⁹ Several of the officers faced criminal charges for making these false reports; the judge later dismissed the charges, noting, “They were acting under the current state of affairs. And, the dereliction, if there is one, does not lie with them,” the judge said. “It lies higher up in the command structure, perhaps to the highest levels.”¹⁷⁰ As a result of the internal investigations, LAPD permanently withdrew from the

¹⁶² Office of the Attorney General, *Attorney General Becerra Restricts Access to LAPD-Generated CalGang Records, Issues Cautionary Bulletin to All Law Enforcement, and Encourages Legislature to Reexamine CalGang Program* (July 2020) <<https://oag.ca.gov/news/press-releases/attorney-general-becerra-restricts-access-lapd-generated-calgang-records-issues>> [as of XXX].

¹⁶³ Office of the Attorney General, *Attorney General Becerra Restricts Access to LAPD-Generated CalGang Records, Issues Cautionary Bulletin to All Law Enforcement, and Encourages Legislature to Reexamine CalGang Program* (July 2020) <<https://oag.ca.gov/news/press-releases/attorney-general-becerra-restricts-access-lapd-generated-calgang-records-issues>> [as of XXX].

¹⁶⁴ Office of the Attorney General, *Attorney General Becerra Restricts Access to LAPD-Generated CalGang Records, Issues Cautionary Bulletin to All Law Enforcement, and Encourages Legislature to Reexamine CalGang Program* (July 2020) <<https://oag.ca.gov/news/press-releases/attorney-general-becerra-restricts-access-lapd-generated-calgang-records-issues>> [as of XXX].

¹⁶⁵ Leonard, *LAPD Metro Officer Claims Quotas Drove False Gang Reports* (Aug. 2020) NBC L.A. <<https://www.nbclosangeles.com/investigations/lapd-metro-officer-claims-quotas-drove-false-gang-reports/2420186/>> [as of XXX].

¹⁶⁶ Murphy, *Los Angeles Officers Suspended After Boy Is Wrongly Labeled a Gang Member* (Jan 2020) New York Times < <https://www.nytimes.com/2020/01/08/us/lapd-gang-database.html>> [as of XXX].

¹⁶⁷ Murphy, *Los Angeles Officers Suspended After Boy Is Wrongly Labeled a Gang Member* (Jan 2020) New York Times < <https://www.nytimes.com/2020/01/08/us/lapd-gang-database.html>> [as of XXX].

¹⁶⁸ Murphy, *Los Angeles Officers Suspended After Boy Is Wrongly Labeled a Gang Member* (Jan 2020) New York Times < <https://www.nytimes.com/2020/01/08/us/lapd-gang-database.html>> [as of XXX].

¹⁶⁹ Leonard, *LAPD Metro Officer Claims Quotas Drove False Gang Reports* (Aug. 2020) NBC L.A. <<https://www.nbclosangeles.com/investigations/lapd-metro-officer-claims-quotas-drove-false-gang-reports/2420186/>> [as of XXX].

¹⁷⁰ Leonard, *Judge Finds Three LAPD Officers ‘Factually Innocent’ of Filing False Gang Reports* (May 2022) NBC Los Angeles <<https://www.nbclosangeles.com/investigations/lapd-false-gang-innocent-calgang/2902392/>> [as of XXX].

CalGang database.¹⁷¹ However, RIPA data does indicate LAPD is using field interview cards during contacts. This is concerning because LAPD may avoid legal requirements, such as notice, by not using the CalGang system.¹⁷²

More generally, notice is an ongoing concern with the statewide database. An individual has the right to receive notice of their entry into CalGang unless it would compromise an ongoing investigation.¹⁷³ A person under the age of 18 and their guardian or attorney must be notified of their entry into CalGang. Similarly, the letter should provide notice to the person that their information was entered into the database, the reason for the person's designation in the database, and inform them that they can request removal from the database.¹⁷⁴ However, data indicates there are very few request for removal despite large numbers of entries into the database raising some concerns.¹⁷⁵ In 2022, there were a total of 1,001 records added to CalGang, and only 16 requests for removal, or 0.01 percent of new entries. Of those requests, only one removal was granted.¹⁷⁶

Because of these ongoing concerns about the accuracy of the database, the Board explores the RIPA data to examine how or when these cards are being used and if there are any disparate impacts on communities. In previous years, the Board began investigating the use of field interview cards with a specific focus on individuals perceived as transgender and youth. This year, the Board builds on this work by examining more broadly the impact of these policing practices and how they may be connected to pretextual policing.

a. RIPA Data Analysis

1. Reason for Stop

In 2022, officers reported filling out a field interview card as a result of stop for 129,971 stops. Among stops during which officers completed field interview cards, the most common primary reason for stop was reasonable suspicion of criminal activity (83,967, or 64.5% of field interview card stops). The next most common primary reasons officers conducted stops for which they completed field interview cards were traffic violations (34,512, 26.6%), knowledge of supervision status (4,359, 3.4%), knowledge of warrant/wanted person (3,243, 2.5%), and consensual encounters resulting in searches (2,806, 2.2%). Other reasons for stop, totaling less

¹⁷¹ Office of the Attorney General, *Attorney General Becerra Restricts Access to LAPD-Generated CalGang Records, Issues Cautionary Bulletin to All Law Enforcement, and Encourages Legislature to Reexamine CalGang Program* (July 2020) <<https://oag.ca.gov/news/press-releases/attorney-general-becerra-restricts-access-lapd-generated-calgang-records-issues>> [as of XXX].

¹⁷² L.A. Police Dept., *LAPD Field Interview (FI) Cards NR21240jl* ("Field Interview Cards") (Sept. 2021) <<https://www.lapdonline.org/newsroom/lapd-field-interview-fi-cards-nr21240jl/>> [as of XXX].

¹⁷³ On only two instances in 2022 agencies did not provide notice of entry into CalGang. Attorney General's Annual Report on CalGang (2022) p. 4 <<https://oag.ca.gov/system/files/media/ag-annual-report-calgang-2022.pdf>> [as of XXX].

¹⁷⁴ Cal. Pen. Code, §186.34.

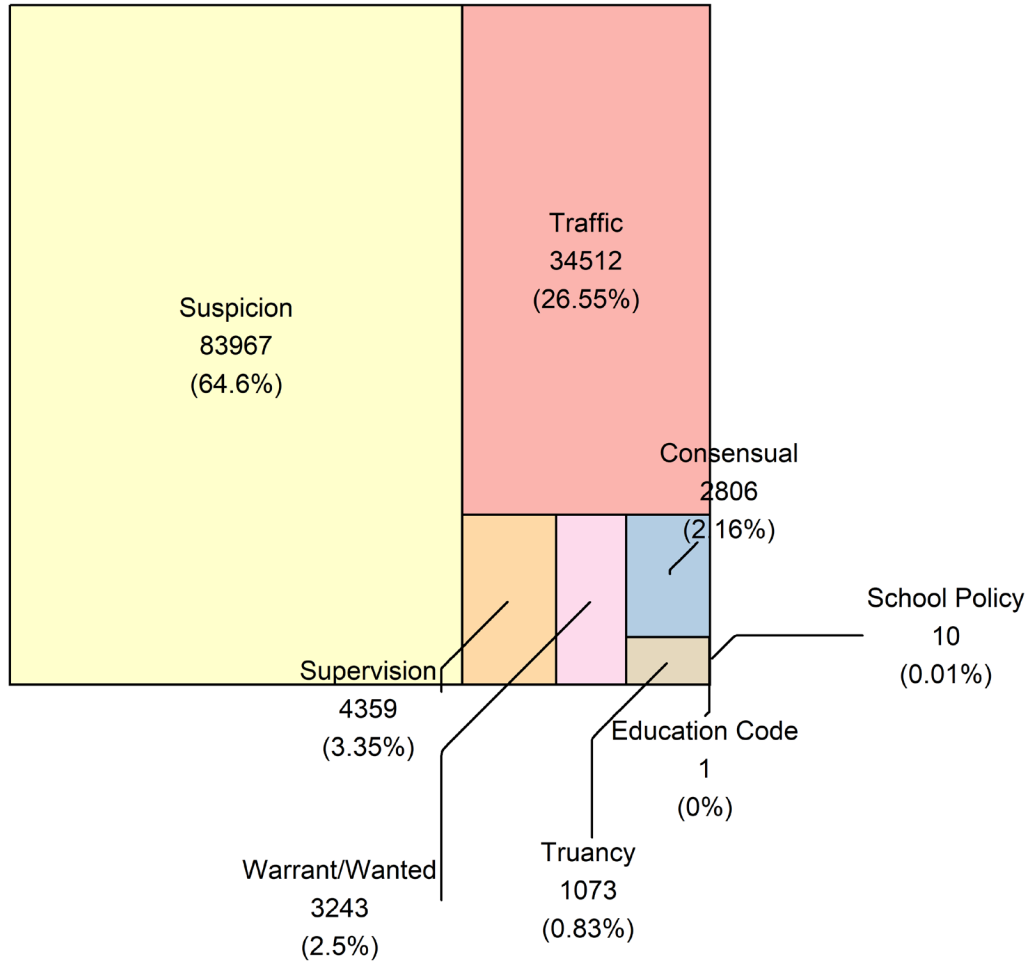
¹⁷⁵ Attorney General's Annual Report on CalGang (2022) p. 4 <<https://oag.ca.gov/system/files/media/ag-annual-report-calgang-2022.pdf>> [as of XXX].

¹⁷⁶ Attorney General's Annual Report on CalGang (2022) p. 4 <<https://oag.ca.gov/system/files/media/ag-annual-report-calgang-2022.pdf>> [as of XXX].

than one percent of stops resulting in the completion of a field interview card were truancy (1,072), school policy (10), and education code (1).

Figure XX

Field Interview Cards by Reason for Stop – Counts and Percentage of Total



When an officer stops an individual with a primary reason of either reasonable suspicion of criminal activity or a traffic violation, the officer also reports the specific suspected offense.¹⁷⁷ Among the primary offenses within stops for reasonable suspicion, the offenses with the largest

¹⁷⁷ Cal. Code of Regs. § 999.226 (a)(10)(A)(2) specifies that "...the officer shall identify the primary code section and subdivision of the suspected violation of law that formed the basis for the stop, *if known to the officer* [emphasis added]." Therefore, officers have the option to leave the offense code field blank, under some circumstances. Accordingly, 14.6 percent of stops for reasonable suspicion of criminal activity do not have an associated offense code.

number of field interview cards were local ordinance violations (9,463 field interview cards)¹⁷⁸, community caretaking (5,079 field interview cards),¹⁷⁹ trespassing (4,844), and burglary (3,451).¹⁸⁰ Among stops for traffic violations, officers filled out field interview cards most commonly for failure to stop vehicle (3,464), vehicle registration (3,022), and display of license plates wrong (2,366).

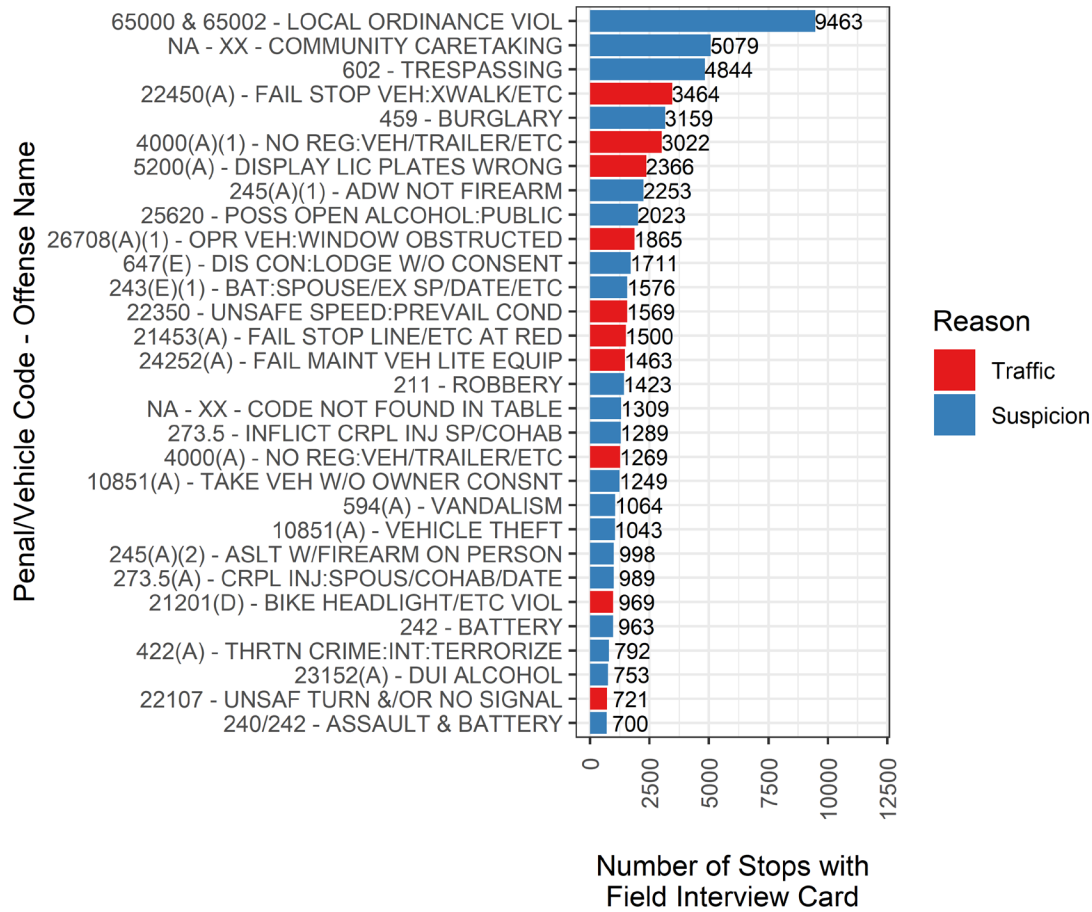
¹⁷⁸ Local ordinance violation offense codes 65002 and 65000 were combined into 65000 for the purposes of this figure.

¹⁷⁹ For a discussion of how community caretaking stops are reflected within the data, please see footnote XX on p. XX.

¹⁸⁰ Local Ordinance Violations specified with California DOJ CJIS Offense codes 65000 and 65002. Community Caretaking specified with California DOJ CJIS Offense codes 99990.

Figure XX

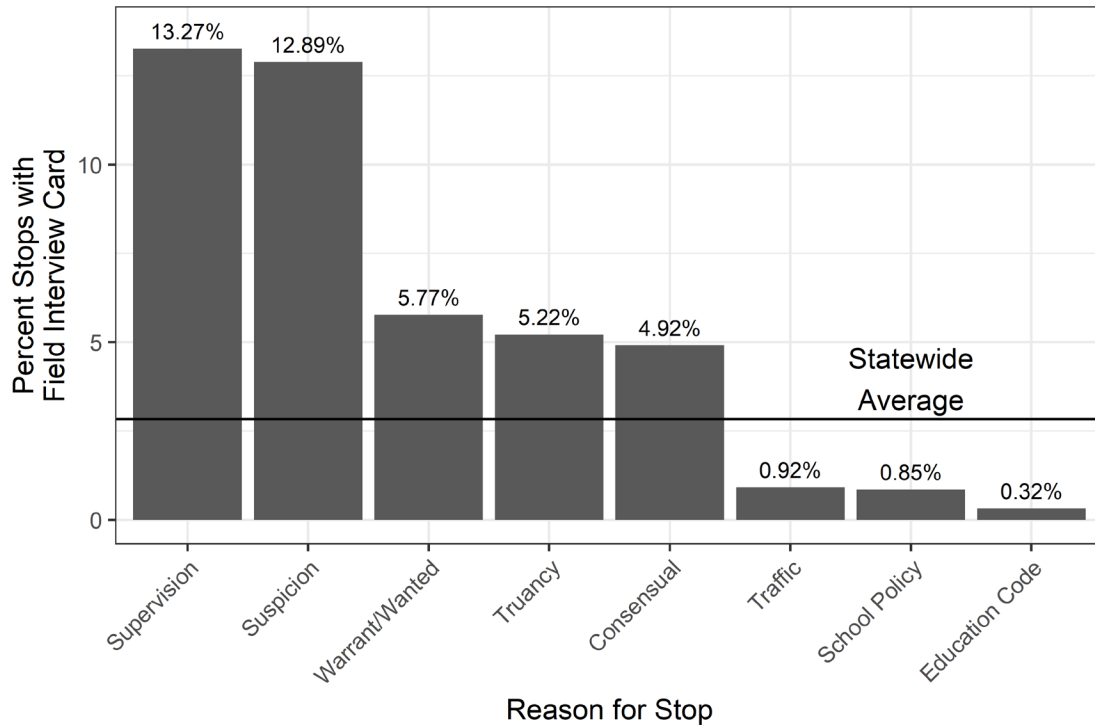
Top 30 Penal and Vehicle Codes by Total Use of Field Interview Cards



Of all the primary reason for stop categories, stops initiated due to known supervision status (field interview cards during 13.3% of stops) and reasonable suspicion of criminal activity (12.9%) had the largest percentages of stops with an officer completing a field interview card. Other reasons for stop with higher than average (2.8%) percentage of stops with field interview cards completed were known warrant/wanted person (5.8%), truancy (5.2%), and consensual encounters resulting in a search (4.9%). The remaining reasons for stop fell below the state average for the percent of stops resulting in having a field interview card completed.

Figure XX

Percentage of Stops with Field Interview Cards by Reason for Stop



2. Field Interview Cards by Identity Group

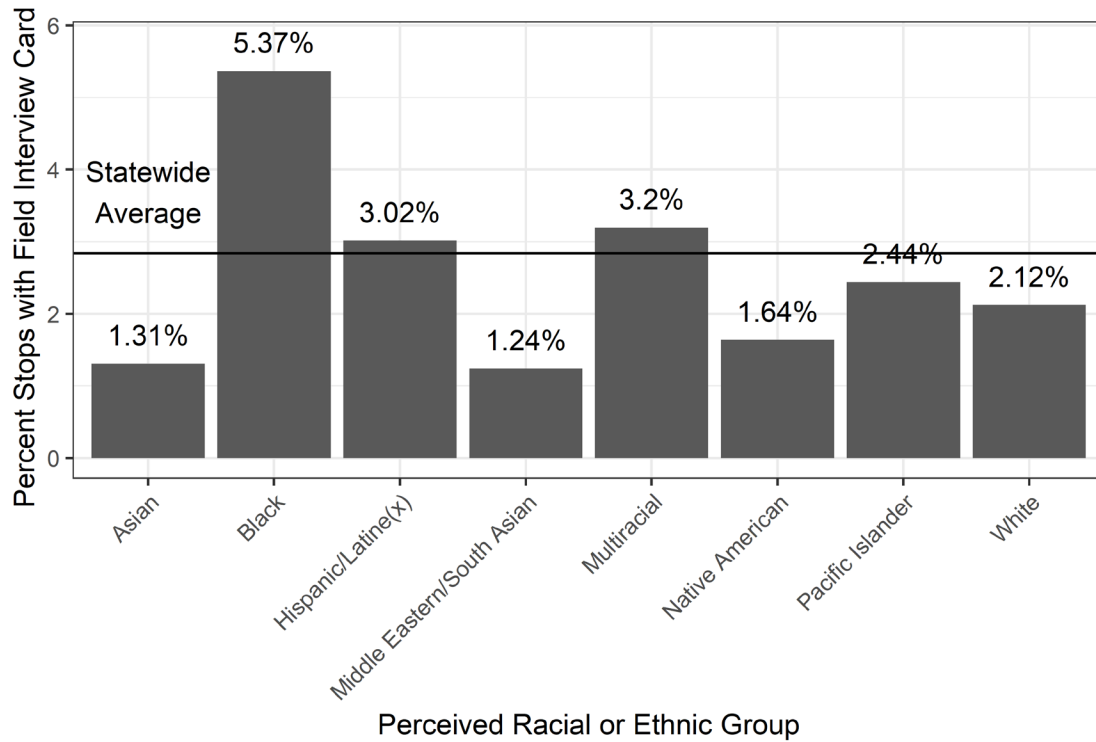
Among stops during which an officer completed a field interview card, the largest portion according to perceived gender were male (100,550 field interview cards, 77.4%) followed by female (28,487, 21.9%). Less than 1% of field interview cards were for individuals perceived as either transgender or gender nonconforming.

Among stops that included an officer filling out a field interview card, the largest portion by racial or ethnic group were of individuals perceived as Hispanic/Latine(x) (59,292, 45.6%). The next largest groups were individuals perceived as White (31,611, 24.2%) and Black (30,673, 23.6%). All other racial or ethnic groups each accounted for less than 3 percent of field interview card stops.

Across the state in 2022, there were 129,971 field interview cards filled out by officers (2.8% of stops – horizontal line on Figure XX). Among racial or ethnic groups, field interview cards were filled out for a larger percentage of stops when individuals were perceived as Black (5.4% of stops), Multiracial (3.2%), or Hispanic/Latine(x) (3%). For all other perceived racial or ethnic groups, field interview cards were filled out during a lower percentage of stops than the statewide average.

Figure XX

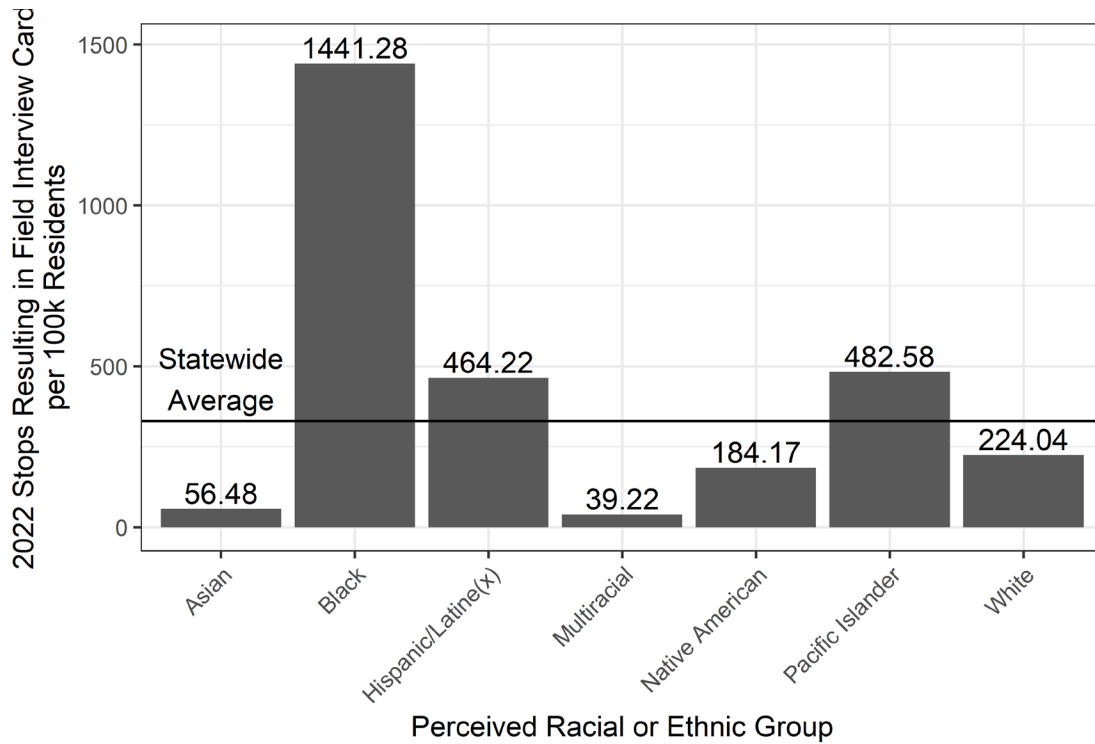
Percentage of Stops with Field Interview Cards by Racial or Ethnic Group



Across the state in 2022, officers filled out 129,971 field interview cards compared to an estimated 39,455,353 California residents in the 5-year American Community Survey. This means officers filled out an interview card during 329 stops for every 100,000 residents. Among racial or ethnic groups, individuals perceived as Black had the highest per capita occurrence of field interview cards (1,441 field interview cards per 100,000 residents, or 4.4 times the statewide average). Individuals perceived as Pacific Islander (482 per 100,000 residents) and Hispanic/Latine(x) (464 per 100,000 residents) were also above the statewide average per capita rate. Racial or ethnic groups with lower interview cards per capita field include individuals perceived as White (224 per 100k residents), Native American (per 100k residents), Asian (56 per 100k residents), and Multiracial (per 100k residents).

Figure XX

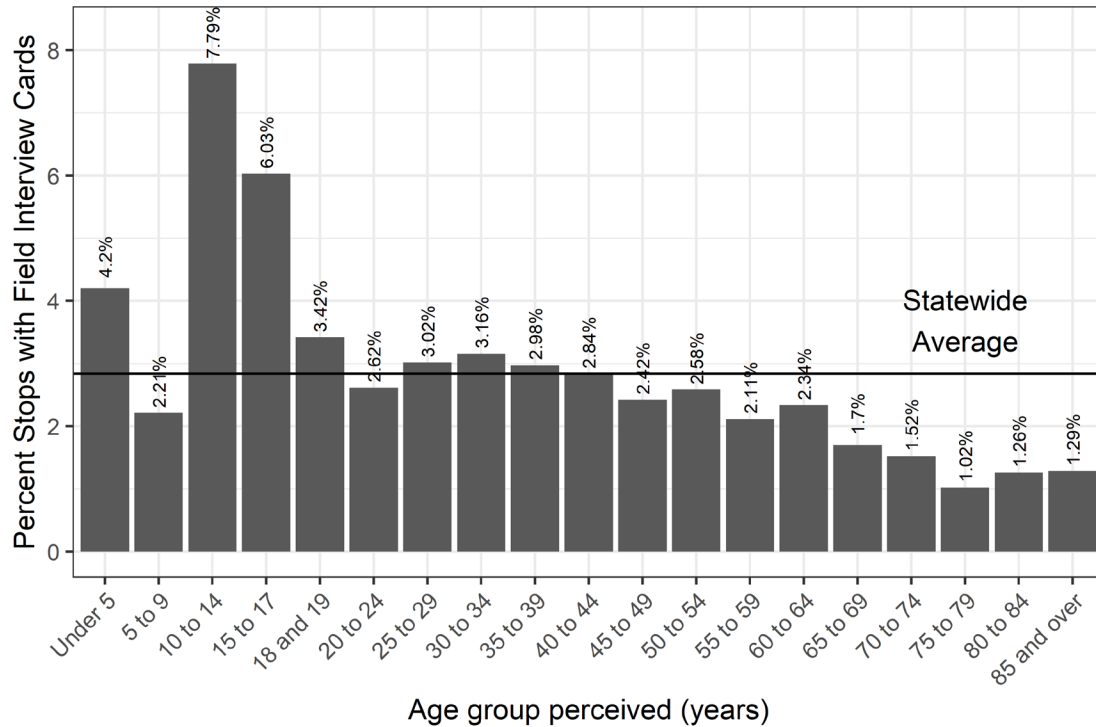
Number of Field Interview Cards per 100k Residents – Racial or Ethnic Groups



Among perceived age groups, the highest percentage of stops during which field interview cards were filled out were among 10-14 year olds (7.8% of stops where a field interview card was filled out) and 15-17 year olds (6% of stops where a field interview card was filled out), which both had more than double the statewide average percentage of stops with field interview cards (2.8%). The percentage of stops during which field interview cards were completed generally declined with age, with the lowest percentages occurring among the oldest age groups.

Figure XX

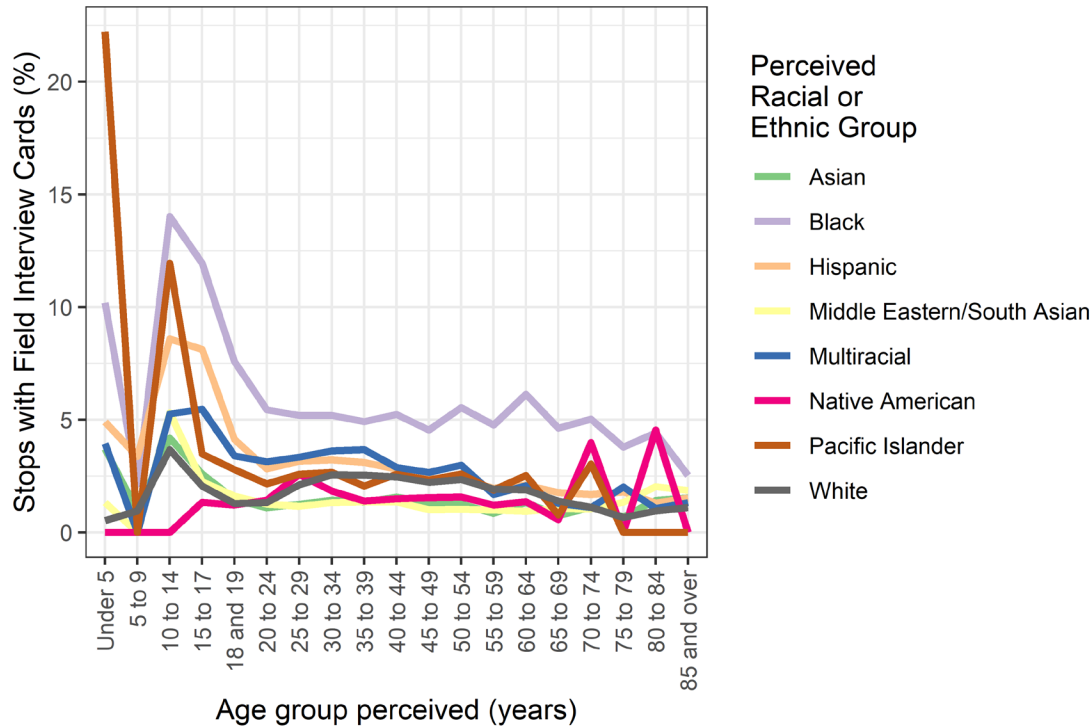
Percentage of Stops with Field Interview Cards by Age Group



Individuals perceived as being both Black and between the ages of 10-14 years old had the highest percentage of stops during which officers completed a field interview card for any intersection of racial or ethnic identity and perceived age (14% of stops 10-14 year olds perceived to be Black involved a field interview card). Across all age groups between the ages of 10 and 80, individuals perceived as Black had the highest percentage of stops in which a field interview card was completed among racial or ethnic groups. Among all racial or ethnic groups with the exception of Native Americans, the highest percentage of stops in which a field interview card was completed occurred among 10-14 year olds.

Figure XX

Percentage of Stops with Field Interview Cards by Racial or Ethnic Group and Age Group



b. Recommendations

In previous years, the Board made several recommendations regarding the use of field interview cards with a specific focus on youth. Since youth are provided with additional protections in many areas of the law – such as custodial interrogations – the Board recommended that policymakers extend these protections to field interview cards to ensure statements are given voluntarily, given that youth are more susceptible to being influenced by an officer.¹⁸¹ Field interview cards may have potentially negative consequences to youth, particularly if any statements made by youth could be used against them criminally. After reviewing the data, this year the Board makes broader recommendations regarding the use of field interview cards.

[Recommendations for RIPA Board’s Consideration]

- (1) Prohibit law enforcement agencies from creating criminal databases that are not regulated by the California Department of Justice.

¹⁸¹ Racial and Identity Profiling Advisory Board, Annual Report (2023) pp. 120-123 <<https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>> [as of XXX].

- (2) Prohibit the collection of field interview cards and entries of youth into criminal databases after youth are questioned or a field interview is conducted without the presence of an attorney.¹⁸²
- (3) Require officers to inform the individuals subject to the field interview that they do not have to respond to questions and are free to leave.¹⁸³ Additionally officers should be required to:
 - a. Inform individuals that providing a physical form of identification is voluntary;¹⁸⁴
 - b. Not use a person's failure to stop, answer questions, decision to end the encounter, or attempt or decision to walk away to establish reasonable suspicion for initial stop or detention, search, citation, or arrest of the person if an officer is engaged in, or attempting to engage in, a field interview.¹⁸⁵
- (4) Ban the collection of and entries into any criminal databases from any information collected from a stop for community caretaking or when a person might be experiencing a mental health crisis.
- (6) Make the removal process from CalGang or other criminal databases more transparent and subject agencies to regular audits, including determining if notice is properly provided to a person entered into a database and evaluating the processes for removal from the databases to ensure compliance with the laws.
- (7) Provide funding directed at reallocating law enforcement resources to community-based violence intervention programs.

¹⁸² See Racial and Identity Profiling Report (2023) p. 123 <<https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>> [as of XXX].

¹⁸³ “Voluntary consent may not truly be voluntary because of the power dynamics at play between a law enforcement officer and a member of the public, particularly with more vulnerable populations.” Moreover, research suggests that officers’ discretion leads to disparate stops and searches of Black and Hispanic/Latine(x) individuals. Therefore, there are likely better solutions, such as severely limiting when a field interview would be appropriate or eliminating the practice entirely. See Racial and Identity Profiling Report (2023) p. 115, citing Sommers, *Are Consent Searches Truly Voluntary?* (May 14, 2019) Scholars Strategy Network <<https://scholars.org/contribution/are-consent-searches-truly-voluntary>> [as of XXX].; See also Settlement Agreement, *Minnesota Department of Human Rights v. City of Minneapolis* (“Minneapolis Settlement Agreement”) (Minn. Dist. Ct. July 13, 2023) No. 27-cv-23-4177, p. 50 <<https://lims.minneapolismn.gov/Download/FileV2/30804/MDHR-v-City-of-Minneapolis-Settlement-Agreement.pdf>> [as of XXX].

¹⁸⁴ Settlement Agreement, *Minnesota Department of Human Rights v. City of Minneapolis* (“Minneapolis Settlement Agreement”) (Minn. Dist. Ct. July 13, 2023) No. 27-cv-23-4177, p. 50 <<https://lims.minneapolismn.gov/Download/FileV2/30804/MDHR-v-City-of-Minneapolis-Settlement-Agreement.pdf>> [as of XXX].

¹⁸⁵ Settlement Agreement, *Minnesota Department of Human Rights v. City of Minneapolis* (“Minneapolis Settlement Agreement”) (Minn. Dist. Ct. July 13, 2023) No. 27-cv-23-4177, p. 50 <<https://lims.minneapolismn.gov/Download/FileV2/30804/MDHR-v-City-of-Minneapolis-Settlement-Agreement.pdf>> [as of XXX].

The Board hopes agencies and the Legislature consider changing these laws, both to improve the accuracy of information obtained during contacts with community members and more importantly to protect vulnerable youth from questioning and improper entries into the databases.

iii. Assignment Type: Specialized Teams and Hotspot Policing

In addition to some of the issues raised with specific types of enforcement actions or results of stops, it is also important to examine certain types of specialized teams, such as gang enforcement units. This year, the Board begins to examine the relationship between officer assignment type and disparities in enforcement. The Board also discusses the impacts of “hot spot” policing and predictive policing where specialized units are often deployed, and reviews data on use of force rates.

Breonna Taylor was killed sleeping in her own bed when a specialized team, using a hot spot model of policing, went to serve a no-knock search warrant.¹⁸⁶ Similarly, the unit that beat Tyre Nichols to death was a specialized team focused on gang and drug-related crimes, operating under a hotspot model of policing.¹⁸⁷

Over the past several years, there has been a growing national conversation about the impact of specialized policing teams and hotspot policing.¹⁸⁸ Specialized teams are developed in police departments to target specific types of alleged criminal activity and are often created to address spikes in activities that are criminalized by the state, such as drug crimes.¹⁸⁹ Similarly, hotspot policing concentrates these units in specific areas in communities that are considered high crime.¹⁹⁰ The support of these units appears to ebb and flow based on crime rates, but it is unclear how effective they may be at combating crime.¹⁹¹

a.. RIPA Data Analysis

Overall, 95.4 percent of 2022 RIPA reported stops (4,366,428 stops) were performed by officers of assignment type “Patrol, traffic enforcement, field operations.” The next most common stop

¹⁸⁶ Lopez, *Policing the Wrong Way: Memphis’s Scorpion is the latest special police unit to come under scrutiny* (Feb. 2023) The N.Y. Times <Memphis’s Scorpion Unit Is the Latest Special Unit to Come Under Fire - The New York Times (nytimes.com)> [as of XXX].

¹⁸⁷ Lopez, *Policing the Wrong Way: Memphis’s Scorpion is the latest special police unit to come under scrutiny* (Feb. 2023) The N.Y. Times <Memphis’s Scorpion Unit Is the Latest Special Unit to Come Under Fire - The New York Times (nytimes.com)> [as of XXX].

¹⁸⁸ Arango and Gabler, *Amid Criticism, Elite Crime Teams Dwindled. Then Cities Brought Them Back* (Feb. 2023) N.Y. Times <<https://www.nytimes.com/2023/02/06/us/police-teams-memphis-scorpion-unit.html>> [as of XXX].

¹⁸⁹ Arango and Gabler, *Amid Criticism, Elite Crime Teams Dwindled. Then Cities Brought Them Back* (Feb. 2023) N.Y. Times <<https://www.nytimes.com/2023/02/06/us/police-teams-memphis-scorpion-unit.html>> [as of XXX].

¹⁹⁰ Arango and Gabler, *Amid Criticism, Elite Crime Teams Dwindled. The Cities Brought Them Back* (Feb. 2023) The New York Times <<https://www.nytimes.com/2023/02/06/us/police-teams-memphis-scorpion-unit.html>> [as of XXX].

¹⁹¹ Arango and Gabler, *Amid Criticism, Elite Crime Teams Dwindled. Then Cities Brought Them Back* (Feb. 2023) N.Y. Times <<https://www.nytimes.com/2023/02/06/us/police-teams-memphis-scorpion-unit.html>> [as of XXX].

types are “Other,” with 1.98 percent of RIPA reported stops (90,462 stops), and “Gang Enforcement” at 1.32 percent of RIPA reported stops (60,297 stops).¹⁹²

Table XX
Percentage and Counts of Stops by Officer Assignment Type

Assignment Type	Percent	Count
Patrol	95.43%	4,366,428
Other	1.98%	90,462
Gang Enforcement	1.32%	60,297
Narcotics/vice	0.35%	15,977
Investigative/detective	0.32%	14,839
Task Force	0.23%	10,460
K-12 Public School	0.2%	9,130
Special Events	0.07%	3,028
Roadblock or DUI	0.06%	2,867
Compliance Check	0.05%	2,237

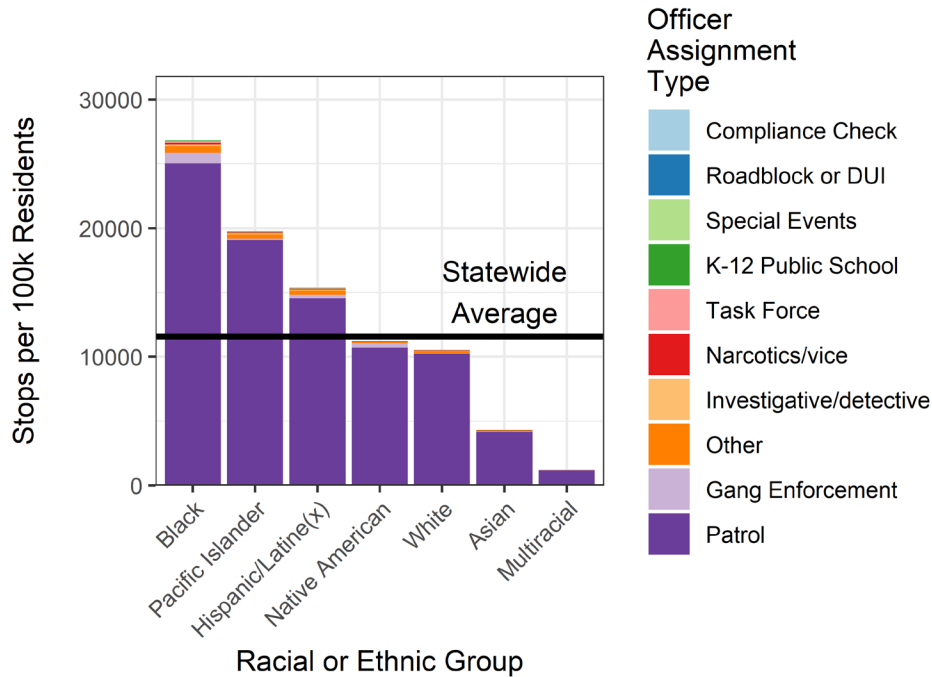
1. Per Resident Stops by Racial or Ethnic Group and Officer Assignment Type

With 4,575,725 RIPA reported stops in California in 2022 and 39,455,353 California residents reported in the 2021 5-year American community survey, there were an estimated 11,597 RIPA reported stops per 100k residents statewide. Per 100k residents, there were higher than average numbers of stops of individuals perceived to be Black (26,850 stops per 100k resident – 2.3 times statewide stop rate), Pacific Islander (19,774 stops per 100k resident, 1.7 times statewide stop rate), and Hispanic/Latine(x) (15,382 stops per 100k resident, 1.3 times statewide stop rate). All other perceived racial and ethnic groups were stopped less frequently than the statewide average.

Figure XX

¹⁹² The most commonly provided word in the description of the officer assignment type “Other” is the word “commercial,” contained within 24,110 of the 90,462 stops by officers of assignment type “Other,” while a series of words describing patrol activities (e.g., patrol, enforcement) were amongst the next most common terms.

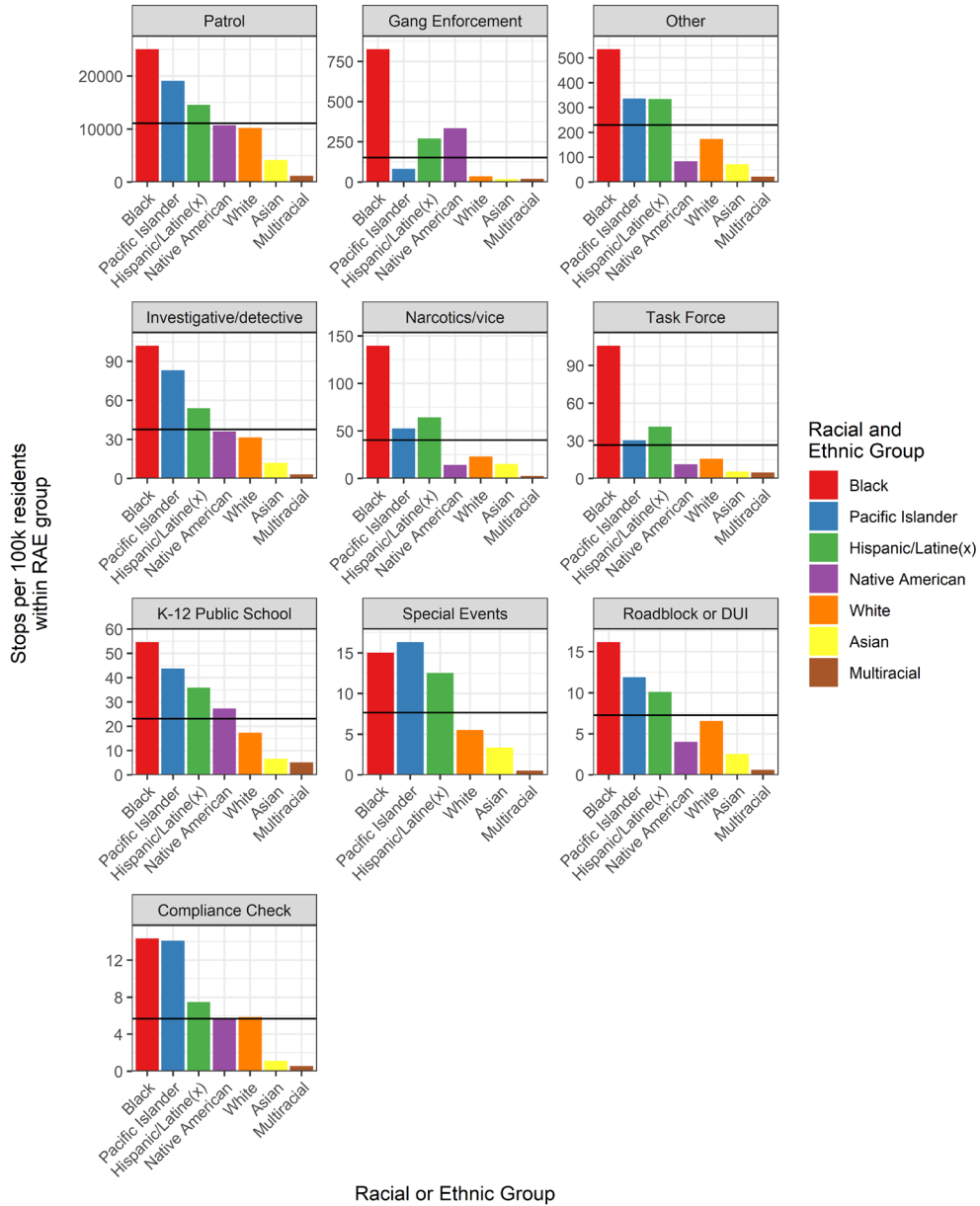
Stop frequency of perceived racial or ethnic groups per 100k residents - Panels by Officer Assignment



The identity of the perceived racial and ethnic groups with the highest per resident stop rate was remarkably consistent across officer assignment types. For 9 of the 10 officer assignment types, the top per resident stop rate was for individuals perceived as Black. Additionally, for 9 of the 10 officer assignment types, the top 3 per resident stop rates were for Black, Pacific Islander, and Hispanic/Latine(x) residents. While the same 3 groups experienced higher stop rates across most officer assignment types, the size of the racial and ethnic stop rate disparities varied. The largest relative disparities between racial and ethnic groups in the number of stops per resident occurred for officer assignment type “Gang Enforcement.” Disparity among groups relative to the average can be calculated as the average difference between all pairs of racial and ethnic groups. These quantities can be averaged and then divided by the mean stops per 100k residents within that assignment type. The units for this metric can be reported as a proportion of the mean stop rate each group is expected. For officer assignment “Gang Enforcement,” groups are on average 2 times the value of the mean away from each other.

Figure XX

Stop frequency of perceived racial and ethnic groups per 100k residents - Panels by Officer Assignment



2. Reason for Stop by Officer Assignment Type

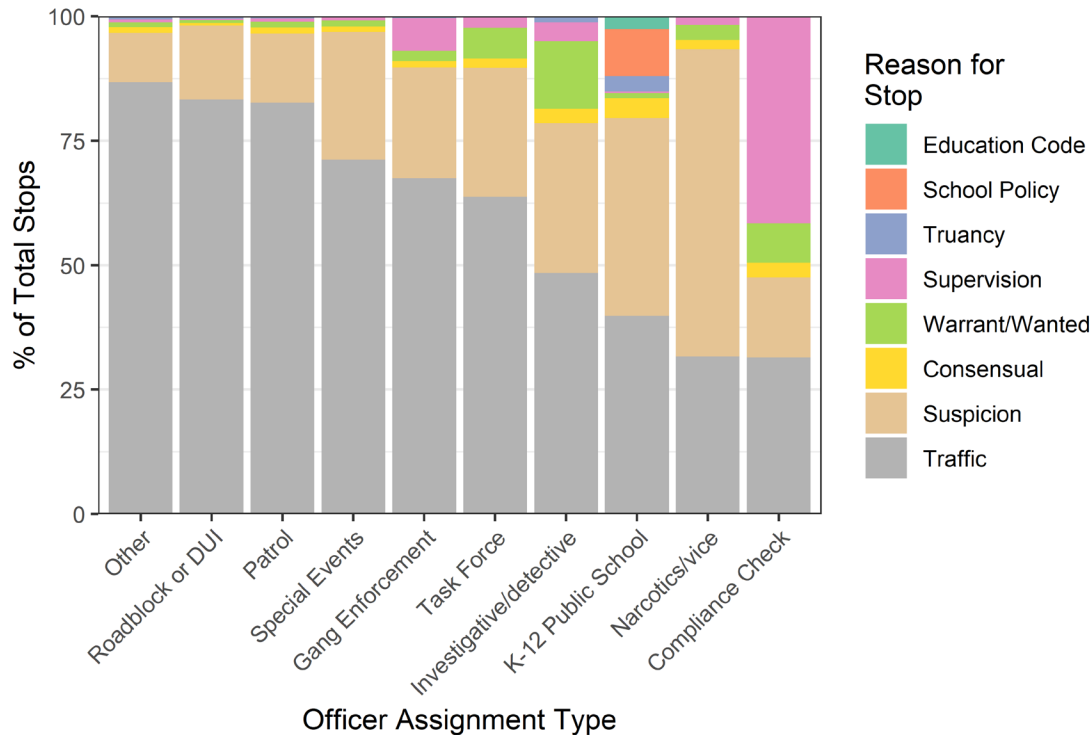
Across 2022 RIPA reported stops, 82.1 percent occurred with a primary reason for stop of traffic violation. The percentage of stops that had a traffic violation as the reason for stop differed among officer assignment types, ordered by percent traffic violation in the figure above. Assignment types with higher than average percentages of traffic violations as the reason for stop were “other” (86.7 % stops for traffic violations), roadblock or DUI (83.3% stops for traffic violations), and patrol, traffic enforcement, field operations (82.7% stops for traffic violations). All other officer assignment types had lower than average percentages of traffic violations as the reason for stop and included special events (71.2% stops traffic violations), gang enforcement (67.5% stops for traffic violations), task force (63.7% stops for traffic violations), investigative/detective (48.5% stops for traffic violations), K-12 public school (38.8% stops for traffic violations), narcotics/vice (31.6% stops for traffic violations), and compliance check (31.5% stops for traffic violations).

Figure XX

Composition of Reason for Stop among Officer Assignment Types

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board’s consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.



3. Actions During Stop by Officer Assignment Type

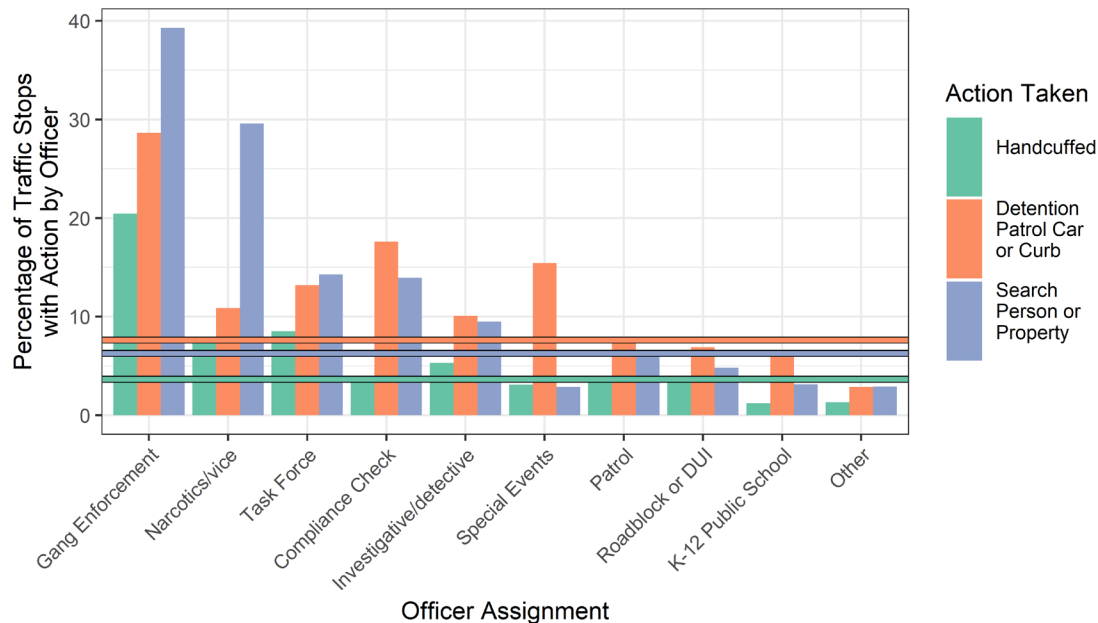
The percentage of traffic violation stops containing various actions by officers (handcuffing, detention in patrol car or curbside, search, or use of force) varied among officer assignment types. Across all RIPA traffic violation stops, 3.6 percent involved an officer handcuffing an individual (green line), 7.6 percent of traffic violation stops involved an officer detaining an individual either in the patrol car or on the curbside (orange line), and 6.3 percent of traffic violation stops involved a search of person or property (blue line). Comparing across officer assignment types, the highest percentages of all stop actions during stops, with the exception of use of force, were for officers of assignment type “Gang Enforcement,” in which officers handcuffed an individual 20.4 percent of all stops for traffic violations, performed a detention (curbside or patrol car) during 28.6 percent of traffic stops, and performed a search during 39.3 percent of traffic stops.

Figure XX

Actions by Officers During Traffic Stops by Different Officer Assignment Types

DRAFT REPORT – PENDING EDITING AND REVIEW

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b History and Impact of Specialized Teams

Historically, specialized policing teams have been marred with allegations of excessive force and corruption. One of the most notorious scandals involved a gang enforcement unit in LAPD called CRASH (Community Resources Against Street Hoodlums).¹⁹³ The unit was created to aggressively fight gang-related crimes and data showed a decrease in reported crimes in the Rampart Area where they patrolled. However, “this ‘success’ of CRASH came at a great price.”¹⁹⁴ The unit embraced an “any means necessary” approach that included a war-like

¹⁹³ Rampart Indep. Rev. Panel, Report of the Rampart Independent Review Panel: A report to the Los Angeles Board of Police Commissioners concerning the operations, policies, and procedures of the Los Angeles Police Department in the wake of the Rampart scandal (Nov. 2000) p. 1

<<https://exonerations.newkirkcenter.uci.edu/groups/sites/default/files/2020-06/OTH%20Rampart%20independent%20review%20panel.pdf>> [as of XXX].

¹⁹⁴ Rampart Indep. Rev. Panel, Report of the Rampart Independent Review Panel: A report to the Los Angeles Board of Police Commissioners concerning the operations, policies, and procedures of the Los Angeles Police Department in the wake of the Rampart scandal (Nov. 2000) p. 1

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mentality against community members.¹⁹⁵ For example, it was discovered that officers had framed individuals to get convictions and cover up excessive force.¹⁹⁶ In addition to framing individuals, the division also used pretextual stops as a means to harass Black and Latine(x) people, “often in expensive or late model cars, or in parts of the city where they might be considered out of place, being stopped for no apparent reason or for one that appears on the surface to be a pretext.”¹⁹⁷ An independent investigative commission further found:

Routine stops of young African-American and Latino males, seemingly without “probable cause” or “reasonable suspicion,” may be part and parcel of the LAPD's aggressive style of policing. The practice, however, breeds resentment and hostility among those who are its targets. Moreover, the practice has created a feeling among many in Los Angeles’ minority communities that certain parts of the City are closed to them or that being detained by the police is the price of traveling in those areas.¹⁹⁸

Ultimately the CRASH team was disbanded entirely, but other specialized teams cropped up in its place, including crime suppression teams that were found to have falsified field interview cards in 2020, discussed in more detail above.¹⁹⁹ The LAPD Metro Division, also discussed in

¹⁹⁵ Rampart Indep. Rev. Panel, Report of the Rampart Independent Review Panel: A report to the Los Angeles Board of Police Commissioners concerning the operations, policies, and procedures of the Los Angeles Police Department in the wake of the Rampart scandal (Nov. 2000) pp. 5, 34 <<https://exonerations.newkirkcenter.uci.edu/groups/sites/default/files/2020-06/OTH%20Rampart%20independent%20review%20panel.pdf>> [as of XXX]; Chemerinsky, *The Rampart Scandal and the Criminal Justice System in Los Angeles County* (2000) Duke U.

¹⁹⁶ Rampart Indep. Rev. Panel, Report of the Rampart Independent Review Panel: A report to the Los Angeles Board of Police Commissioners concerning the operations, policies, and procedures of the Los Angeles Police Department in the wake of the Rampart scandal (Nov. 2000) <<https://exonerations.newkirkcenter.uci.edu/groups/sites/default/files/2020-06/OTH%20Rampart%20independent%20review%20panel.pdf>> [as of XXX].

¹⁹⁷ Indep. Comm’n. on the L.A. Police Dept., Report of the Independent Commission on the Los Angeles Police Department (1991) p. 76 <<https://ia600302.us.archive.org/5/items/ChristopherCommissionLAPD/Christopher%20Commission%20LAPD.pdf>> [as of XXX].

¹⁹⁸ Indep. Comm’n. on the L.A. Police Dept., Report of the Independent Commission on the Los Angeles Police Department (1991) p. 77 <<https://ia600302.us.archive.org/5/items/ChristopherCommissionLAPD/Christopher%20Commission%20LAPD.pdf>> [as of XXX].

¹⁹⁹ Leonard, *Judge Finds Three LAPD Officers ‘Factually Innocent’ of Filing False Gang Reports* (May 2022) NBC Los Angeles <<https://www.nbclosangeles.com/investigations/lapd-false-gang-innocent-calgang/2902392/>> [as of XXX].

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the field interview card section above, was created to be an elite crime suppression team.²⁰⁰ However, in practice the team and has been marred with allegations of corruption and biased stops in communities.²⁰¹ In 2019, a LA Times study showed the Metro Division stopped Black drivers at five times the rate of the city’s population.²⁰² Another investigation showed the Metro Division searched Black drivers at a rate of 4 to 1 and Latine(x) drivers at a rate of 3 to 1, compared to White drivers, despite finding more contraband on White drivers.²⁰³ Finally, in addition to the data, the Metro Division was accused of falsifying FI cards framing Black and Brown drivers as gang members without supporting evidence.²⁰⁴

LAPD is not alone in its issues with specialized teams. Other agencies throughout the country have also faced similar issues with specialized teams because of this “any means necessary approach.”²⁰⁵

In Baltimore, for example, the Gun Trace Task Force (GTTF) was found to have targeted Black individuals and used unjustified stops, false arrests, and planted evidence to “get perceived ‘bad guys’ off the streets.”²⁰⁶ It was further argued that the police department incentivized those strategies to maximize arrest numbers to pursue gun charges without a concern for the means.²⁰⁷ In New York City, the anti-crime units plainclothes teams were disbanded after the department found officers in that unit were involved in some of the most notorious police shootings;

²⁰⁰ Statement of Findings of Widespread Corruption Within LAPD’s Metro Division (2020) PUSH LA <<https://pushla.org/statement-on-metro-corruption/>> [as of XXX].

²⁰¹ Statement of Findings of Widespread Corruption Within LAPD’s Metro Division (2020) PUSH LA <<https://pushla.org/statement-on-metro-corruption/>> [as of XXX].

²⁰² Statement of Findings of Widespread Corruption Within LAPD’s Metro Division (2020) PUSH LA <<https://pushla.org/statement-on-metro-corruption/>> [as of XXX].

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²⁰⁴ Statement of Findings of Widespread Corruption Within LAPD’s Metro Division (2020) PUSH LA <<https://pushla.org/statement-on-metro-corruption/>> [as of XXX].

²⁰⁵ Leonard, *Judge Finds Three LAPD Officers ‘Factually Innocent’ of Filing False Gang Reports* (May 2022) NBC Los Angeles <<https://www.nbclosangeles.com/investigations/lapd-false-gang-innocent-calgang/2902392/>> [as of XXX].

²⁰⁶ Freeman, Zachariasiewicz, Crawford, Graber, Lalchandani, and May for Victims of the Baltimore Police Department as Amici Curiae in Support of Appellee, *Baltimore City Police Department, et. al. v. Ivan Potts, Md.* (Dec. 2019) p. 5 <<https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2020/01/Potts-Md.-BGL-Amicus-Brief.pdf>> [as of XXX].

²⁰⁷ Freeman, Zachariasiewicz, Crawford, Graber, Lalchandani, and May for Victims of the Baltimore Police Department as Amici Curiae in Support of Appellee, *Baltimore City Police Department, et. al. v. Ivan Potts, Md.* (Dec. 2019) p. 2 <<https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2020/01/Potts-Md.-BGL-Amicus-Brief.pdf>> [as of XXX].

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consequently, NYPD chose to move away from this crime-fighting strategy and instead use intelligence-gathering technology.²⁰⁸ And an investigation into the Louisville Metro Police Department by the U.S. Department of Justice recommended the department reconsider the role of any specialized street enforcement units that conducted targeted or pretextual traffic and pedestrian stops.²⁰⁹

“If we have racial bias in policing, what that means is that the data that’s going into these algorithms is already inherently biased and will have biased outcomes, so it doesn’t make any sense to try and use technology when the likelihood that it’s going to negatively impact communities of color is apparent.”
– Justin Cummings Mayor of Santa Cruze

In addition to concerns about use of force, one factor that may be driving some of these disparities is what is known as hotspot policing – when agencies use data to determine areas to concentrate police forces and often specialized teams. Much of the crime-based data is from neighborhoods law enforcement is already policing, which reinforces the idea that the over-policed areas merit further police surveillance, thus creating a feedback loop of disinformation.²¹⁰

One study found higher racial disparities in traffic stops where there were “hot spots” compared to other areas of cities that were not deemed hotspots.²¹¹

Another study found similar results that software

disproportionately predicts crime will occur in neighborhoods “inhabited by working-class people, people of color, and Black people in particular.”²¹² The Office of Inspector General in Los Angeles also found inconsistencies in the data collected and that a majority of people identified from a predictive policing program had few if any actual contacts with police.²¹³

²⁰⁸ Watkins, *N.Y.P.D. Disbands Plainclothes Units Involved in Many Shootings* (June 2020) N.Y. Times <<https://www.nytimes.com/2020/06/15/nyregion/nypd-plainclothes-cops.html>> [as of XXX].

²⁰⁹ Investigation of the Louisville Metro Police Department and Louisville Metro Government (Mar. 2023) U.S. Dept. of Justice Civil Rights Div., p. 82.

²¹⁰ Guariglia, *Police Use of Artificial Intelligence: 2021 in Review* (Jan. 2022) EFF <<https://www.eff.org/deeplinks/2021/12/police-use-artificial-intelligence-2021-review>> [as of XXX].

²¹¹ Barnes, *Police-Community Relations: A Study of Racial Disparity and the Effects of Hot Spots Policing Leadership Strategies* (2018) North Carolina A&T State U., p. 1 <doi:10751787> [as of XXX].

²¹² Guariglia, *Police Use of Artificial Intelligence: 2021 in Review* (Jan. 2022) EFF <<https://www.eff.org/deeplinks/2021/12/police-use-artificial-intelligence-2021-review>> [as of XXX].

²¹³ Inspector General, Police Commission (Mar. 2019) Review of Selected Los Angeles Police Department Data-Driven Policing Strategies < https://www.lapdpolicecom.lacity.org/031219/BPC_19-0072.pdf> [as of XXX].

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Another report noted that some of this technology used field interview cards to feed information into the database, thus increasing surveillance of already over policed communities.²¹⁴

Understanding how hotspot policing can negatively affect communities may be key for law enforcement leaders to address disparities in their own departments.

c. Recommendations

[Recommendations for RIPA Board's Consideration]

The Legislature, agencies, and municipalities should:

- (1) Create policies that provide for greater oversight of specialized teams and require law enforcement agencies to develop policies that define clear objectives and outcomes for the specialized teams.
- (2) Provide funding programs that focus on community-based drug and violence intervention programs rather than specialized law enforcement response models.

C. Conclusion

²¹⁴ Bhuiyan, LAPD ended predictive policing programs amid public outcry. A new effort shares many of their flaws (2021) The Guardian < <https://www.theguardian.com/us-news/2021/nov/07/lapd-predictive-policing-surveillance-reform>> [as of XXX].

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