

*State of California Racial and Identity
Profiling Advisory Board*



RIPA Board c/o
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December 20, 2019

The Honorable Shirley Weber
Assembly Member, District 79
California Legislature State Capitol
P.O. Box 942849
Sacramento, CA 94249-0079

RE: Re: Request to Amend Penal Code Section 148.6

Dear Assembly Member Weber:

I write to you on behalf of the Racial and Identity Profiling Advisory Board (RIPA Board) in my capacity as co-chair. In addition to implementing a stop data program to collect demographic and other information regarding stops, the Racial and Identity Profiling Act requires agencies that report civilian complaint data to include more granular information about these complaints, including whether the complaint alleged racial or identity profiling.

In carrying out our statutory mandates, the RIPA Board and its subcommittees have discussed a legal conflict in Penal Code section 148.6 that may impact the number of civilian complaints filed. The Board, comprised of law enforcement and advocates, agrees that this state law could serve as a deterrent to complainants because the current law mandates that agencies include in each civilian complaint submitted to law enforcement a warning regarding prosecution for knowingly submitting a false report. Not only does state law require the warning be provided, but it also requires that the complainant sign the form acknowledging this warning. Although the Board understands that the intent of Penal Code section 148.6 is to deter complainants from making false or frivolous allegations against peace officers that must be investigated, requiring complaints to be signed, in writing, and under penalty of criminal prosecution may hinder the accurate reporting of civilian complaints, particularly those that allege racial or identity profiling. Moreover, the data around civilian complaints, which this Board has reported upon in the last two years, suggests that there may be underreporting of complaints, whether it be in the volume of complaints received or in the manner they are processed by agencies. This year's RIPA Board report will also discuss this issue in more detail.

Law enforcement agencies currently cannot determine with certainty whether they are required, or prohibited, from complying with the advisory requirements of Penal Code section 148.6. This is because the Ninth Circuit and California Supreme Court have come to opposite conclusions regarding whether the provisions of Section 148.6 are constitutional. The Ninth

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Circuit Court of Appeal held that Section 148.6, subdivision (b) violates the First Amendment of the United States Constitution. This ruling was made three years after the California Supreme Court, in 2002, upheld the constitutionality of Section 148.6. As a result of the conflict between state and federal law, California law enforcement agencies are left without clear direction.

Accordingly, the RIPA Board urges the Legislature to resolve the existing conflict between the Ninth Circuit and California courts regarding Section 148.6's criminal sanctions, by deleting or amending Section 148.6, subdivision (a), and amending the statute's requirement that a complaint must be signed and in writing. We believe that doing so will improve the civilian complaint reporting process within California's law enforcement agencies.

Please do not hesitate to contact me if you would like to discuss this important matter.

Sincerely,



David Robinson
Co-Chair, Racial and Identity
Profiling Advisory Board