

COMMISSION ON POLICE PRACTICES

Wednesday, August 7, 2024

4:30pm-7:30pm

**REGULAR BUSINESS MEETING
AND COMMUNITY HEARING**

AGENDA

George Stevens Senior Center

570 S. 65th Street

San Diego, CA 92114

The Commission on Police Practices (Commission) meetings will be conducted pursuant to the provisions of California Government Code Section 54953 (a), as amended by Assembly Bill 2249.

The Commission business meetings will be in person and the meeting will be open for in-person testimony. Additionally, we are continuing to provide alternatives to in-person attendance for participating in our meetings. In lieu of in-person attendance, members of the public may also participate via telephone/Zoom.

The link to join the meeting by computer, tablet, or smartphone at 4:30pm is:

<https://sandiego.zoomgov.com/j/1610950576>

Meeting ID: 161 095 0576

In-Person Public Comment on an Agenda Item: If you wish to address the Commission on an item on today's agenda, please complete and submit a speaker slip before the Commission hears the agenda item. You will be called at the time the item is heard. Each speaker must file a speaker slip with the Executive Director at the meeting at which the speaker wishes to speak indicating which item they wish to speak on. Speaker slips may not be turned in prior to the day of the meeting or after completion of in-person testimony. In-person public comment will conclude before virtual testimony begins. Each speaker who wishes to address the Commission must state who they are representing if they represent an organization or another person.

For discussion and information items each speaker may speak up to three (3) minutes, subject to the Chair's determination of the time available for meeting management purposes, in addition to any time ceded by other members of the public who are present at the meeting and have submitted a speaker slip ceding their time. These speaker slips should be submitted together at one time to the Executive Director. The Chair may also limit organized group presentations of five

or more people to 15 minutes or less.

In-Person Public Comment on Matters Not on the Agenda: You may address the Commission on any matter not listed on today's agenda. Please complete and submit a speaker slip. However, California's open meeting laws do not permit the Commission to discuss or take any action on the matter at today's meeting. At its discretion, the Commission may add the item to a future meeting agenda or refer the matter to staff or committee. Public comments are limited to three minutes per speaker. At the discretion of the Chair, if a large number of people wish to speak on the same item, comments may be limited to a set period of time per item to appropriately manage the meeting and ensure the Commission has time to consider all the agenda items. A member of the public may only provide one comment per agenda item. In-person public comment on items not on the agenda will conclude before virtual testimony begins.

Virtual Platform Public Comment to a Particular Item or Matters Not on the Agenda: When the Chair introduces the item you would like to comment on (or indicates it is time for Non-Agenda Public Comment), raise your hand by either tapping the "Raise Your Hand" button on your computer, tablet, or Smartphone, or by dialing *9 on your phone. You will be taken in the order in which you raised your hand. You may only speak once on a particular item. When the Chair indicates it is your turn to speak, click the unmute prompt that will appear on your computer, tablet or Smartphone, or dial *6 on your phone. The virtual queue will close when the last virtual speaker finishes speaking or 5 minutes after in-person testimony ends, whichever happens first.

Written Comment through Webform: Comment on agenda items and non-agenda public comment may also be submitted using the [webform](#). If using the webform, indicate the agenda item number you wish to submit a comment for. All webform comments are limited to 200 words. On the [webform](#), members of the public should select Commission on Police Practices (even if the public comment is for a Commission on Police Practices Committee meeting).

The public may attend a meeting when scheduled by following the attendee meeting link provided above. To view a meeting archive video, click [here](#). Video footage of each Commission meeting is posted online [here](#) within 24-48 hours of the conclusion of the meeting.

Comments received no later than 11 am the day of the meeting will be distributed to the Commission on Police Practices. Comments received after the deadline described above but before the item is called will be submitted into the written record for the relevant item.

Written Materials: You may alternatively submit via U.S. Mail to Attn: Office of the Commission on Police Practices, 525 B Street, Suite 1725, San Diego, CA 92101. Materials submitted via U.S. Mail must be received the business day prior to the meeting to be distributed to the Commission on Police Practices.

If you attach any documents to your comment, they will be distributed to the Commission or Committee in accordance with the deadlines described above.

- I. CALL TO ORDER/WELCOME (Chair Tran)
 - A. Community Hearing begins at 5 pm, time certain
- II. ROLL CALL (Executive Assistant Conde)
- III. PURPOSE OF THE COMMISSION ON POLICE PRACTICES
The purpose of the Commission on Police Practices (CPP or Commission) is to provide independent community oversight of SDPD, directed at increasing community trust in SDPD & increasing safety for community and officers. The purpose of the Commission is also to perform independent investigations of officer-involved shootings, in-custody deaths and other significant incidents, and an unbiased evaluation of all complaints against members of SDPD and its personnel in a process that will be transparent and accountable to the community. Lastly, the Commission also evaluates the review of all SDPD policies, practices, trainings, and protocols and represents the community in making recommendations for changes.
- IV. APPROVAL OF MEETING MINUTES (Chair Tran)
 - A. CPP Regular Meeting Minutes of July 17, 2024
- V. NON-AGENDA PUBLIC COMMENT
(Community Engagement Coordinator Yasmeen Obeid)
- VI. CHAIR/CABINET REPORT (Chair Tran)
- VII. EXECUTIVE DIRECTOR REPORT (Executive Director Paul Parker)

5:00 P.M.

- VIII. **TIME CERTAIN COMMUNITY HEARING – PRETEXT STOPS**
Community hearing items are “time certain” and shall be heard beginning at 5:00 p.m. Due to the time certain requirement, other items may be taken out of order to accommodate the 5:00 p.m. Community Hearing item.
 - A. Introduction (Chair Tran)
 - B. Overview of Pretext Stops (Outside Counsel Duane Bennett)
 - C. Testimony from Community Members
 - D. Commissioner Comments (Time Permitting)
- IX. CLOSING COMMENTS (Chair Tran)
 - A. Next Steps
- X. ADJOURNMENT

Materials Provided:

- DRAFT Minutes from Regular Meeting on July 17, 2024
- [SDPD Stop/Detention and Pat Down Procedures, Number 401 – Legal](#)
- Pretext Stops PowerPoint—DRAFT

Access for People with Disabilities: As required by the Americans with Disabilities Act (ADA), requests for agenda information to be made available in alternative formats, and any requests for disability-related modifications or accommodations required to facilitate meeting participation, including requests for alternatives to observing meetings and offering public comment as noted above, may be made by contacting the Commission at (619) 236-6296 or commissionpolicepractices@sandiego.gov.

Requests for disability-related modifications or accommodations required to facilitate meeting participation, including requests for auxiliary aids, services, or interpreters, require different lead times, ranging from five business days to two weeks. Please keep this in mind and provide as much advance notice as possible to ensure availability. The city is committed to resolving accessibility requests swiftly.

Commission on Police Practices

**COMMISSION ON POLICE PRACTICES
REGULAR BUSINESS MEETING
AND AD HOC PERSONNEL COMMITTEE
JOINT MEETING MINUTES**

Wednesday, July 17, 2024

4:30pm-7:30pm

**Mountain View Recreation Center
641 S Boundary Street
San Diego, CA 92113**

Click <https://youtu.be/TXOyYfQbpSY> to view this meeting on YouTube.

CPP Commissioners Present:

Chair Gloria Tran
1st Vice Chair Dennis Brown
2nd Vice Chair Doug Case
John Armantrout
Bonnie Benitez
Alec Beyer
Cheryl Canson
Stephen Chatzky
Lupe Diaz (arrived at 4:38 pm)

Armando Flores (arrived at 5:34 pm)
Christina Griffin-Jones
Dwayne Harvey
Brandon Hilpert
Clovis Honoré
James Justus
Daniel Mendoza
Darlanne Mulmat
Ada Rodriguez

Excused:

Octavio Aguilar

Absent:

None

CPP Staff Present:

Paul Parker, Executive Director
Duane Bennett, CPP Outside Counsel
Olga Golub, Chief Investigator
Alina Conde, Executive Assistant
Jon'Nae McFarland, Administrative Aide

- I. CALL TO ORDER/WELCOME: Chair Gloria Tran called the meeting to order at 4:30pm.
- II. ROLL CALL: Executive Assistant Alina Conde conducted the roll call for the Commission and established quorum.
- III. PURPOSE OF THE COMMISSION ON POLICE PRACTICES: The purpose of the Commission on Police Practices (CPP or Commission) is to provide independent community oversight of SDPD, directed at increasing community trust in SDPD & increasing safety for community and officers. The purpose of the Commission is also to perform independent investigations of officer-involved shootings, in-custody deaths and other significant incidents, and an unbiased evaluation of all complaints against members of SDPD and its personnel in a process that will be transparent and accountable to the community. Lastly, the Commission also evaluates the review of all SDPD policies, practices, trainings, and protocols and represents the community in making recommendations for changes.
- IV. APPROVAL OF MEETING MINUTES
 - A. CPP Regular Meeting Minutes of July 3, 2024
 1. **Motion:** Commissioner Brandon Hilpert moved for approval of the CPP Regular Meeting Minutes of July 3, 2024. Commissioner Clovis Honoré seconded the motion. The motion passed with a vote of 16-0-0.
 Yays: Chair Tran, 1st Vice Chair Brown, 2nd Vice Chair Case, Armantrout, Benitez, Beyer, Chatzky, Diaz, Griffin-Jones, Harvey, Hilpert, Honoré, Justus, Mendoza, Mulmat, and Rodriguez
 Nays: 0
 Abstained: 0
 Excused/Late Arrival: Aguilar, Canson, Flores
- V. NON-AGENDA PUBLIC COMMENT:

In Person Public Comment:

Yusef Miller (*Timestamp 2:39*) Spoke regarding surveillance lights in the community.
 Francine Maxwell (*Timestamp 4:50*) Spoke regarding work of the commission, review of cases, and community outreach.
 Tasha Williamson (*Timestamp 6:40*) Spoke requesting for the commission to start stepping into the community and assisting the public with complaints.

Virtual Public Comment:

Evie Kosower (*Timestamp 9:42*) Spoke regarding the work of the commission and the lack of audio during the meetings.
- VI. CHAIR/CABINET REPORT
 - The following Commissioners were officially reappointed to the CPP through June 30, 2026, by the City Council: 1st Vice Chair Brown and 2nd Vice Chair Case, and to Commissioners Honore, Diaz, Armantrout, Mulmat, Beyer, Aguilar, and Chatzky.
 - 6 new Commissioner Candidates were also appointed: Christopher John Kennison (Council District 8), Imani Robinson (Low-to-Moderate Income Category), Gonzalo Rocha Vazquez, Viviana Ortega in the Youth Category, and Jessica Dockstader and Dan Lawton in the At-Large Category.
 - The Cabinet and Executive Director held a marathon 5-hour meeting on

July 13th. Items discussed were meeting management, publicity for the Community Hearing on Pretext Stops, media outreach for the pursuit preliminary report, training schedule, calendar update, meeting dates, public communication guidelines, and the ad hoc personnel committee. (Timestamp 12:58)

VII. EXECUTIVE DIRECTOR REPORT

Virtual Public Comment:

Sharmaine Moseley (Timestamp 18:08) Spoke regarding a comment made at the July 3rd meeting.

- Priority is to get the CPP fully staffed. Recruitments are currently underway for these positions: Investigators, Policy Manager, and Senior Management Analyst. There are three pending recruitments for: Deputy Executive Director, General Counsel, and Performance Auditor.
- The Office of the Commission on Police Practices is working on consistency, transparency, notifications, and outreach to the community.
- The audio and visual issues are actively being addressed with upcoming meetings with an AV Vendor and CityTV teams.
- Staffing updates will be provided with every executive director report. There also will be updates regarding general activities, topics, and issues. In addition, updates will be provided for current events and trends of civilian oversight seen locally, state, and federal.

VIII. POLICE PURSUIT AD HOC COMMITTEE

A. Preliminary Pursuit Policy Recommendations - (Timestamp 29:35) Ad Hoc Committee Chair Doug Case gave an update on the progress of the committee's action plan. Committee Chair Case shared the preliminary report worked on by the committee, which includes paralegals Joseph Comstock and Judith Ezeh. The preliminary report and all supporting documents were shared with the SDPD and we will review any feedback they provide.

B. In Person Public Comment

Tasha Williamson (Timestamp 45:42) Spoke regarding an infraction that caused the death of two young boys.

Yusef Miller (Timestamp 50:10) Spoke regarding the preliminary report and concerns about the data provided.

Francine Maxwell (Timestamp 52:39) Spoke regarding the form of obtaining data and recommendation of how to move forward.

C. Discussion - (Timestamp 55:25)

IX. PRETEXT STOP COMMUNITY HEARING

A. Reminder: Wednesday, August 7, 2024, at 5pm,
Location: George Stevens Community Center

B. In person Public Comment:

Yusef Miller (Timestamp 1:23:34) Spoke regarding pretext stopping and unfairly stopping people of color.

Francine Maxwell (Timestamp 1:26:28) Spoke regarding flyers to be posted throughout the area at the George Stevens Community Center.

Tasha Williamson (Timestamp 1:28:59) Spoke regarding pretext stops and how families have responded throughout the community.

C. Discussion (Timestamp 1:33:48)

- X. SAN DIEGO POLICE PROTEST POLICY – PROPOSED COMMUNITY HEARING
- A. Saturday, September 21, 2024, at 10 am; however, the date was moved to Sept. 14, 2024, due to a conflict with the 21st.
 - B. Public Comment: None
 - C. Discussion (*Timestamp 1:41:05*)
 - D. **Motion:** Chair Tran moved to host the Protest Policy Community Hearing on Saturday, September 14 at 10:00am. Commissioner Darlanne Mulmat seconded the motion. The motion passed with a vote of 18-0-0.
Yays: Chair Tran, 1st Vice Chair Brown, 2nd Vice Chair Case, Armantrout, Benitez, Beyer, Canson, Chatzky, Diaz, Flores, Griffin-Jones, Harvey, Hilpert, Honoré, Justus, Mendoza, Mulmat, and Rodriguez
Nays: 0
Abstained: 0
Excused: Aguilar
- XI. AD HOC OPERATING PROCEDURES
- A. Public Records Act (PRA) Procedure Final Draft Presentation • No Public Comment • Discussion (*Timestamp 1:42:12*)
• Action: Vote on Public Records Act (PRA) Procedure
Motion: Commissioner Brandon Hilpert moved to accept the Public Records Act Procedure. Commissioner Ada Rodriguez seconded the motion. The motion passed with a vote of 18-0-0.
Yays: Chair Tran, 1st Vice Chair Brown, 2nd Vice Chair Case, Armantrout, Benitez, Beyer, Canson, Chatzky, Diaz, Flores, Griffin-Jones, Harvey, Hilpert, Honoré, Justus, Mendoza, Mulmat, and Rodriguez
Nays: 0
Abstained: 0
Excused: Aguilar
 - B. Records Retention Final Draft Presentation • Public Comment
• Discussion (*Timestamp 1:46:00*)
• Action: Vote on Records Retention
Motion: Commissioner Ada Rodriguez moved to accept the Records Retention policy. Commissioner Bonnie Benitez seconded the motion. The motion passed with a vote of 18-0-0.
Yays: Chair Tran, 1st Vice Chair Brown, 2nd Vice Chair Case, Armantrout, Benitez, Beyer, Canson, Chatzky, Diaz, Flores, Griffin-Jones, Harvey, Hilpert, Honoré, Justus, Mendoza, Mulmat, and Rodriguez
Nays: 0
Abstained: 0
Excused: Aguilar
 - C. Next Steps (Ad Hoc Committee Chair Case): Operating Procedures will now move through the approval process, starting review by the City’s Labor Negotiations team.
- XII. CLOSED SESSION (NOT OPEN TO THE PUBLIC)
- A. Public Comment – None
 - B. Outside Counsel Duane Bennett led CPP into Closed Session
 - C. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
Discussion & Consideration of Complaints & Reports: Pursuant to Government Code Section 54957 to discuss complaints, charges, investigations, and discipline

(unless the employee requests an open public session) involving San Diego Police Department employees, and information deemed confidential under Penal Code Sections 832.5-832.8 and Evidence Code Section 1040. Reportable actions for the Closed Session items on the agenda will be posted on the Commission's website at www.sandiego.gov/cpp or stated at the beginning of the Open Session meeting if the meeting is held on the same day.

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|-------|---|
| I. | San Diego Police Department Feedback on Case Specific Matters |
| II. | Officer Involved Shooting (0) |
| III. | Category II Case Audit Reports (0) |
| IV. | Discipline Reports (6) |
| V. | Case Review Reports (3) |
| VI. | Case-Specific Recommendations to the Mayor/Chief (0) |
| VII. | Referrals to other governmental agencies authorized to investigate activities of a law enforcement agency (0) |
| VIII. | Legal Opinion(s) Request & Response (0) |

XIII. REPORT OUT FROM CLOSED SESSION (7:19pm): Outside Counsel Duane Bennett reported that there was no reportable action.

XIV. COMMISSIONER COMMENTS:

- Commissioner Darlance Mulmat (*Timestamp 1:50:00*) requested to know the status of the review of closed cases on a regular basis.
- Commissioner Clovis Honoré (*Timestamp 1:50:48*) acknowledged the volume of community members that participated in the meeting.
- Commissioner Dwayne Harvey (*Timestamp 1:52:06*) spoke about how the Harvey Family Foundation is having a family fun day on August 17, 2024, at 10am at Willie Henderson Sports Complex. The CPP can have a booth there for community outreach.
- Commissioner Christina Griffin-Jones (*Timestamp 1:54:58*) spoke about a Sumo Fundraiser for her team at Martin Luther King Jr Park on August 10, 2024.
- Commissioner Bonnie Benitez (*Timestamp 1:56:46*) spoke regarding polling for new calendar date.

XV. ADJOURNMENT: The meeting adjourned at 7:36 pm.

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: AUGUST 27, 2021
NUMBER: 4.01 – LEGAL
SUBJECT: STOP/DETENTION AND PAT DOWN PROCEDURES
RELATED POLICY: 1.04
ORIGINATING DIVISION: TRAINING & EMPLOYEE DEVELOPMENT
NEW PROCEDURE:
PROCEDURAL CHANGE: **MINOR CHANGES**
SUPERSEDES: DP 4.01 – 09/16/2019

I. PURPOSE

This Department procedure establishes guidelines for officers when contacting subjects for the purpose of investigating criminal activity.

II. SCOPE

This procedure applies to all sworn members of the Department.

III. BACKGROUND

NEW

The Department understands that direct contact with officers is, to the vast majority of the public, a rare and infrequent event. As a consequence, such contact can often be uncomfortable, awkward, or unnerving for citizens when they do not know why they are being contacted. A way to alleviate this is to provide citizens being contacted with the reasons for the interaction. Officers should communicate the reasons for the necessity of contact with citizens to the extent this is possible, in light of investigatory and safety concerns. Interactions with citizens must be consistent with Fourth Amendment search and seizure principles. Interactions that exceed the scope of the Fourth Amendment may lead to negative impacts in criminal and civil cases.

IV. PROCEDURES FOR CONSENSUAL CONTACTS, CONSENSUAL SEARCHES, STOPS, PAT DOWNS

A. Consensual Contact

Officers are encouraged to initiate consensual contacts with individuals in the community in order to gain a more thorough knowledge of their beats and the community.

Consensual contacts are different from detentions or arrests, in that they do not involve the "seizure" of persons within the meaning of the Fourth Amendment. Officers do not need "reasonable suspicion," "probable cause," or any other specific indication of criminal activity in order to initiate this type of contact.

During the course of citizen contacts, officers should not ask about a person's probation or parole status, or other legally documented status, unless the officer has independent knowledge of the person's criminal history or the totality of the circumstances would necessitate the information be immediately ascertained.

1. Initiation of a Consensual Contact

Officers may find it necessary to investigate the activities of a person when they do not possess sufficient information to make a detention or arrest. In such a case, the officers may initiate a contact with the person in any place in which the officer has a right to be. Unless an officer concludes that an arrest should be made or that a detention is reasonable, communications with a private person should begin with a consensual conversation that does not imply detention or arrest.

2. The Reasonable Person Test

The test: Would a reasonable person under the same or similar circumstances believe that he or she is free to leave?

It is not what the person contacted believes or should believe. It is what a reasonable person in the same circumstances would believe.

If a reasonable person would not believe they have a choice under the circumstances, then the person contacted is being detained, and absent sufficient legal cause to detain the person, it is an illegal detention.

3. Conduct During Consensual Contacts

Although no legal cause need be present for the officer to initiate a "contact," the persons contacted may not be halted, detained, or frisked against their will. They may not be required to answer questions or to

cooperate in any way, if they do not wish to do so. If they refuse to cooperate, they must be permitted to go on their way, unless the officer has developed reasonable suspicion to detain or probable cause to arrest. If it seems appropriate under the circumstances, however, the person may be kept under surveillance. Since a consensual contact is not a stop or an arrest, and those persons contacted may be innocent of wrongdoing of any kind, officers should take special care to act in a restrained and courteous manner.

Note: Except in situations that would jeopardize an investigation, officers shall ensure that all persons contacted are advised of the officer's affiliation with the Police Department, if it is not apparent by the officer's appearance.

4. Reporting Consensual Contacts

Officers are expected to make a variety of contacts with members of the community throughout each work shift. Contacts that do not lead to enforcement action may be documented on the Officer's Daily Journal, at the officer's discretion. If enforcement action results from a consensual contact, the resulting citation, warning, field interview, juvenile contact report, arrest or detention report shall be documented on the Officer's Daily Journal.

NEW

5. Consensual Searches

- a. Absent a search warrant, officers may conduct a search of a person or a person's property under limited circumstances. This includes incidents when a subject gives their consent for a search.
- b. Consent may be express or implied.
 - (1) Express Consent: When a person responds in the affirmative to an officer's request for permission to search, specifically any word(s) that reasonably indicates the person is agreeing to the specific request. Express consent may be verbal or written.
 - (2) Implied Consent: When a person's actions or responses effectively communicate permission to search; for example an individual handing an officer his or her car keys after the officer requests to search the vehicle. A failure to object to a search or a request to search does not constitute implied consent.

- (3) Consensual searches shall be conducted within the following legal parameters. Failure to adhere to these parameters may cause negative impacts in criminal or civil cases:
 - (a) Express or implied consent is given by the subject;
 - (b) Consent is freely and voluntarily given by the subject;
 - (c) The search shall not exceed the scope of consent given by the subject;
 - (d) The search is not unduly intensive or intrusive;
 - (i.) For example, consent to search does not authorize officers to destroy or damage the property or location during the search.
 - (e) The search is not unreasonable in its duration.
- (4) When verbal consent is obtained, the entire interaction shall be captured on BWC. Each of the following shall be included in the BWC recording:
 - (1) For instance, an officer may request to search any of the following: a house, vehicle, person, cellphone, computer, other mobile device, or purse/backpack.
 - (2) A request to search one's person may include fingerprints, DNA, or other identifying biological samples. A request for a biological sample should include an explanation of the method of analysis or comparison, such as running the sample through a comparison database.
 - (3) Members shall follow all applicable Department procedures and forms when obtaining biological samples.
- c. Officers shall make a clear request for consent to search the premise, person, personal property, or vehicle.
 - (1) For instance, an officer may request to search any of the following: a house, vehicle, person, cellphone, computer, other mobile device, or purse/backpack.
 - (2) A request to search one's person may include fingerprints, DNA, or other identifying biological samples. A request for a biological sample should include an explanation of the method of analysis or comparison, such as running the sample through a comparison database.
 - (3) Members shall follow all applicable Department procedures and forms when obtaining biological samples.
- d. The officer shall explain to the person they have the right to refuse, modify, or withdraw consent to search at any time, even after consent was given and the search has begun.

6. If a person's actions indicate implied consent, the officer shall confirm the consent verbally and ensure the confirmation is captured on BWC.
7. In the absence of a BWC recording of the subject's consent, members shall obtain written consent for a search using applicable Department forms.

NEW

B. Written Consent to Search

1. Consent to Search forms are available in the F: Drive under Templates/Patrol Based Forms/Consent to Search – Person and Personal Items.
2. These forms were translated into many of the languages spoken in our communities, and shall be used to facilitate communication and clearly document consent searches as circumstances dictate.
3. In addition to forms, officers are encouraged to continue to use qualified bilingual officer and civilian translators, as well as interpretation services contracted by the Department to enhance communication efforts as detailed by DP 1.47 – Limited English Speakers.

C. Detention

A detention, also referred to as a “stop”, occurs when officers use their authority to compel a person to halt, to remain in a certain place, or to perform some act, such as walking to a nearby location. Courts have used the terminology “investigative stop” for a detention. A detention is allowed so an officer may have a reasonable amount of time to investigate a person's possible involvement in actual or perceived criminal activity, allowing the officer to make an informed decision whether to arrest, or to release, the subject.

If the persons have been told they are not free to leave the officer's presence, a detention has occurred. When conducting a detention, the officer shall notify the subject contacted that he or she is no longer free to leave. However, officers are not required to make such a notification if it would hamper an investigation or jeopardize the officer's safety.

1. If an officer reasonably suspects that a person has committed, is committing, or is about to commit any crime, the authority to detain that person exists. Courts have used the terminology “Criminal activity is afoot” to describe these circumstances. The officer may exercise this authority in any place that the officer has the right to be. Both pedestrians and persons in vehicles may be detained. A detention is warranted if there is a reasonable suspicion by the officer that:

- a. Some activity relating to crime has taken place, is presently taking place, or is about to occur; and,
 - b. The person to be stopped or detained is involved in that activity.
2. “Reasonable suspicion” is a term that is not capable of precise definition; it is more than a hunch or mere speculation on the part of an officer, but less than the probable cause necessary for arrest. It may arise out of a contact, or it may exist prior to a contact. The following list contains some, but certainly not all, factors that should be considered in determining whether reasonable suspicion exists for a detention.

Note: A single factor listed below, or a combination of factors, may or may not individually justify a detention. An officer shall consider the totality of the circumstances present when deciding whether a detention is reasonable.

- a. Factors to Consider Regarding a Person's Appearance:
 - (1) The detainee fits the description of a person wanted for a known offense;
 - (2) The person appears to be suffering from a recent injury; or,
 - (3) The person appears to be under the influence of alcohol, drugs or other intoxicants.
- b. Factors to Consider Regarding a Person's Behavior/Actions:
 - (1) The person is fleeing from an actual or possible crime scene;
 - (2) The person is behaving in a manner indicating possible criminal conduct;
 - (3) The person was overheard making incriminating statements; or,
 - (4) The person is associating himself/herself with someone the officer determined to be reasonably suspicious.

- c. Factors to Consider Regarding Prior Knowledge of the Person:
 - (1) The person has an arrest or conviction record; or,
 - (2) The person is known to have committed an offense similar to the one that just occurred or is about to occur.

- d. Factors to Consider Regarding Demeanor
 - (1) The person's answers are evasive, suspicious, or incriminating; or,
 - (2) The person is excessively nervous during the consensual contact.

- e. Factors to Consider Regarding the Location of the Detention:
 - (1) The person is near the location of a known offense soon after its commission; or,
 - (2) The person is in an area known for a particular criminal activity and it is that type of activity that the person is thought to have committed, is committing, or is about to commit.

Note: Officers are cautioned that the courts find no credence in the term "high crime area", and that the term should be avoided. If reference is to be made to the area of the detention, officers should be able to articulate specific facts concerning that area (i.e., four commercial burglaries in the past week within several blocks of the location of the stop; 25 acts of vandalism within the past month at San Diego High School, etc.).

- f. Factors to Consider Regarding the Time of Day:
 - (1) It may be unusual for people to be in that area at that particular time; or,
 - (2) It is the time of day or night during which the suspected criminal activity usually occurs.

g. Police Training and Experience

The person's conduct is similar to the pattern followed in particular criminal offenses based on the investigating officer's training

and/or experience in dealing with that particular kind of criminal activity.

h. Emergency Circumstances

Public safety may be endangered if investigative action is not taken.

i. Factors to Consider Regarding the Source of Information:

If the basis of the officer's reasonable suspicion is in whole, or in part, based upon information supplied by another person, the officer should consider the reliability of the source of the information. The reliability of the information includes such things as:

- (1) Whether the officer knows the informant(s);
- (2) Whether they have supplied accurate information in the past;
- (3) How they came by this information; and,
- (4) Whether this information has been corroborated in any way, prior to making the detention.

3. Every officer who conducts a detention, as opposed to a consensual contact, must be prepared to document all of those specific factors that led the officer to believe the detention was reasonable.

4. Detention vs. Arrest

- a. If not handled properly, a "detention" could become an "arrest" which, if not supported by "probable cause" to arrest, would be illegal.
- b. General Rule: The least intrusive means should be used during a detention.
- c. The following list contains some factors that could cause a detention to turn into an arrest:
 - (1) Numerous officers involved;
 - (2) Display of weapons;
 - (3) Use of handcuffs;

- (4) Person is placed in back of a patrol car;
- (5) Encounter is in non-public setting;
- (6) The officer's authoritative manner and actions imply that compliance is compelled; and,
- (7) The officer did not advise the detainee of his right to terminate the encounter.

Note: The use of handcuffs or weapons or placing someone in a patrol car do not automatically make the contact an arrest if the actions are seen as reasonably necessary under the circumstances (person attempts to flee, officer safety concerns) and the person is told that they are only being detained, as opposed to arrested.

5. Proper justification for a detention does not permit unreasonable conduct during the detention. All police activity during a detention shall be done in a reasonable manner. The courts, in determining whether the detention was reasonable and lawful, will consider every phase of a detention.

a. Duration of the Detention

A person stopped pursuant to this procedure may be detained for a reasonable amount of time under the circumstances. Officers should detain a person only for the length of time necessary to determine if the person should be arrested or released.

b. Scope of the Detention

A reasonable on-the-scene investigation is all that is authorized by law during a detention. Therefore, an officer shall not move a detainee unless:

- (1) The officer obtains the detainee's consent to be moved;
- (2) The officer has probable cause to arrest the detainee;
- (3) A victim cannot, for valid reasons, be brought to the scene of the detention;
- (4) The movement is for a reasonable distance and facilitates the completion of the investigation (i.e., securing the

detainee in a patrol car while completing an investigation);
or,

(5) The movement is for the safety of the officer or the detainee.

c. Explanation to a Detained Person

Officers shall act with as much restraint and courtesy towards the detained person as is possible under the circumstances. Plain-clothes officers making a detention shall identify themselves as law enforcement officers as soon as it is appropriate. At some point during the detention, the officer should give the detainee an explanation of the purpose of the stop, unless such an explanation would jeopardize officer safety or hamper an investigation.

d. Questioning of a Detained Person

The officer may direct questions to detained persons for the purpose of obtaining their name, address, and an explanation of their presence and conduct. The detained person may not be compelled to answer these questions, even that of identity. During this questioning, it is not necessary to advise the person of their Constitutional rights under Miranda until such time as the person is placed under arrest, or the questioning has become coercive, rather than brief and casual.

e. Effect of Refusal to Cooperate

Refusal to answer questions does not, by itself, establish probable cause to arrest, but such refusal may be considered along with other facts as an element in determining whether the investigation should be continued. However, a person who flees during a lawful detention may be arrested for a violation of Penal Code Section 148 (a)(1), provided that such flight delayed or obstructed the investigation and there is sufficient proof to show that the person knew he/she was being detained by a police officer.

f. Tactical Options

Officers should strive to maintain a position of advantage (POA) and place the subject(s) contacted at a disadvantage whenever possible. Three techniques are: placing a subject on the curb, on the patrol vehicle's push bumper, or in the back seat of a patrol vehicle. While officer safety is of primary concern, curb sitting was not designed to

be a standard practice in all situations and officers recognize that community members find this tactic disrespectful.

If a situation justifies having a subject sit on the curb, the subject should be removed from that position once the threat has been mitigated (i.e., additional officers arrive on scene). This technique is only appropriate under circumstances where officer safety is threatened.

- g. Use of Force to Detain Officers shall comply with Department Procedure 1.04 - Use of Force, when deciding how much force, if any, should be used in effecting a detention.

6. Reporting Detentions

- a. In cases where a subject is detained and released at the scene, without being transported away from that scene, the “contact officer” shall complete a Field Interview (FI) form (ARJIS-1). The contact officer shall document in the FI those facts that led to the reasonable suspicion required to detain the subject. The contact officer shall log the FI on his/her Officer’s Daily Journal.
- b. In cases where a subject is detained, transported away from the scene and later released without booking, the contact officer shall prepare a “detention only” arrest report that properly documents the probable cause, special circumstances, or consent that was required for the detention and movement of the subject.
- c. If the need for photographs and/or fingerprints arises during the course of a detention, the person may be detained until a camera and/or fingerprinting equipment can be obtained, provided the detention does not become unreasonably long. Moving a subject to another location for photographs and/or prints requires either consent from the subject, probable cause to arrest, or special circumstances such as an injured victim, etc. Absent those exceptions, officers shall not transport a subject away from the scene for photographs and/or fingerprints. In cases where the suspect is a juvenile, the officer shall notify parents that he/she is taking photographs of the juvenile and the circumstances surrounding the incident.

D. Pat Downs

A “pat down” is a limited search for the purpose of finding weapons or other instruments that could be used against an officer. A pat down is not a search for

evidence or contraband, and, absent consent, officers shall not use a pat down as a pretext to conduct an evidentiary search.

1. An officer may pat down any person who has been detained when the officer reasonably suspects that the person is carrying a concealed weapon or dangerous instrument and that a pat down is reasonable to protect the officer or others. The pat down may be conducted immediately upon making the stop or at any time during the stop whenever a "reasonable suspicion to pat down" appears.
2. "Reasonable suspicion for a valid pat down" is more than a vague hunch and less than probable cause. If a reasonably prudent officer, under the circumstances, would believe the officer's safety or that of other persons in the vicinity is in danger because a particular person might be carrying a weapon or dangerous instrument, a pat down is justified. The following list (which is not all inclusive) contains some factors that should be considered in determining whether reasonable suspicion exists for a pat down.

Note: A single factor listed below, or even a cluster of factors, may or may not individually justify a pat down. An officer shall consider the totality of the circumstances present when deciding whether or not a pat down is reasonable.

- a. The person's appearance – their clothes may contain a bulge that suggests the presence of an object capable of inflicting injury.
- b. The person's actions - he/she may have made a furtive movement, as if to hide a weapon. The subject may be excessively nervous during the detention. The subject may be exhibiting threatening actions or words.
- c. Prior knowledge – the officer may know that the subject has a prior record for weapons violations or assaultive behavior.
- d. Location – the area may be sufficiently isolated so as to limit immediate police assistance, if needed.
- e. Time of day – darkness may inhibit visibility.
- f. Police purpose – the officer's detention of the subject may be for an armed, serious, or violent offense.
- g. Companions – the officer may have detained multiple subjects. If a weapon is found on one person, it may indicate a greater likelihood that a weapon may be found on others being detained.

3. Every officer who conducts a pat down must be prepared to document those specific factors which led the officer to conclude that "reasonable suspicion" existed before the pat down began. A mere statement that the officer feared for his/her safety is not sufficient. Instead, the officer shall cite specific factors listed above.
4. Pat downs that reveal items reasonably believed to be weapons or other dangerous objects vary slightly from those that reveal items that are reasonably believed to be an otherwise seizable item.
 - a. Weapon or dangerous instrument - if, when conducting a pat down, the officer feels an object which the officer reasonably believes is a weapon or dangerous instrument or is a hard object which may contain such an item, the officer may reach into the area of the person's clothing where the object is located (i.e., a pocket, waistband, or sleeve) and remove the object.
 - b. Other seizable item - if, while conducting a pat down, an officer feels an object which the officer does not reasonably believe to be a weapon or dangerous instrument, but which he immediately recognizes as an item of contraband, based on the nature of the object felt, along with or in combination with other factors, the officer has probable cause to believe that a crime is being committed in the officer's presence, and the officer should tell the person he/she is under arrest for that crime. The officer may then conduct a full custody search incidental to arrest but must not take any step to examine the object before making the arrest. If a seizable item is not found, the person should be released.

E. Photographing Guidelines

1. The taking of a field photograph must be connected to an investigation of a crime or an arrest. All photographs taken in connection with the investigation of a crime or an arrest must be attached to the appropriate reports or forwarded to the appropriate investigative unit. Refer to Department Procedure 3.26, Media Evidence Recovery and Impounding/Preserving Procedures, for further instruction.
2. An officer may, with the individual's consent, take a photograph in conjunction with a Field Interview (FI). That photograph must be attached to the yellow copy of the FI, which is forwarded to the appropriate investigative section.

3. When an officer takes a photograph of a juvenile, parental notification will be made. Refer to Department Procedure 3.08, Juvenile Procedures, for guidelines for photographing juveniles and making parental notification.
8. Officers are not to keep field photographs for the purpose of personal intelligence files or for personal use.

V. ASSEMBLY BILL 953

Assembly Bill 953 (AB 953), also known as the Racial and Identity Profiling Act (RIPA) of 2015, requires law enforcement agencies to collect data on all stops, detentions, and searches. This includes consensual searches and instances where force was utilized. In order to capture this data, a new application became available for every event generated through the Department's MPS and Intranet systems beginning July 1, 2018. There is a template to collect the required data in the F: Drive under Templates/Patrol Based Forms/PD-953, if the database application is temporarily unavailable. The data documented on this form shall be entered into the electronic application prior to the end of officer's shift unless exigent circumstances exist.

Under this mandate, the data collected will include the date, time, and duration of the stop, the location, perceived race or ethnicity, perceived gender, perceived LGBT, perceived or known disability, English fluency, perceived age, and the reason for the stop, detention, or search. The reason for the stop may be generated from a call for service, a traffic violation, reasonable suspicion or knowledge that the person was engaged, or about to engage in criminal activity and conclude with the actions taken by the officer. These actions will describe the basis of the search, whether or not contraband or other evidence is discovered, the reason for and type of property seized and the results of the stop or detention. The data collected under RIPA replaces the data previously collected from vehicle stop data cards.

- A. When completing a detention and/or arrest report, officers will ensure the narrative includes that a RIPA entry was submitted for every person being arrested or detained.
- B. Supervisors will verify officers have documented the RIPA entry in their narrative prior to approval.

PRETEXT STOPS

& RACIAL COMPONENTS

DEFINING PRETEXT STOPS

- A pretextual traffic stop occurs when law enforcement conducts a minor traffic stop with the purpose of investigating a crime unrelated to the motorist's driving, and not truly for the purpose of enforcing a traffic code.
- Example: an officer pulls over a motorist for a minor traffic or equipment violation and then uses the stop to investigate a more serious crime.

ARE PRETEXT STOPS LEGAL?

- Yes.
- In 1996, the U.S. Supreme Court ruled that Pretextual stops do not violate the 4th Amendment against unreasonable search and seizures. (***Whren v. United States, 517 U.S. 806 (1996)***)
- However, the 4th Amendment affirms that police officers must have probable cause or reasonable suspicion that a crime has been committed to stop and search a vehicle.

CASE LAW: WHREN V. UNITED STATES, 517 U.S. 806 (1996)

Case Summary: A Plainclothes policemen patrolling a "high drug area" in an unmarked vehicle stopped a vehicle driven by petitioner Brown due to a traffic violation. The truck driven by the petitioner turned suddenly, without signalling, and sped off at an "unreasonable" speed. Upon approaching the truck, the officer observed plastic bags of crack cocaine in petitioner Whren's hands. Whren and Brown were arrested on federal drug charge

Held: *The temporary detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment's prohibition against unreasonable seizures, even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective.* Pp. 809-819.

RACIAL IMPLICATIONS OF PRETEXT STOPS

- In 1999, the Washington Supreme Court held in *State v. Ladson* that the state constitution barred police from conducting pretextual traffic stops. However, in 2012, the court eased this restriction on pretextual stops in *State v. Arreola*.

PRETEXT STOPS - STATE V. LADSON

“We begin our analysis by acknowledging the essence of this, and every, pretextual traffic stop is that the police are pulling over a citizen, not to enforce the traffic code, but to conduct a criminal investigation unrelated to the driving. Therefore the reasonable articulable suspicion that a traffic infraction has occurred which justifies an exception to the warrant requirement for an ordinary traffic stop does not justify a stop for criminal investigation.”

State v. Ladson, 138 Wn. 2d 343, 349 (Wash. 1999)

“PRETEXT IS RESULT WITHOUT REASON”

“However, the problem with a pretextual traffic stop is that it is a search or seizure which cannot be constitutionally justified for its true reason (i.e., speculative criminal investigation), but only for some other reason (i.e., to enforce traffic code) which is at once lawfully sufficient but not the real reason. **Pretext is therefore a triumph of form over substance; a triumph of expediency at the expense of reason.** But it is against the standard of reasonableness which our constitution measures exceptions to the general rule, which forbids search or seizure absent a warrant. **Pretext is result without reason.**”

Emphasis added. State v. Ladson, 138 Wn. 2d 343, 351 (Wash. 1999)



STATE V. ARREOLA

“We hold that a mixed-motive traffic stop is not pretextual so long as the desire to address a suspected traffic infraction (or criminal activity) for which the officer has a reasonable articulable suspicion is an actual, conscious, and independent cause of the traffic stop. So long as a police officer actually, consciously, and independently determines that a traffic stop is reasonably necessary in order to address a suspected traffic infraction, the stop is not pretextual in violation of article I, section 7, despite other motivations for the stop.”

State v. Arreola, 290 P.3d 983 (2012)

EFFECTS OF *STATE V. ARREOLA* IN WASHINGTON

- In an analysis of a data set of 8,257,527 traffic stops conducted by the Washington State Patrol from 2008 through 2015, Stanford Law review, concluded that *Arreola* decision is associated with a statistically significant increase in traffic stops of drivers of color relative to white drivers.
- The data also revealed that increase in traffic stops of drivers of color is concentrated during daytime hours, when officers can more easily ascertain a driver's race through visual observation. (73 *Stan. L. Rev.* 637 (2021))

Rushin, Stephen, and Griffin Edwards. "An Empirical Assessment Of
Pretextual Stops and Racial Profiling." *Stanford Law Review*, 31 Mar. 2021, www.stanfordlawreview.org/print/article/an-empirical-assessment-of-pretextual-stops-and-racial-profiling/.

A close-up, low-angle shot of the top of a police car at night. The car's roof is white with several circular blue and white markings. A red and blue emergency light bar is mounted on top, with the red lights on the left and blue lights on the right. The lights are flashing, creating a bright glow. The background is dark and out of focus, showing some blurred lights and a person in a dark uniform on the left. The overall scene is dimly lit, emphasizing the police car's presence.

PRETEXT STOPS IN CALIFORNIA

RIPA(Racial and Identity Profiling Advisory)

NEW PRETEXT POLICY IN LAPD

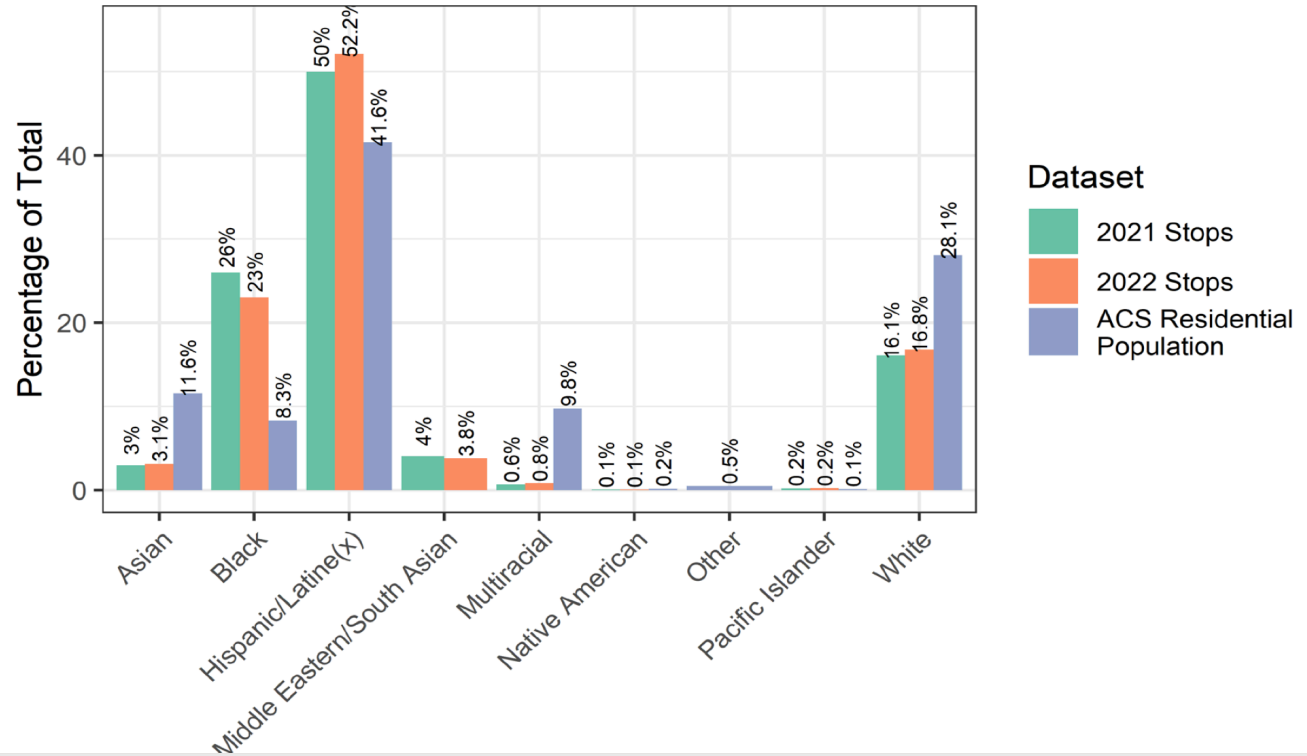
- In 2022, LAPD Implemented a new policy aimed at reducing the use of pretext stops.
- The new policy restricts pretext stops in two ways:
 1. Limits the circumstances in which traffic stops can be made by officers.
 2. Requires officers to articulate a reason to believe the person stopped has committed a serious crime.
- The policy went into effect March 1, 2022.

Effects Of New Pretext Policy Between 2021 And 2022

This figure compares the racial composition of stops during 2021 (teal) and 2022 (orange) pretext policy with the racial composition of the residential population of the city of Los Angeles (blue)

SOURCE:
2024 RIPA BOARD ANNUAL REPORT

Figure 30. Before and After Pretext Policy – LAPD Racial or Ethnic Composition Compared to Los Angeles City Residential Population



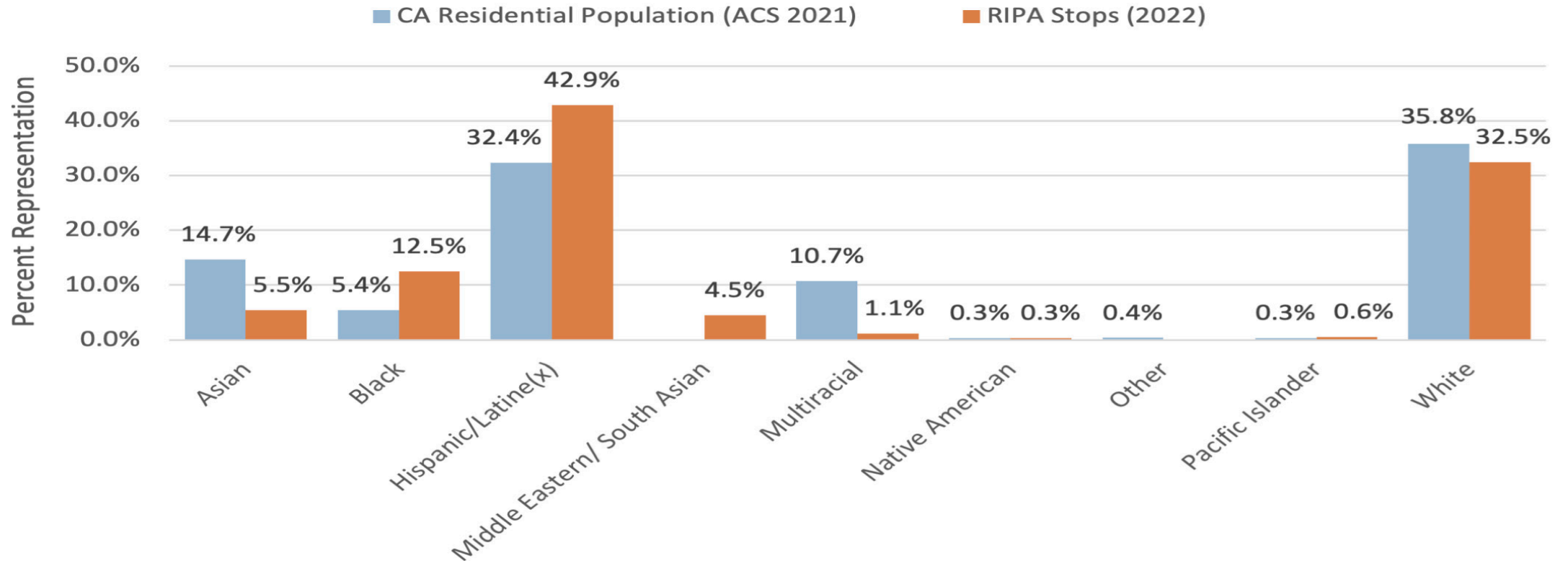
EFFECTS OF NEW PRETEXT POLICY BETWEEN 2021 AND 2022

- The Data illustrates that Black, Brown/Latinx, and Pacific Islander individuals represented a larger percentage in stops in both 2021 and 2022, relative to their percentage of the city's population,
- White, Asian and Multicultural individuals represented a lower percentage in stops in both 2021 and 2022, relative to their percentage of the city's population.
- After the new pretext policy was implemented in 2022, the disparity in stop numbers for Black individuals was slightly reduced, but the disparity in stop numbers for Brown/Latinx slightly increased.

FINDINGS REGARDING STOP DATA

- Five hundred thirty-five agencies conducted a total of 4,575,725 stops from January 1, 2022, to December 31, 2022. There are 25 additional agencies required to report RIPA stop data, but they reported zero stops in 2022.
- Black individuals were stopped 131.5 percent more frequently than expected, given their relative proportion of the California population, using a comparison of stop data and residential population data.

RESIDENTIAL POPULATION COMPARISON TO STOP DATA¹



SOME DEPARTMENTS ADDRESS BIAS IN POLICE

- **Explicit bias:** Conscious belief or attitude towards a specific social group or person that may lead an individual to act in discriminatory ways
 - Operates consciously

Vs.

- **Implicit Bias :** Attitudes or stereotypes that affect a person's understanding, actions, and decisions in an unconscious manner.
 - Implicit bias may be involuntary without an individual's awareness or intentional control

SDPD POLICY 9.31 – NON BIAS BASED POLICING

- “The Department does not tolerate bias based policing...”
- “The Department’s commitment to non-bias-based policing includes providing all members with ongoing training related to biases, including implicit, overt, and bias by proxy, and all members are expected to understand their negative impacts on policing.”
- “Members shall not base any enforcement action, in whole or in part, on race, color, ethnicity, religion, national origin, age, disability, gender (to include gender identity and gender expression), lifestyle, sexual orientation, or similar personal characteristics, while conducting any law enforcement activity, including stops and detentions...”

EXCEPTIONS - SDPD POLICY 9.3 I

“If deficiencies are found, supervisors shall take appropriate action. The Department will conduct regular internal reviews of stop data collected, and work collaboratively with external experts to identify trends, unexplained disparities, and to develop changes to Department operations as necessary to maintain equity in policing ...when engaging in the investigation of appropriate **suspect-specific** activity to identify a **particular person or group**. Members seeking one or more specific persons who have been identified or **described in part by their race, color, ethnicity**, religion, national origin, age, disability, gender identity, gender expression, or sexual orientation may rely, in part, on the **specified identifier or description** only in combination with other appropriate identifying factors and may not give the specified identifier or description undue weight...”

SENATE BILL -16 REQUIRES DISCLOSURE OF SUSTAINED COMPLAINTS OF DISCRIMINATION

On the basis of :

- Race
- Color
- National Origin...

Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, [involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.](#)

POLICE ACCOUNTABILITY HISTORIC COMPLAINTS IN 2016-2017

- Of 226 reported civilian complaints - 11% were sustained.
- Out of 21 civilian complaints of police discrimination, 75 use of force complaints and 2 complaints alleging criminal misconduct, none of these complaints were sustained.
- This trend appears to continue.
- The Commission continues to receive complaints involving pretext stops and complaints related to discrimination, illegal detention, courtesy...Rarely does the Department sustain complaints where pretext stops have been utilized.

RACIAL PROFILING TRENDS CITIZEN COMPLAINTS 2016-2019

- 2016: 8 complaints - 0 sustained
- 2017: 13 complaints - 0 sustained 6 unfounded 5 pending
- 2018: 15 complaints - 0 sustained 11 unfounded 4 pending
- 2019: 25 complaints - 5 sustained 1 exonerated 9 unfounded 10 pending

- Source: City of San Diego - Get the data – [nbcsandiego.com](https://www.nbcsandiego.com), July 3, 2020



TRAFFIC STOPS IN SAN DIEGO

EXAMINING DATA OF TRAFFIC STOPS IN SAN DIEGO CITY

CONSENT SEARCHES

Officers have more discretion to conduct a search based on the consent of the person being searched than they do when conducting a search pursuant to a search warrant.

According to the stop data provided by San Diego police in all three quarters from **2018- 2019**, there were 2,565 searches where the police reported no basis for the search other than consent being given.

CONSENT SEARCHES SDPD & SDSD

Analysis evaluating data on police stops, obtained through public records requests:

- Consent searches are also more likely to be discretionary and vulnerable to racial bias.
 - San Diego police searched 6,614 people after pulling them over for an alleged traffic violation. **(7/1/18-6/30/19)**
 - The data illustrated that San Diego police were more likely to pull over People of Color for equipment violations where police have substantial discretion.
 - ex. driving with a brake light or plate light out.
 - After being pulled over for a traffic violation, San Diego police were 44% more likely to search Latinx people and 33% more likely to search Black people compared to their White counterparts.

COMPARING SEARCH RATES AT TRAFFIC STOPS

Search Rates At Traffic Stops



39 searches of Black people per 1,000 stops.



15 searches of White people per 1,000 stops.

DATA OF TRAFFIC STOPS IN SAN DIEGO CITY 2021

At Traffic Stops, Black
People Were Searched
2.6 Times As Often As
White People.

DATA OF TRAFFIC STOPS IN SAN DIEGO CITY 2021

At Traffic Stops, Latinx People Were Searched **2.3** Times As Often As White People.

Search Rates At Traffic Stops



34 searches of Latinx people per 1,000 stops.



15 searches of White people per 1,000 stops.

COMPARING SEARCH RATES AT TRAFFIC STOPS

Search Rates At Traffic Stops



12 searches of Asian people per 1,000 stops.



15 searches of White people per 1,000 stops.

DATA OF TRAFFIC STOPS IN SAN DIEGO CITY 2021

At traffic Stops,
Asian People were
searched **0.8** times
as often as White
People.

SDPD POLICY 4.01 – STOP/DETENTION AND PAT DOWN PROCEDURES

C. A detention, also referred to as a “stop”, occurs when officers use their authority to compel a person to halt, to remain in a certain place, or to perform some act, such as walking to a nearby location. Courts have used the terminology “investigative stop” for a detention. A detention is allowed so an officer may have a reasonable amount of time to investigate a person’s possible involvement in actual or perceived criminal activity, allowing the officer to make an informed decision whether to arrest, or to release, the subject.

C(2):“Reasonable suspicion” is a term that is not capable of precise definition; it is more than a hunch or mere speculation on the part of an officer, but less than the probable cause necessary for arrest...

*** Officers have broad discretion in defining “Reasonable Suspicion” and are not to rely on perceptions of “high crime areas.”**

CALIFORNIA SUPREME COURT RECENTLY RULED TO RESTRICT GROUNDS FOR DETENTIONS

People v. Marlon Flores (May 2, 2024):

- Officer Guy suspected Flores was “loitering for the use or sales of narcotics” in a gang area. Guy gave no reason why he thought so, other than the area and Flores’s “suspicious behavior” upon seeing the police. During a pat-down search of his car, Officer Guy pointed his flash light and saw what looked like a drug pipe.
- **In her majority opinion, Justice Carol Corrigan writes:**

In short, Officer Guy failed to articulate “more than an ‘inchoate and unparticularized suspicion or “hunch” ’ of criminal activity.”

"But before an officer can compel compliance with a show of authority... articulable facts must support a reasonable suspicion of criminal activity. In the absence of such facts, the person is constitutionally protected and empowered to go on his or her way."

CONCURRING OPINION BY JUSTICE EVANS PEOPLE V. FLORES

“Despite growing recognition of the deep-seated issues in policing in our country, it is still the case that communities of color disproportionately experience heightened levels of police scrutiny and racial profiling. ‘Not only are Black people stopped and searched more often, but such searches are less likely to yield evidence or contraband’...Black individuals were stopped 131.5 percent more frequently relative to their proportion of the population and Hispanic individuals comprised the largest racial group of stopped individuals.” [The Opinion References and incorporates the 2024 RIPA data.]

“Today’s opinion notes that some courts have begun accounting for the impact of racial disparities in policing in the totality of the circumstances analysis.”



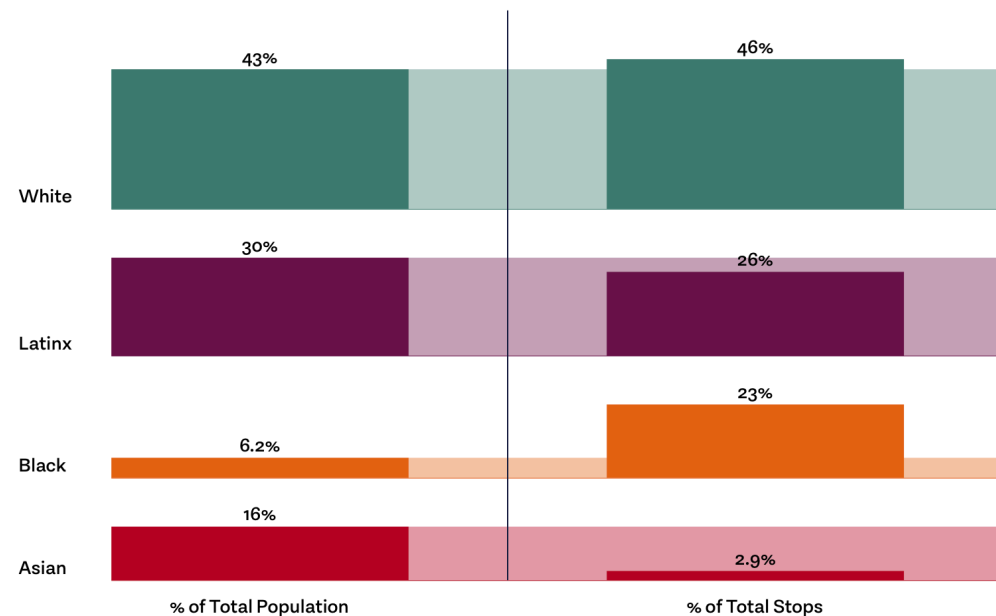


NON-TRAFFIC STOPS

- Examining Data Of Non-Traffic Stops In San Diego City 2021

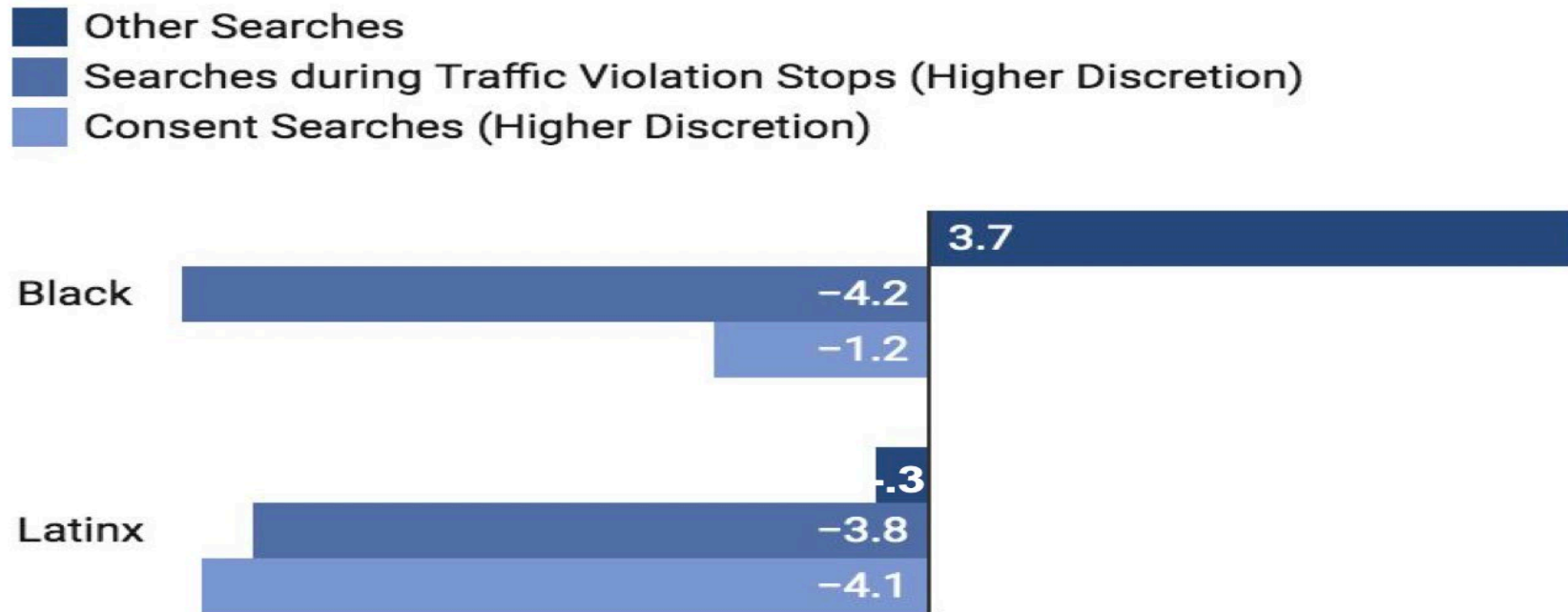
There is an obvious disparity between the racial groups, similar to the one observed in Los Angeles. Black individuals were 6.2% of the population but were 23% of non-traffic stops compared to other ethnic groups.

Percentage of Non-Traffic Stops, by Racial Group, Compared to Population



In situations where San Diego police had more discretion, racial disparities in search outcomes were more severe.

Police were less likely to find contraband on Black and Latinx people than White people during the types of searches where officers had the most discretion, indicating racial bias.

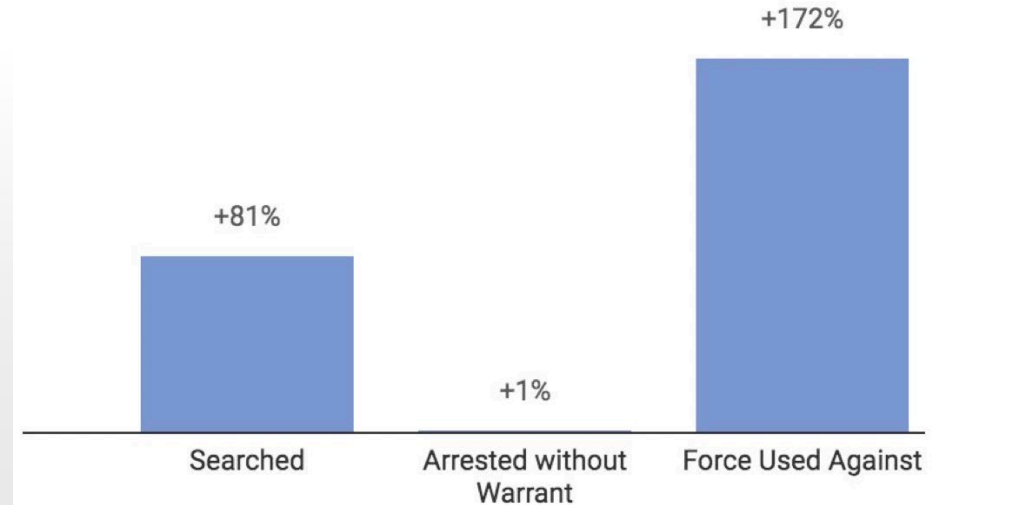


Displays the rate of contraband being found by San Diego police during a search relative to the rate for searches of white people.

People Perceived To Have Mental Disabilities Were 81% More Likely To Be Searched And 172% More Likely To Experience Police Use Of Force Than People Who Were Not Perceived To Have A Disability.

Bias Against People with Mental Disabilities in San Diego PD Stops

San Diego police were 81% more likely to search people with mental disabilities during a stop and more than twice as likely to use of force against them.



Few Theories As To Why This Disparity Exist Across Cities In America

- **Police bias**
 - In a review of 5 major police departments, California state auditors found that none of the departments had fully implemented best practices to mitigate the effects of police bias.
- **Hot spot policing**
 - Specialized teams are created in police departments to address specific criminal activities such as drug crimes.
 - A study found that there are higher racial disparities in traffic stops where there are “hot spots” compared to cities that were not considered hot spots.
- **Neighborhood Crime Rate and Poverty Levels**
 - A statistical technique called regression analysis used by the Center For Police Equity determined that neighborhood crime rates, and poverty levels explained 36% of the frequency of non-traffic stops, while 64% was not explained by these factors.

PROBABLE CAUSE DOES NOT INCLUDE AN ELEMENT OF RACE, ETHNICITY OR COLOR

1. **PROBABLE CAUSE**: A reasonable ground for belief in the existence of facts warranting an arrest or search.
2. **PROBABLE CAUSE** exists where the facts and circumstances would warrant a person of reasonable caution to believe that an offense was or is being committed.
3. **PROBABLE CAUSE** is the existence of circumstances which would lead a reasonably prudent person to believe in the guilt of the arrested party.

REASONABLE SUSPICION CONTAINS NO ELEMENTS OF RACE, ETHNICITY OR COLOR

In [*Terry v. Ohio, 392 U.S. 1 \(1968\)*](#), the Supreme Court [held](#) that if a police [officer](#) has [reasonable suspicion to believe](#) "that the person has committed, is committing, or is about to commit a crime and has a reasonable belief that the person may be armed and presently dangerous"- then the officer may [stop](#) and search the individual.

The Court held that to determine whether the police officer acted reasonably in the stop, courts should consider "the specific [reasonable inferences](#) which he is entitled to [draw](#) from the [facts](#) in light of his experience," rather than merely relying on a hunch.



**ADDRESSING THE DISPARITY
IN SAN DIEGO POLICE
DEPARTMENT**



ADDRESSING POLICING OUTCOMES

- Cases reviewed by the Commission suggest that at the assignment level, the Gang Unit, Special Investigations Unit, task force officers... stop Black and Brown people using pretext stops, or other methods, that continue to generate complaints.
- Policymakers and police leadership may wish to re-examine the how these units are deployed or utilized in light of alleged racially disparate impacts.

RIPA'S REGULATIONS

- RIPA's regulations currently prevent the public from accessing data showing the ID numbers of the officers making each stop.
 - Arguments have been made that access to the full data could be used to track the spread of misconduct through a police department over time and even predict which officers would likely commit misconduct in the future.
- * SB-16 affords access to sustained complaints of discrimination

AB 2773

In an effort to address pretext stops, A.B. 2773, which took effect Jan. 1, 2024, requires officers to announce the reasons for vehicle stops and police agencies to track whether officers who stop drivers are complying with the law.

CALIFORNIA SENATE BILL NO. 50

- SB 50 was proposed in 2023 to restrict stops for certain minor traffic infractions.
- The Prosecutor Alliance of California (bill sponsor) argued that pretext stops fail to meaningfully improve public safety and result in profiling of individuals.
- "This bill would prohibit a peace officer from stopping or detaining the operator of a motor vehicle or bicycle for a low-level infraction, as defined, unless a separate, independent basis for a stop exists or more than one low-level infraction is observed..."

OPPOSITION TO CALIFORNIA SENATE BILL NO. 50

- Those opposing the bill expressed concern that by reducing pretextual stops, officers could lose the ability to detain an individual to investigate an unrelated “hunch” and potentially discover contraband.
- In support of this argument, they referenced several individual cases where narcotics or weapons were seized during a pretextual stop.
- According to RIPA data, a vast majority of pretextual stops do not yield contraband.

GUIDANCE PROVIDED FOR FEDERAL LAW ENFORCEMENT OFFICERS

- A. When conducting traffic stops, Federal law enforcement **officers may not use race, ethnicity**, gender, national origin, religion, sexual orientation, or gender identity. Officers **may only rely on these listed characteristics for suspect description.**
- B. When conducting traffic stops, Federal law enforcement officers may consider race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity **only** if it is trustworthy and relevant to the locality, that individual to an identified criminal incident, scheme, or organization, a threat to national or homeland security...
 - > In order to rely on a these characteristics, law enforcement officers must reasonably believe that the activity is merited under the totality of the circumstances, such as any temporal exigency and the nature of any potential harm to be averted.

SOME BENEFITS TO CHANGING THE *STATUS QUO* REGARDING PRETEXT STOPS

- Increased accountability and public trust in non-biased policing.
- Fewer complaints and investigations against officers for discrimination, racial profiling, illegal detentions and courtesy.
- Lessened emotional toll on officers subject to citizen complaints and accused of misconduct for discrimination, etc.
- Fewer *Pitches* motions (Evidence Code 1043-1047) for discovery into police officer personnel files where criminal charges are filed.
- Fewer *Murgia** motions in criminal cases for selective prosecutions on the basis of race.

* *Murgia v. Municipal Court* (1975) 15 Cal.3d 286. A *Murgia* motion requests that a defendant's criminal charges be dismissed based upon a showing of selective prosecution for improper purposes amounting to a violation of the right to due process and equal protection under the Fourteenth Amendment.

A FEW RECOMMENDATIONS

- **Acknowledgment of Disparate Impacts on People of Color**
- **Hold Accountable those Supervisors or Officers who Direct or Order the Pretext Stop as opposed to Officers simply Complying with the Directive or Order**
- **Revision of Policy 9.3 I to remove Vagueness and Ambiguity regarding use of Race or Ethnicity in Stops, Detentions and Arrests**
- **Strict Compliance with Policy 9.3 I regarding Training and External Experts to Identify Inequities and Disparate Patterns**

SOME RECOMMENDATIONS

- **Expanded Alternatives to Arrests for Low-Level Offenses**
- **Consideration of Principles in the Federal Standard for Law Enforcement Stops**
- **More Scrutiny regarding the Usage of Consent Searches where Safety Concerns are not an issue, and for Stops related to equipment violations**
 - Racial disparities are higher in these types of searches
- **Improve Data Transparency, Reporting and Compliance with the Racial Identity Profiling Act**

SUMMARY

- Pretextual stops might be causing more harm than good.
- The disparity between the number of stops and the proportion of residential population is greater for People of Color, who are stopped more frequently and searched at a higher rate than White individuals.
- Pretext stops may lead to more serious incidents or harm to those errantly stopped.
- Pretext stops contribute to an Hot spot Policing - where agencies use data to determine areas to concentrate police forces.
- Much of crime-based data is from heavily policed areas, which reinforces the notion that “over policed areas” require further police surveillance. This creates the negative cycle we see in pretextual stops.

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“Pretext is therefore a triumph of form over substance; a triumph of expediency at the expense of reason... Pretext is result without reason”

CITATIONS

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