

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/.



PRETEXT STOPS IN CALIFORNIA

RIPA(Racial and Identity Profiling Advisory)

NEW PRETEXT POLICY IN LAPD

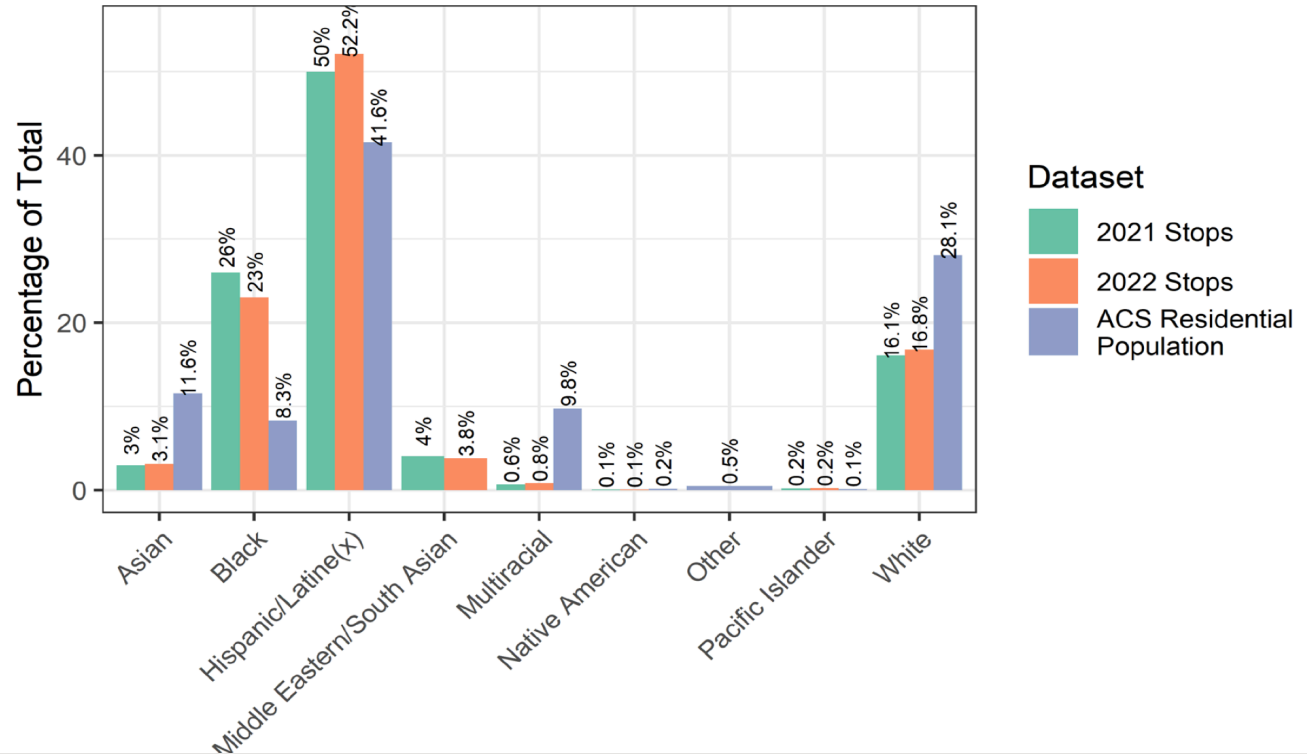
- In 2022, LAPD Implemented a new policy aimed at reducing the use of pretext stops.
- The new policy restricts pretext stops in two ways:
 1. Limits the circumstances in which traffic stops can be made by officers.
 2. Requires officers to articulate a reason to believe the person stopped has committed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



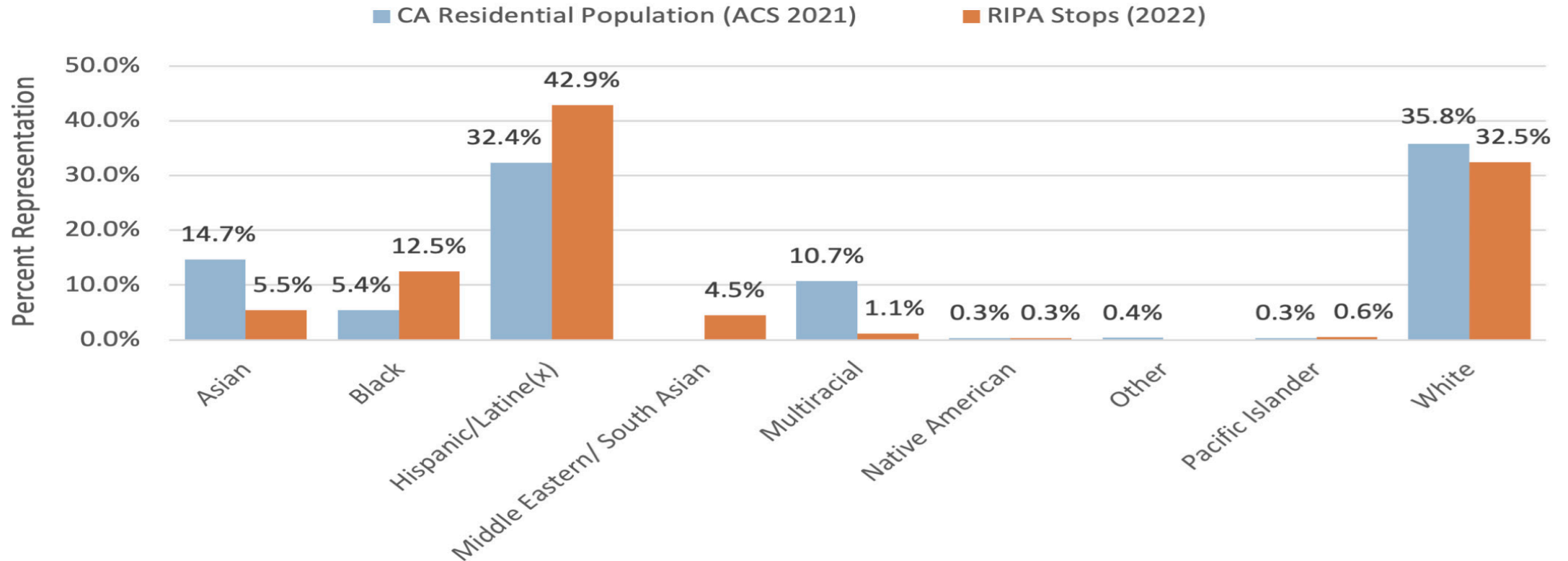
EFFECTS OF NEW PRETEXT POLICY BETWEEN 2021 AND 2022

- 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.

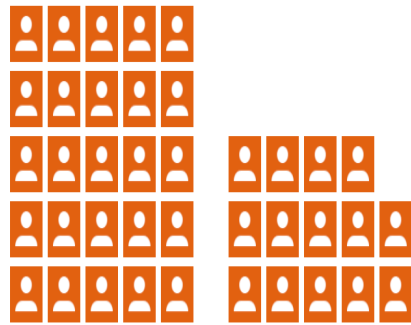
CONSENT SEARCHES SDPD & SDSD

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.”



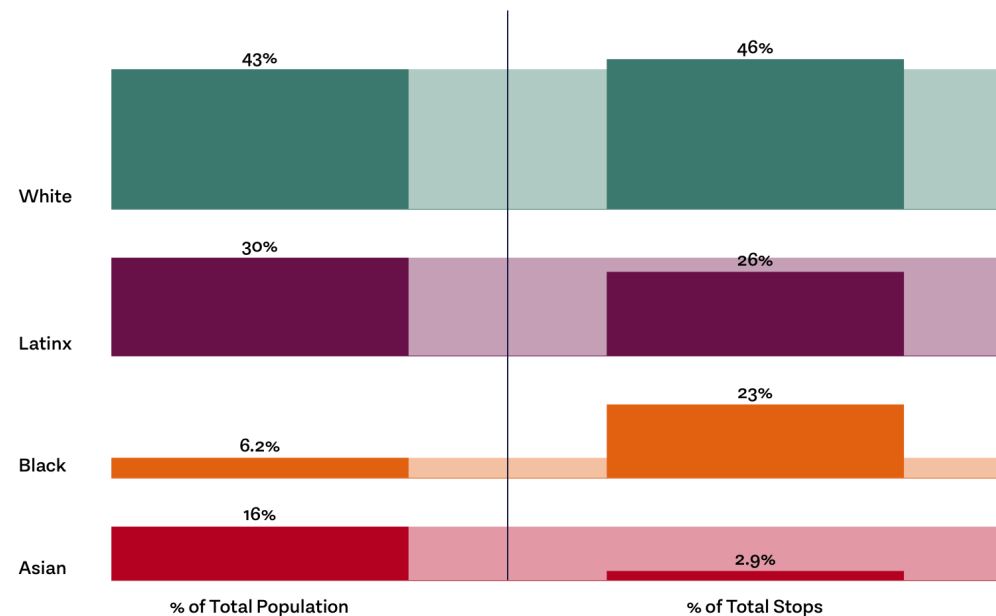


NON-TRAFFIC STOPS

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

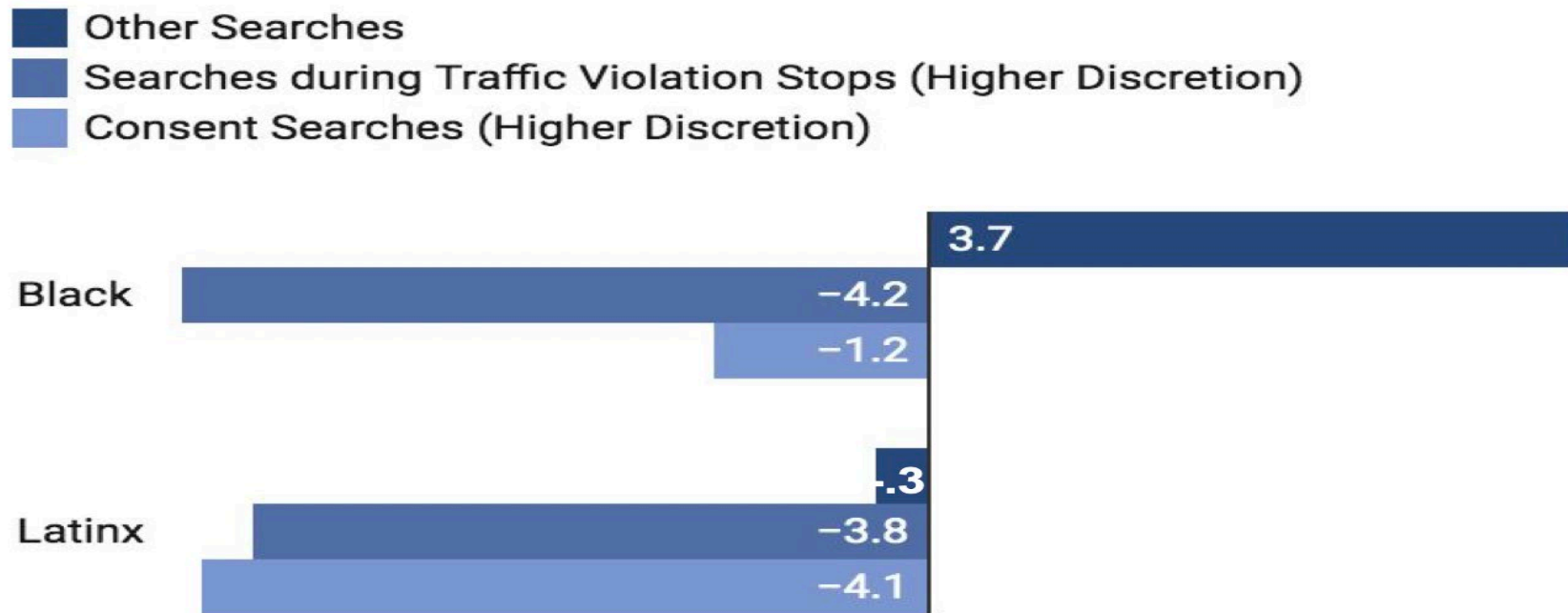
There is an obvious disparity between the racial groups, similar to the one observed in Los Angeles. Black individuals were 6.2% of the population but were 23% of non-traffic stops compared to other ethnic groups.

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.

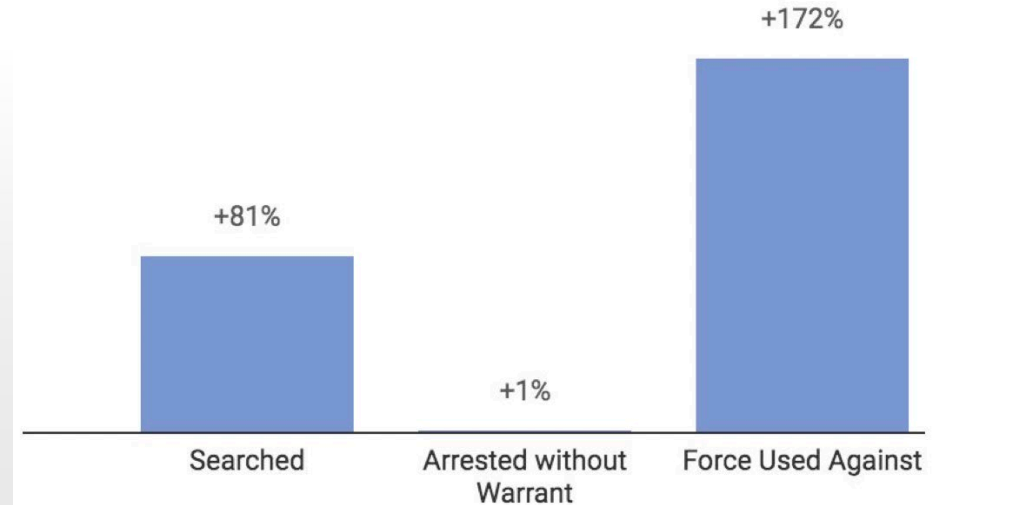


Displays the rate of contraband being found by San Diego police during a search relative to the rate for searches of white people.

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.

WASHINGTON STATE SUPREME COURT

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

CITATIONS

1. 2024 - RIPA Board - Annual Report - AB 953 - Racial And ..., oag.ca.gov/system/files/media/ripa-board-report-2024.pdf.
2. 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/.
3. "California Racial and Identity Profiling Advisory Board Releases Report on 2022 Police Stop Data." *State of California - Department of Justice - Office of the Attorney General*, 3 Jan. 2024, oag.ca.gov/news/press-releases/california-racial-and-identity-profiling-advisory-board-releases-report-2022.
4. "Principles of the Law, Policing." *Principles of the Law Policing*, www.policingprinciples.org/chapter-2/2-04-use-of-pretextual-policing/. Accessed 23 Apr. 2024.
5. "Whren v. United States, 517 U.S. 806 (1996)." *Justia Law*, supreme.justia.com/cases/federal/us/517/806/. Accessed 23 Apr. 2024.
6. *Justice Navigator*, justicenavigator.org/report/sandiego-city-ca-2021/ps. Accessed 24 Apr. 2024.
7. Legal Information Institute – Cornell Law School
8. Sinyangwe, Samuel. "Evaluating Policing in San Diego ." *PoliceScoreCard.Org*, ACLU of San Diego and Imperial Counties , www.sandiegocounty.gov/content/dam/sdc/clerb/docs/disparities-in-local-policing/1121Attach1-DisparitiesInLocalPolicing.pdf. Accessed 1 Aug. 2024.