

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

AARON M. FREY
ATTORNEY GENERAL



STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

REGIONAL OFFICES
84 HARLOW ST. 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

125 PRESUMPSHOT ST., SUITE 26
PORTLAND, MAINE 04103
TEL: (207) 822-0260
FAX: (207) 822-0259

14 ACCESS HIGHWAY, STE. 1
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

TEL: (207) 626-8800
TTY USERS CALL MAINE RELAY 711

March 16, 2020

The Honorable Michael Carpenter, Chair
The Honorable Donna Bailey, Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333-0100

Re: Attorney General Response regarding Collection and Compilation of Data on Profiling Pursuant to P.L. 2019, ch. 410, An Act To Eliminate Profiling in Maine

Dear Senate Chair Carpenter, House Chair Bailey and Members of the Committee:

I am writing regarding P.L. 2019, ch. 410, An Act to Eliminate Profiling in Maine ("Act"). Section 4 of the Act provides that "[t]he Attorney General, in consultation with interested parties, including law enforcement agencies and community, professional, research, civil liberties and civil rights organizations, shall explore available techniques for the collection and compilation of profiling data and shall report findings and recommendations to the Joint Standing Committee on Judiciary no later than March 15, 2020." In response to this directive, our office sought input from the following organizations: Immigrant Legal Advocacy Project, Maine People's Alliance, Maine Chiefs of Police Association, Maine Sheriffs Association, Maine's eight District Attorneys, Cumberland Legal Aid Clinic, Maine Association of Criminal Defense Lawyers, ACLU Maine, Maine Department of Public Safety, Maine State Police, and NAACP. A copy of all the responses we received are attached to this letter.

Summary of Information Reviewed. In addition to the responses, we reviewed literature on data collection relating to racial profiling, including: 1) Racial Identity Profiling Advisory Board Annual Report (2019) (California); 2) State of Connecticut, Traffic Stop Data Analysis and Findings (June 2019); 3) Maine Human Rights Commission Data (2000-2020); 4) Report of the Advisory Committee on Bias-Based Profiling by Law Enforcement Officers and Law Enforcement Agencies (February 12, 2012) (Maine); 5) Report of the Intergovernmental Pretrial Justice Reform Task Force (December 2019) (Maine); and 6) Maine Chiefs of Police Model Policy Regarding Hate/Bias Crimes and Bias-Based Profiling.

Currently, there are multiple mechanisms in place for the collection of data relating to law enforcement in Maine. In addition to Maine State Police ("MSP") and other state law enforcement

agencies, there are 120 municipal police departments, and 16 county sheriffs' departments in Maine. The records management systems used by each law enforcement entity is determined on an agency basis. In the February 12, 2012 Advisory Study, it was estimated that there may be as many as 13 different data collection systems used by law enforcement agencies in Maine. This number has not been updated. The current systems are decentralized and are not comprehensive. MSP collects information relating to traffic stops and the investigation of criminal complaints. In those instances where a traffic citation is issued, the investigating law enforcement officer records the age, race and gender of the detained individual. During criminal investigations, the age, sex, race, and ethnicity for complainants and suspects are captured in MSP's records management system. All Maine law enforcement agencies are required to submit data to MSP for specific categories of crimes, and this data is compiled and submitted to the United States Department of Justice on an annual basis.

The Maine Human Rights Commission ("MHRC") is the state agency charged with enforcing the Maine Human Rights Act ("MHRA"), which prohibits discrimination in public accommodations on the basis of race. After reviewing a charge of discrimination, the MHRC makes a determination of whether there are reasonable grounds to believe that discrimination in violation of the MHRA has occurred. Information from the MHRC indicates that between 2000 and 2020, there have been forty-eight public accommodation charges of race discrimination relating to municipal and county entities. The MHRC did not find reasonable grounds to support any racial profiling charges relating to law enforcement during that period.

We also reached out to the eight District Attorneys as well as all of the MDEA drug task force attorneys, who are assistant attorneys general, to determine whether any Motions to Suppress or Motions to Dismiss alleging racial profiling were filed by defense counsel. We received one response to this request. In *State of Maine v. Kam Leung* bearing Cumberland County Docket Nos. CR-2019-0623 and 2017-6994, defense counsel filed a Motion to Suppress evidence on the basis that the troopers "engaged in selective law enforcement tactics that involve discrimination based on race..." See Attachment 4. A hearing was held and a decision by the Court is still pending.

One reported case, *United States v. Garcia-Zavala*, 2018 WL 1091973 (D. Me. 2018), *aff'd*, 919 F. 3d 108 (1st Cir. 2019), *cert. denied*, 140 S. Ct. 391 (2019), involving claims of a racially motivated pretextual traffic stop by a Maine State Trooper, was found to be without factual support. This finding was affirmed on appeal.

In its response to our inquiry, Immigrant Legal Advocacy Project ("ILAP") identified seven instances in which ILAP found some indicia of individuals being stopped, arrested and detained by Immigration and Customs Enforcement ("ICE") after a traffic stop for minor infractions or when no reason was provided. ILAP also reported that racial profiling by police is identified as a problem in the immigrant communities that ILAP serves.

Since approximately 1993, the Office of the Attorney General (“OAG”) was informally designated as the recipient of complaints of racial profiling by law enforcement. In addition, a protocol was established in conjunction with the development of a model policy for Hate/Bias Crimes and Bias-Based Profiling by the Maine Chiefs of Police Association in 2000. Since 1993, the OAG has received one complaint of racial profiling. This complaint was reviewed and was not substantiated.

As noted in the response of the ACLU, the states of California and Connecticut have recently established comprehensive data collection and compilation practices with respect to racial profiling.¹ In both states, the state legislature enacted a law mandating the collection and reporting of data relating to stops and civilian complaints against law enforcement officers. The process has involved multiple years of study, implementation that includes a centralized data collection and establishment of an advisory board to oversee the process. Data collection involves the entry of information into a central database by the investigating officer after the stop.² We understand that the data reporting process in Connecticut is designed to take 90 seconds or less and could be completed by an officer “on the side of the road” after the stop.

Options:

A. Implementation of a data collection and compilation program in Maine similar to California and Connecticut is one option the Legislature may wish to consider. As in other states, this would be a multi-year process. In addition, there must be safeguards in place to insure the reliability and integrity of the data collected. The assessment of police-citizen contact for the presence or absence of racial bias presents the challenge of how to account for alternative explanations for any racial disparity in stop rates. For example, is the difference based upon race, differences in driving/offending behavior, or differences in rates of exposure to law enforcement due to location of the encounter and population in or travelling through a particular location? The challenge for a study of racial profiling is to find suitable methods to pinpoint the correct explanation.

The Legislature would need to appropriate funding to retain a consultant with experience in the implementation of a data collection and compilation program addressing racial profiling in law enforcement as well as the development of a data collection system. We understand that the cost to build the data collection system in Connecticut was approximately \$750,000. Federal funds may be available that would offset some of the start-up cost pursuant to 23 CFR § 1300.11. It is

¹ We also understand the States of Oregon and Rhode Island have similar data collection and compilation programs.

² Extending the stop for the purposes of questioning the subject of the stop about matters not related to the purpose of the stop is not permitted. *Illinois v. Caballes*, 125 S. Ct. 834 (2005) (a stop may become unlawful if it is prolonged beyond the time reasonably required to complete the mission of the stop).

our understanding that provided a state meets the grant requirements, states are eligible for grants of \$375,000 per year. It should be noted that the Report of the Intergovernmental Pretrial Justice Reform Task Force (December 2019) (Maine) (“Task Force”) recognized that there are “significant gaps” in data collection and analysis in Maine.³ The Task Force recommended that the State “fully support and fund robust data development and collection...disaggregated by suspect classifications (at least race and gender).” *Id.* at 6 and 9. If the recommendation from this Task Force is followed, and if Option A is chosen, law enforcement/racial profiling data collection could be part of the larger data collection project recommended by the Task Force (which includes arrests, bail conditions, bail amounts, violations, jail data, and pretrial length of stay).

B. Another option would be to formalize the OAG racial profiling complaint policy to determine whether a more robust data collection process (like the state collection systems described above) is warranted. If all law enforcement agencies were required, either by statute or rule to report complaints of racial profiling to the OAG for review, there would be a centralized repository of complaints. As noted above, since approximately 1999, there has been only one complaint. That complaint was not substantiated. The lack of complaints may be because law enforcement agencies are not aware of the OAG complaint procedure or it may be because there are not many instances of racial profiling involving state or local law enforcement.⁴ Providing outreach and training to law enforcement agencies on the availability of the OAG complaint process should also be part of this option.

C. Under current law, the Maine Criminal Justice Academy (“MCJA”) has the authority to require every local law enforcement agency in Maine to adopt written policies consistent with policy standards established by the Academy. 25-A M.R.S. § 2803-B (2019). Mandatory reporting to the MCJA or OAG of racial profiling complaints could be added as a mandatory element of local law enforcement agency policy. In addition, the MCJA also has the authority to require law enforcement agencies to make certain reports to the MCJA on an annual basis. *See, e.g.*, 25 M.R.S. § 2805-B (2019). The Legislature or the MCJA could add racial profiling as a required category for annual reports as is currently the case for excessive force complaints. *Id.*

³ The Task Force was re-established by a February 6, 2019 Order of the Chief Justice of the Maine Supreme Judicial Court for the purpose of reviewing and improving the system of pretrial justice in Maine. Part of the responsibilities of the Task Force were to review relevant current research and data and make recommendations that will “achieve fairness in the application of policies and laws, including but not limited to, giving attention to racial, ethnic, gender, LGBTQ, and economic factors. Report of the Intergovernmental Pretrial Justice Reform Task Force (December 2019) (Maine) at 4-5.

⁴ Federal law enforcement stops would be beyond the scope of a state data collection system.

The Honorable Michael Carpenter, Chair
The Honorable Donna Bailey, Chair
Joint Standing Committee on Judiciary
March 16, 2020
Page 5

I hope this information is responsive to the request for information. Please let me know if you have additional questions or concerns.

Sincerely,



AARON M. FREY
Attorney General

AMF/SPH

Attachments

cc: Members of the Joint Standing Committee on Judiciary:
Honorable Senator Shenna Bellows
Honorable Senator Lisa Keim
Honorable Representative Christopher Babbidge
Honorable Representative Barbara Cardone
Honorable Representative Philip Curtis
Honorable Representative John DeVeau
Honorable Representative Jeffrey Evangelos
Honorable Representative David Haggan
Honorable Representative Thom Harnett
Honorable Representative Lois Reckitt
Honorable Representative Rachel Talbot Ross

ATTACHMENTS INDEX

Attachment 1: Maine State Police's response dated January 29, 2020

Attachment 2: ILAP's response dated February 13, 2020

Attachment 3: ACLU's response dated March 6, 2020

Attachment 4: Motion to Suppress in *State of Maine v. Kam Leung*,
Cumberland County Docket Nos. CR-2019-0623 and
CR-2017-6994



STATE OF MAINE
Department of Public Safety
Maine State Police
42 State House Station
Augusta, Maine
04333-0042

JANET T. MILLS
GOVERNOR
MICHAEL SAUSCHUCK
COMMISSIONER

COL. JOHN COTE
CHIEF
LT COL BILL HARWOOD
DEPUTY CHIEF

Susan Herman, Chief Deputy
Office of the Attorney General
6 Statehouse Station
Augusta, ME 04333-0006

January 29, 2020

Dear Chief Deputy Herman:

This letter is in response to a request from Attorney General Aaron Frey dated January 16, 2020 for information which may help to 'explore available techniques for (or to enhance) the collection and compilation of profiling data'.

Currently, related data is primarily collected and documented by the State Police during roadside traffic stops or the investigation of criminal complaints. During a roadside traffic stop, personal information described in LD 1475 is limited to the descriptors of age, race, and gender. This information is only required to be captured when a Violation Summons and Complaint (traffic citation) is issued. Because the number of total traffic stops far exceeds the stops where a citation is issued it is virtually impossible to determine the number of times our officers interact with people in the categories described in this statute. Maine law enforcement is currently moving to an electronic citation process. This will not, however increase or impact the type of data that is collected but may allow for improved analysis of the aggregate data across the State.

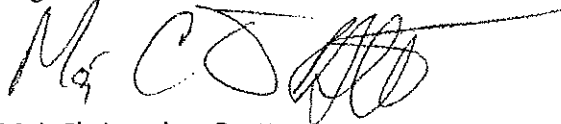
In terms of our interaction with citizens during criminal investigations, relevant data is captured in our records management system pertaining only to complainants and suspects and is limited to age, sex, race and ethnicity. The State Police serves as the repository for Uniform Crime Report data from all Maine law enforcement agencies. Agencies are required to submit data from only specific categories of crimes. This data is compiled and submitted to the Department of Justice annually which results in Maine's published 'crime statistics'. It is important to note that the relevant data received and aggregated for statewide crimes is currently limited to age, sex, race and ethnicity for individuals

charged with one of these specific crimes. As agencies are required to transition to a new system over the next few years this will additionally provide the same data for victims and non-charged suspects.

In summary, the data that we collect and document is limited to common physical descriptors and does not include many of the categories articulated in the statute. Our enforcement and investigative activities are solely based on conduct, behavior, and the investigation of crime. The information that we compile for Maine law enforcement agencies is currently limited to charged suspects in specific crimes and does not include most of the categories in 5 MRSA §200-K Sec. 4.

Please let me know if there is additional information that I can provide that might be helpful in your efforts on this important topic.

Regards,

A handwritten signature in black ink, appearing to read 'Maj. C. Grotton', with a long horizontal flourish extending to the right.

Maj, Christopher Grotton
Maine State Police

Pc: Col. John Cote
Comm. Michael Sauschuck



IMMIGRANT LEGAL ADVOCACY PROJECT

ATTACHMENT 2

February 13, 2020

Chief Deputy Susan Herman
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006

Re: Response to Request for Information Related to Racial Profiling

Dear Ms. Herman,

Thank you for requesting ILAP's assistance in exploring available techniques for the collection and compilation of profiling data related to the implementation of Public Law 2019, Chapter 410 (L.D. 1475). We have observed racial profiling to be a problem in Maine and appreciate the serious attention your office is giving to this important matter.

ILAP's services and expertise are focused on immigration law and we lack knowledge of the best techniques for collection and compilation of profiling data. Therefore, we are unable to provide that information. We understand that the ACLU of Maine is providing you with some recommendations and we urge you to consider their input and implement the best possible system to track profiling data. We will gladly assist your office in any way that we can as you implement the new system.

ILAP is Maine's only statewide immigration legal services organization. We provide direct immigration legal services and education and outreach to over 5,000 immigrants in all sixteen counties of Maine each year. This includes work with individuals who have been detained by Immigration and Customs Enforcement (ICE) after encounters with local and state police. Through our work, we have heard many reports that suggest racial profiling was involved in law enforcement encounters with members of the immigrant community. Because of these trends, we have been tracking cases in which there was some indicia of a pretextual stop and/or racial profiling. The following are examples of cases where individuals were arrested and detained by ICE after traffic stops for minor infractions or when no reason was provided:

- An individual was pulled over by state police, with no reason provided. ICE arrived shortly after and arrested him after reviewing his documents. When ILAP staff visited him at Cumberland County Jail he expressed fear of being killed by gangs in El Salvador after he is deported.
- An individual was pulled over by police, who claimed one of his mirrors was not working although he claimed that it was working. He was turned over to ICE and arrested.
- An individual was pulled over by the police for making a wrong turn when pulling into a motel. He was turned over to ICE and arrested. When ILAP staff visited him at the

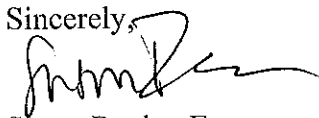
Cumberland County Jail he expressed a fear of deportation because he was badly beaten by gangs in Mexico before coming to the United States.

- Police pulled over a 15-passenger van because the front occupants were not wearing seatbelts and the front windshield was broken. They were turned over to ICE.
- An individual was pulled over but not given a reason for the stop. He was arrested for driving without a license/registration and was turned over to ICE.
- An individual was pulled over for failure to wear a seatbelt and was turned over to ICE.
- An individual was pulled over because his lights were not on while his windshield wipers were operating. He was turned over to ICE.

Racial profiling was also identified as a problem during “Community Conversation” meetings ILAP held during the fall of 2018 and spring of 2019 with client communities in different areas of the state. The purpose was to collect feedback and recommendations related to ILAP’s services and to hear about the most pressing concerns in client communities. During a meeting in Washington County with a group of 11 former clients and 1 community member (all of whom were from the Latinx community) the participants identified racial profiling by police as their greatest concern. Almost every person at the meeting, regardless of immigration status or citizenship, reported that they had been followed by police and/or stopped and questioned without cause.

Thank you again for reaching out to ILAP. We are grateful for the efforts your office is taking to set policies and guidelines to ensure the prohibition and elimination of profiling in Maine. Please let me know if we can be of any further assistance as you design and implement a system for collecting and compiling profiling data in Maine.

Sincerely,



Susan Roche, Esq.
Executive Director



PO Box 7860
Portland, ME 04112
(207) 774-5444
www.aclumaine.org

ATTACHMENT 3

March 6, 2020

The Honorable Aaron M. Frey
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333-0006

Dear Attorney General Frey:

Thank you for the opportunity to provide information and recommendations regarding the available techniques for the collection and compilation of profiling data. On the local, state, and national stage, police reform and racial equity have become the most pressing and sensitive civil rights issues for many public figures as distrust between police and communities of color remains at a high point.

An evidence-based approach to public safety can turn concerns about biased policing into sound, solution-driven policies across our state. We all want safe communities where people are treated equally, with dignity and respect, and to have the freedom to pursue their dreams and aspirations without fear of being unjustifiably targeted by law enforcement.

The reason for data collection is simple: we manage what we measure. If we are to understand and address the role that racial and other identity biases play in law enforcement decision-making, we have to get basic information on what police are doing. Data helps move us from rhetorical arguments to evidence-based solutions.

I. What is Profiling?

Racial profiling occurs every day, in cities and towns across our state, when law enforcement and private security target people of color for humiliating and often frightening detentions, interrogations, and searches without evidence of criminal activity and based on perceived race, ethnicity, national origin, or religion.

Profiling patently violates the U.S. Constitution's core promises of equal protection under the law and freedom from unreasonable searches and seizures. Just as importantly, profiling is ineffective. Profiling alienates communities from law enforcement, hinders community policing efforts, and causes law enforcement to lose credibility and trust with the people they are sworn to protect and serve.

A. Explicit and Implicit Bias

When the term “racial profiling” first came into use two decades ago, it referred to the explicit use of race by police as a reason to conduct an encounter or search. Since then, our understanding of the role of racial bias, both generally and in particular with respect to police action, has evolved significantly. Specifically, in addition to traditional notions of intentional prejudice, modern research on “implicit bias” shows that race plays a role in decision-making at an unconscious level, particularly with respect to assessments of danger and criminality about people of color. Studies provide that implicit bias occurs not just in a few bad apples, but pervasively throughout American society, even by people who do not describe themselves as racist and are themselves subjects of discrimination.¹

B. Types of Profiling

1. Race/Skin Color

More than 240 years of race-based slavery and 90 years of legalized racial segregation have led to systemic profiling of Black people in our country, as they engage in everyday activities such as driving, walking in their neighborhood, shopping, or attending school. This profiling happens in all areas of the country, including the northeast.

Although data on profiling is not collected in Maine yet, just recently a Lewiston man filed a lawsuit against police in Westbrook, Maine that stemmed from a racial profiling incident. Vincent Oden was stopped by police in Westbrook by police who had previously let cars driven by white people pass by. He was given a field sobriety test, which he passed, yet he was nevertheless arrested and taken to Cumberland County Jail, where his blood was drawn. He was strip searched and put into a jail cell. When he was finally released, his bail was conditioned on not visiting locations that served alcohol, and he lost his job and a business venture he was pursuing.² All charges were dropped against Oden.

This experience was not only humiliating and degrading to Oden, it is now expensive for the City of Westbrook that must defend the lawsuit.

¹ See generally Tracey G. Gove, *Implicit Bias and Law Enforcement*, Police Chief Magazine (Oct. 2011); Jerry Kang, *Implicit Bias: A primer for Courts*, Natl. Ctr. for State Courts (Aug. 2009).

² Christopher Williams, *Lewiston Man Sues Westbrook Cops Over Arrest*, Lewiston Sun Journal, Jan. 30, 2020, available at <https://www.sunjournal.com/2020/01/30/lewis-ton-man-sues-westbrook-cops-over-arrest/>.

2. Ethnicity/National Origin

Numerous examples of profiling based on perceived ethnicity or national origin have emerged publicly in Maine, although we know from our friends at the Immigrant Legal Advocacy Project (ILAP) that many of their clients have been turned over to Immigrations and Customs Enforcement as a result of pretextual law enforcement stops. In 2017, attorneys in federal court alleged that a state trooper engaged in racial profiling when he pulled over a van driven by Honduran men and gleefully exclaimed to his colleague, “This is the (expletive) ICE motha load right here” and “ICE is gonna be coming out here with their (expletive) SWAT team on this one.”³ And, in October of last year, a U.S. Customs and Border Patrol agent admitted in an affidavit submitted to federal court that he pursued a family in Bangor because they “appeared to be of Central-American origin” and were “overheard speaking Spanish.”⁴ The U.S. Attorney’s Office later dropped the felony charges against a man arrested as a result of that profiling.

Ethnicity and national origin profiling is often—though not always—combined with racial profiling. In the current climate of brutal federal immigration enforcement, it is especially important that Maine protect against this profiling.

3. Religion

The number of people practicing Islam in Maine has risen over the past twenty years, and now there are well over 5,000 Muslims in our state. Islamophobia has risen during this time, and has seen a recent surge with rhetoric from the president of the United States attempting to enact bans on emigration from “majority Muslim” populations. As the federal government ratchets up its rhetoric on this point, we are likely to see local and federal law enforcement increase profiling of people they believe are Muslim immigrants.

C. Harms Caused by Profiling

People who are stopped, interrogated, or searched by the police on the basis of an identity characteristic often recall the experience for a lifetime. The humiliation of being ordered out of your car, hands and feet spread apart, frisked while neighbors or strangers pass by, having your car searched or torn apart in a futile search for

³ Randy Billings, *Attorney Alleges Racial Profiling by State Police in Portland Traffic Stop*, Portland Press Herald, December 21, 2017, available at <https://www.pressherald.com/2017/12/21/attorney-alleges-racial-profiling-in-portland-immigration-stop/>.

⁴ Charles Eichacker, *Border Patrol Questioned Family in Bangor Because They Looked Central American and Spoke Spanish*, Bangor Daily News, October 17, 2019, available at <https://bangordailynews.com/2019/10/03/news/bangor/border-patrol-questioned-family-in-bangor-because-they-looked-central-american-and-spoke-spanish/>.

drugs, being interrogated about your personal life, whether you live in the neighborhood or what business you have in this part of town—these experiences are hard to forget, and they color one’s view of law enforcement and the criminal legal system for the rest of a person’s life. A letter from the American Psychological Association (“APA”) states that the effects of profiling on victims include post-traumatic stress disorder and other forms of stress-related disorders, perceptions of race-related threats and failure to use available community services.⁵

People of color in our state, but especially Black people, are disproportionately arrested, punished, and left to suffer the years of disenfranchisement that comes with a criminal record—including dire consequences for employment, income, and housing. Every comprehensive study has shown that people of color are no more likely than whites to be carrying drugs or other contraband in their vehicles. However, because they are stopped and searched for drugs at grossly disproportionate rates, they are also arrested and incarcerated at grossly disproportionate rates.

The racial composition of our prisons and jails today is, in large part, a product of racial profiling. In Maine, Black people are disproportionately arrested for all crimes, but especially drug crimes. In 2018, for example, black people made up one percent of Maine’s population, but 5 percent of all arrests, 8 percent of all drug arrests, 15 percent of all Class B drug arrests, and 21 percent of all Class A drugs arrests in our state that year were of Black people.⁶ This is despite the fact that Black and white people use drugs at roughly similar rates and white people sell drugs at higher rates than Black people.⁷

Profiling is especially damaging to youth. It sends the powerful message that no matter how hard you try in school, no matter whether you play by the rules and obey the law or not, because of your identity characteristics—because of who you are—you are more likely to be viewed as and treated like a criminal than white people who do not play by the rules or obey the law.

⁵ American Psychological Association, Letter to U.S. House in Support of the End Racial Profiling Act, H.R. 2074 (9 August 2001), *available at* <http://apa.org/ppo/issues/pracialprof.html>.

⁶ Council of State Governments, Justice Reinvestment in Maine, *Second Presentation to the Maine Commission to Improve the Sentencing, Supervision, Incarceration and Management of Prisoners* (12 November 2019), *available at* <https://csgjusticecenter.org/jr/maine/publications/justice-reinvestment-in-maine-second-presentation/>.

⁷ See, e.g., Christopher Hamilton, *White People Are More Likely To Deal Drugs, But Black People Are More Likely To Get Arrested For It*, The Washington Post, Sept. 30, 2014, *available at* <https://www.washingtonpost.com/news/wonk/wp/2014/09/30/white-people-are-more-likely-to-deal-drugs-but-black-people-are-more-likely-to-get-arrested-for-it/>.

Frustration, rage, and cynicism are the predictable by-products of racial profiling. These justifiable emotions can last for years. A 2009 Harvard Kennedy School study of the Los Angeles Police Department showed that minorities who were unfairly targeted experience years of continued mistrust and fear.⁸ These emotions also render healthy police-community relations impossible. According to a study conducted by the Ontario Human Rights Commission, distrust in civic institutions, like policing organizations, is "...heightened by [an] unwillingness on the part of the institutions to acknowledge the concern and engage in a constructive process to address it."⁹

D. Workable, and Working, Profiling Data Collection and Analysis Systems

As your office looks to the best ways to collect and compile data on racial profiling, you will encounter several states with laws prohibiting profiling and requiring data collection.¹⁰ We wish to highlight two states that we think have especially good data collection and compilation practices: California and Connecticut. These states show that data collection and analysis from law enforcement stops, when implemented thoughtfully, are not onerous to law enforcement and potentially save the states money by investing a little up front, and avoiding costly and time-consuming lawsuits on the back end.

Both California and Connecticut have features that any good data collection system implemented in Maine should have: first, they are explicit and detailed in the kind of data that must be collected by law enforcement;¹¹ second, they have advisory boards built into their laws that are not just made up of law enforcement, but a variety of voices from the community that have expertise in the issue, to analyze the

⁸ See Ranjana Natarajan, *Racial Profiling Has Destroyed Public Trust in Police. Cops are Exploiting Our Weak Laws Against It*, Washington Post, Dec. 15, 2014, available at <https://www.washingtonpost.com/posteverything/wp/2014/12/15/racial-profiling-has-destroyed-public-trust-in-police-cops-are-exploiting-our-weak-laws-against-it/>

⁹ Ontario Human Rights Commission, *The Effects of Racial Profiling*, Website, <http://www.ohrc.on.ca/en/paying-price-human-cost-racial-profiling/effects-racial-profiling>

¹⁰ *E.g.*, Alabama (Ala. Code. 1975 §32-5B-8(d)); California (Government Code §12525.5, Penal Code §§ 13012, 13519.4); Connecticut (C.G.S.A. §54-11 *et seq.*); Florida (tit. XXIII, §316.614(9)); Louisiana (LSA-R.S. 32:398.10); Maryland (MD Code, Transportation, §25-113); Missouri (V.A.M.S. 590.650); Montana (MCA 44-2-117); Nebraska (Neb. Rev. St. §20-504); North Carolina (N.C.G.S.A. §143B-903); Texas (Vernon's Ann. Texas C.C.P. Art. 2.132(6), 2.134).

¹¹ Including the requirement that the law enforcement officer's perception of a person's race, national origin, gender, etc. be recorded, rather than what is on a person's birth certificate. While claims were made at the hearing for LD 1475 that it would require law enforcement to racially profile in order to collect information on the race of people they stop, that is simply not the case.

data received; and third, the laws were implemented after robust input from all stakeholders and a careful, deliberate system was put in place to ensure that data was collected from all law enforcement in a uniform manner that was practical both for law enforcement and for meaningful data analyses.

1. California

California has implemented a robust and useful data collection and analysis system in an attempt to measure racial profiling by law enforcement, following the passage of The Racial and Identity Profiling Act of 2015 (the “Act”). The Act created a uniform system for law enforcement departments to report basic information on police activity to the California Department of Justice for analysis.

To implement this law, the California Attorney General developed extensive regulations that detail how information is to be collected and analyzed, and by whom. We have attached a copy of the rules to this letter. Also attached are comments the stakeholders submitted in response to the Attorney General’s notice of proposed rulemaking, and a letter that stakeholders sent to the Attorney General after his office met with them shortly before promulgating its regulations. The stakeholders recommendations would be as useful in Maine as in California; we urge you to adopt them.

We also urge you to visit the Attorney General’s website on these regulations¹² for an in-depth discussion of why the regulations look as they do, and why law enforcement is now required to collect data in the manner that it is. The regulations detail an extremely comprehensive system of collection and aggregation, and is one of the two states whose data collection most closely mirrors best practices in this area.

From our point of view, the important parts of California’s system are that it: (1) requires almost all law enforcement officers in California, other than probation officers, to collect and report data on stops that occur in non-custodial settings; (2) establishes a Racial and Identity Profiling Advisory board (the “RIPA Board”), comprised of diverse stakeholders, to analyze law enforcement stop data, training programs, and policies and practices; and (3) details and describes the points of information that must be collected by law enforcement—and how they must be collected—so that law enforcement have sufficient guidance to apply the law uniformly and timely.

While California is a state with more resources than Maine, it also faced logistical hurdles that luckily we do not face. According to the U.S. Department of Justice, as of 2008, California had 509 law enforcement agencies and employed nearly 80,000

¹² California Racial and Identity Profiling Act of 2015 (AB 953), *available at* <https://oag.ca.gov/ab953/regulations>

sworn officers.¹³ By comparison, Maine had 146 law enforcement agencies employing 2,569 sworn officers.¹⁴

California estimated that it would take \$2.1 million over five years to implement the data collection system, but when divided over the number of law enforcement agencies and the longer period of time, the departments were able to absorb the costs with their existing resources.¹⁵

2. Connecticut

In 1999, Connecticut passed the Alvin W. Penn Racial Profiling Prohibition Act. After the Act's implementation, Connecticut quickly encountered challenges with compliance. That bill was significantly updated in 2012, to streamline the process and ensure that law enforcement had clear guidelines on what data to collect and how the data would be aggregated and analyzed.

Connecticut's data collection system requires police to collect 26 data points per traffic stop (as compared to California's 17). Filling the form is estimated to take only one to two minutes of law enforcement's time. The total cost to the state of Connecticut was less than \$250,000.

Attached is a letter from Ken Barone of the Institute for Municipal and Regional Policy at Central Connecticut State University, describing the implementation process for Connecticut's law. Mr. Barone has already considered a law enforcement system that uses several different record management systems. He has offered himself as a resource to jurisdictions looking at how to collect racial profiling information in their state; we urge you to contact him.

E. Federal Funding

Finally, we understand that at the public hearing on this bill, there was considerable testimony about the prohibitive costs associated with a project of tracking profiling. Although we believe that California and Connecticut show that the cost is not prohibitive, you should know that the federal government also provides funding to states for the collection and evaluation of data on racial profiling.¹⁶ In order to receive this funding, Maine has to meet certain qualification

¹³ U.S. Department of Justice, Census of State and Local Law Enforcement Agencies 2008 (July 2011) at p.15, *available at* <https://www.bjs.gov/content/pub/pdf/csle08.pdf>.

¹⁴ *Id.*

¹⁵ See Economic and Fiscal Statement for AB 953 Stop Data Reporting Regulations to Implement Gov. Code Section 12525.5, *available at* <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-std399-signed-110817.pdf>?

¹⁶ See 23 CFR §1300.28.

criteria, which are defined in federal regulations.¹⁷ We urge you to ensure that the regulations you propose qualifies Maine for these federal funds.

Conclusion

Thank you for soliciting our input on this matter. The experience of other states shows that the most successful programs to reduce racial profiling involve a diverse set of stakeholders and advocates at every step of the process, and we would be happy to continue to work with you as you move forward to implement the Act to Eliminate Profiling in Maine.

Sincerely,



Alison Beyea, Executive Director



Meagan Sway, Policy Council

¹⁷ *Id.*

CALIFORNIA CODE OF REGULATIONS
TITLE 11. LAW
DIVISION 1. ENFORCEMENT
CHAPTER 19
FINAL TEXT OF REGULATIONS

Article 1. Definitions

Article 2. Law Enforcement Agencies Subject to Government Code section 12525.5

Article 3. Data Elements To Be Reported

Article 4. Reporting Requirements

Article 5. Technical Specifications and Uniform Reporting Practices

Article 6. Audits and Validation

Article 1. Definitions

§ 999.224

(a) For purposes of Government Code section 12525.5 and this chapter only, the following definitions shall apply:

(1) “Act” means the provisions of the Racial and Identity Profiling Act of 2015, also known as “AB 953,” which are contained in Government Code section 12525.5, Penal Code section 13012, and Penal Code section 13519.4.

(2) “Consensual search” is a search that occurs when a person gives a peace officer consent or permission to search the person or the person’s property. Consent can be given in writing or verbally, or may be implied by conduct.

(3) “Custodial setting” means correctional institutions, juvenile detention facilities, and jails, including parking lots and grounds within the perimeter of these enumerated facilities. “Custodial setting” does not include home detention or any circumstances where persons are under house arrest outside of correctional institutions, juvenile detention facilities, or jails.

(4) “Data element” refers to a category of information the peace officer must report regarding a stop. For example, “perceived gender of person stopped” is a data element that must be collected under Government Code section 12525.5.

(5) “Data value” is a component or characteristic of a data element to be used in reporting each data element. For example, “male,” “female,” “transgender man/boy,” “transgender woman/girl,” and “gender nonconforming” are each data values to use in reporting the data element “perceived gender of person stopped.” Reporting agencies shall ensure that the technical specifications for data values are consistent with these regulations and in doing so shall follow the data dictionary prepared by the Department.

(6) "Department" refers to the California Department of Justice or the California Attorney General.

(7) "Detention," unless otherwise provided in these regulations, means a seizure of a person by an officer that results from physical restraint, unequivocal verbal commands, or words or conduct by an officer that would result in a reasonable person believing that he or she is not free to leave or otherwise disregard the officer.

(8) "Firearm" means a weapon that fires a shot by the force of an explosion, and includes all handguns, rifles, shotguns, and other such devices commonly referred to as firearms.

(9) "K-12 Public School" means "California state educational institution," as defined in this chapter.

(10) "Probation officer" means an adult probation officer authorized by Penal Code section 1203.5, or a juvenile probation officer authorized by Welfare and Institutions Code section 270, whose duties are defined in Penal Code section 830.5 or Welfare and Institutions Code sections 280 and 283, respectively.

(11) "Reporting agency" means:

(A) Any city or county law enforcement agency that employs peace officers.

1. "Reporting agency" includes any city or county law enforcement agency that employs peace officers, including officers who are contracted to work at other government agencies or private entities. This includes, but is not limited to, peace officers assigned to work in cities or other jurisdictions that are not within the original jurisdiction of the city or county law enforcement agency; peace officers of city or county law enforcement agencies assigned to or contracted to work at housing or transit agencies; and school resource officers assigned to work in California state educational institutions.

(B) The California Highway Patrol.

(C) The law enforcement agencies of any California state or university educational institutions.

1. "California state educational institution" means any public elementary or secondary school; the governing board of a school district; or any combination of school districts or counties recognized as the administrative agency for public elementary or secondary schools.

a. "The law enforcement agencies of California state educational institutions" refers to any police department established by a public school district pursuant to Education Code section 38000, subdivision (b).

2. "California university educational institution" means the University of California, the California State University, and any college of the California Community Colleges.

a. “The law enforcement agencies of California university educational institutions” refers to the following:

(1) Police departments of all campuses of the California State University established pursuant to Education Code section 89560;

(2) Police departments of all campuses of the University of California established pursuant to Education Code section 92600; and

(3) Police departments of all California community colleges established pursuant to Education Code section 72330.

(12) “School resource officer” includes, but is not limited to, “school resource officer” as defined by 42 U.S.C. § 3796dd-8(4).

(13) “Search,” unless otherwise provided, means a search of a person’s body or property in the person’s possession or under his or her control, and includes a pat-down search of a person’s outer clothing as well as a consensual search, as defined in these regulations.

(14) “Stop” for purposes of these regulations means (1) any detention, as defined in these regulations, by a peace officer of a person; or (2) any peace officer interaction with a person in which the officer conducts a search, as defined in these regulations.

(15) “Stop data” refers collectively to the data elements and data values that must be reported to the Department.

(16) “Student” means any person who is enrolled in a K-12 Public School, or any person who is subject to California’s compulsory education law as provided in Education Code section 48200. A “student” includes persons between 6 and 18 years of age who are not otherwise exempt from the compulsory education laws as provided in Education Code section 48200. “Student” also refers to persons up to 22 years of age who are being provided special education and services, as provided under Education Code section 56026. The reporting requirements of this chapter regarding “students” apply only to interactions between officers and students that take place in a K-12 Public School.

(A) Example: A person between the ages of 6 and 18 who is not enrolled in a K-12 Public School because he or she has been expelled or is temporarily suspended from school is a student for purposes of these regulations.

(B) Example: A person between the ages of 6 and 18 who is enrolled as a student at one K-12 Public School but who is stopped by an officer at another school is a student for purposes of these regulations.

(C) Example: A 19-year old person who is enrolled in a K-12 Public School is a student for purposes of these regulations.

(D) Example: A 21-year old special education student enrolled in a K-12 Public School is a student for purposes of these regulations.

(E) Example: An interaction between an officer and a student that takes place at a mall must be reported pursuant to the general reporting requirements set forth in § 999.227, subdivision (a) of these regulations, and not the reporting requirements set forth at § 999.227, subdivision (e)(3) – (4) for interactions that take place between a student and an officer in a K-12 Public School.

(17) “Unique Identifying Information” means personally identifying information, the release of which, either alone or in combination with other data reported, is reasonably likely to reveal the identity of the individual officer who collected the stop data information. It does not include the minimum information that is specified in Government Code section 12525.5, subdivision (b).

(18) “Vehicle” means motor vehicles as defined in Vehicle Code section 670; motorcycles, mopeds, and motorized scooters as defined in Vehicle Code sections 400, 406, and 407.5, respectively; and any motorized vehicles, including boats.

Note: Authority cited: Section 12525.5, Government Code. Reference: Section 12525.5, Government Code.

Article 2. Law Enforcement Agencies Subject to Government Code Section 12525.5

§ 999.225

(a) The data collection requirements of this chapter apply only to peace officers, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who are employed by “reporting agencies,” subject to the exceptions set forth below.

(b) Probation officers are not subject to this chapter.

(c) Peace officers shall not report stops that occur in a custodial setting. Peace officers who work in custodial settings are subject to this chapter for stops that occur in non-custodial settings.

(d) All peace officers employed by a reporting agency, except for probation officers, are subject to this chapter even if the officer makes a stop while assigned or contracted to work for another governmental agency or a private entity pursuant to a contract or memorandum of understanding between the reporting agency and the governmental agency or private entity.

(1) Example: A peace officer of a reporting agency who is also a member of a federal task force is subject to this chapter when stopping a person while the officer is performing duties as part of the task force, regardless of whether the officer must also comply with federal data collection policies, if any.

(2) Example: A peace officer of a reporting agency assigned to work as a school resource officer in a K-12 Public School pursuant to a memorandum of understanding or other contractual relationship is subject to this chapter when stopping a person while on that assignment.

(3) Example: A peace officer of a reporting agency hired pursuant to a memorandum of understanding or other contractual relationship between the reporting agency and a private entity to work at a private university or college, or sporting event, is subject to this chapter when stopping a person while working on that assignment.

Note: Authority cited: Section 12525.5, Government Code. Reference: Section 12525.5, Government Code.

Article 3. Data Elements To Be Reported

§ 999.226

(a) The data elements regarding stops that shall be collected by peace officers subject to this chapter are defined as follows:

(1) “ORI number” is the data element that refers to the reporting agency’s Originating Agency Identifier, a unique identification code number assigned by the Federal Bureau of Investigation.

(2) Date, Time, and Duration of Stop

(A) “Date of Stop” refers to the year, month, and day when the stop occurred. It shall be recorded as the date on which the stop began. If the stop extends over two days (e.g., if a stop began at 2330 hours on January 1st and concluded at 0030 hours on January 2nd), the “Date of Stop” should be recorded as the first date (in this example, January 1st).

(B) “Time of Stop” refers to the approximate time that the stop began and shall be recorded using a 24-hour clock (i.e., military time).

(C) “Duration of Stop” is the approximate length of the stop measured from the time the reporting officer, or any other officer, first detains or, if no initial detention, first searches the stopped person until the time when the person is free to leave or taken into physical custody. In reporting this data element, the officer shall enter the approximate length of the stop in minutes.

1. Example: Officer A stops a vehicle for suspected driving under the influence (DUI) at 1300 hours. Officer B then arrives at the scene 15 minutes later and conducts a field sobriety test on the driver, who fails the tests. Officer B then arrests and takes the driver into custody at 1345. “Duration of Stop” would be reported as 45 minutes.

2. Example: Officer A begins interviewing witnesses to a robbery at 1100 hours. After approximately 30 minutes of interviews with different witnesses, Officer A observes what looks like a switchblade knife protruding from the waistband of one of the witnesses. Officer A then searches that person. “Duration of Stop” is measured from the time the person is searched (1130 hours) and not the time during which the officer began interviewing the witnesses to the robbery (1100 hours).

(3) "Location of Stop" refers to the physical location where the stop took place and shall be reported as follows:

(A) The officer shall report one of the following options, which are provided in order of preference:

1. Block number and street name;
2. Closest intersection; or
3. Highway and closest highway exit.
4. If none of these options are applicable, the officer may report a road marker, landmark, or other description, except that the officer shall not provide a street address if the location is a residence.

(B) The officer shall report the city. To ensure uniformity, the Department shall provide a list of cities within the State of California.

(4) "Perceived Race or Ethnicity of Person Stopped" refers to the officer's perception of the race or ethnicity of the person stopped. When reporting this data element, the officer shall make his or her determination of the person's race or ethnicity based on personal observation only. The officer shall not ask the person stopped his or her race or ethnicity, or ask questions or make comments or statements designed to elicit this information.

(A) When reporting this data element, the officer shall select all of the following data values that apply:

1. Asian
2. Black/African American
3. Hispanic/Latino(a)
4. Middle Eastern or South Asian
5. Native American
6. Pacific Islander
7. White

a. Example: If a person appears to be both Black and Latino(a), the officer shall select both "Black/African American" and "Hispanic/Latino(a)."

(B) "Asian" refers to a person having origins in any of the original peoples of the Far East or Southeast Asia, including for example, Cambodia, China, Japan, Korea, Malaysia, the Philippine Islands, Thailand, and Vietnam, but who does not fall within the definition of "Middle Eastern or South Asian" or "Pacific Islander."

(C) "Black/African American" refers to a person having origins in any of the Black racial groups of Africa.

(D) “Hispanic/Latino(a)” refers to a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

(E) “Middle Eastern or South Asian” refers to a person of Arabic, Israeli, Iranian, Indian, Pakistani, Bangladeshi, Sri Lankan, Nepali, Bhutanese, Maldivian, or Afghan origin.

(F) “Native American” refers to a person having origins in any of the original peoples of North, Central, and South America.

(G) “Pacific Islander” refers to a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands, but who does not fall within the definition of “Middle Eastern or South Asian” or “Asian.”

(H) “White” refers to a person of Caucasian descent having origins in any of the original peoples of Europe and Eastern Europe.

(5) “Perceived Gender of Person Stopped” refers to the officer’s perception of the person’s gender. When reporting this data element, the officer shall make his or her determination of the person’s gender based on personal observation only. The officer shall not ask the person stopped his or her gender or use the gender specified on the person’s driver’s license or other identification, recognizing that the officer’s observation may not reflect the gender specified on the person’s identification.

(A) When reporting this data element, the officer shall select at least one of the following data values. In doing so and when applicable, the officer may select “Gender nonconforming” in addition to one of the four enumerated gender data values of Male, Female, Transgender man/boy, or Transgender woman/girl. If the officer cannot perceive the person stopped to be within the categories of Male, Female, Transgender man/boy, or Transgender woman/girl, the officer must select “Gender nonconforming” as the only data value.

1. Male

2. Female

3. Transgender man/boy

4. Transgender woman/girl

5. Gender nonconforming

(B) For purposes of completing this data element, the officer shall refer to the following definitions:

1. “Transgender man/boy” means a person who was assigned female at birth but who currently identifies as a man, or boy if the person is a minor.

2. “Transgender woman/girl” means a person who was assigned male at birth but who currently identifies as a woman, or girl if the person is a minor.

3. “Gender nonconforming” means a person whose gender-related appearance, behavior, or both, differ from traditional conceptions about how males or females typically look or behave. A person of any gender or gender identity may be gender nonconforming. For this reason, an officer may select “Gender nonconforming” in addition to any of the other gender data values, if applicable.

(6) “Person Stopped Perceived to be LGBT” refers to the officer’s perception that the person stopped is LGBT. “LGBT” refers to lesbian, gay, bisexual or transgender. When reporting this data element, the officer shall select “Yes” or “No” and shall make his or her determination based on personal observation only, without asking whether the person is LGBT. If an officer selects “Transgender man/boy” or “Transgender woman/girl” in response to the data element for “Perceived Gender of Person Stopped,” he or she must also select “Yes” in response to this data element.

(7) “Perceived Age of Person Stopped” refers to the officer’s perception of the approximate age of the person stopped. When reporting this data element, the officer shall make his or her determination based on personal observation only. The officer shall not ask the person stopped his or her age or use the age specified on the person’s identification, recognizing that the officer’s observation may not reflect the age specified on the person’s identification. In providing this information, the officer shall input an Arabic numeral (e.g., 1, 2, 3, 4) rounded up to the closest whole number.

(8) “Person Stopped Has Limited or No English Fluency” refers to the officer’s perception that the person stopped has limited or no fluency in English. The officer shall only select this data element if it applies to the person stopped.

(9) “Perceived or Known Disability of Person Stopped” refers to the officer’s perception that the person stopped displayed signs of one or more of the following conditions; the officer’s knowledge that the person stopped has one or more of the following conditions because the person stopped so advised the officer; or the officer’s prior knowledge that the person stopped had one or more of the following conditions. Nothing in this provision alters any existing requirements to comply with reasonable accommodation and anti-discrimination laws with respect to the treatment of people with disabilities. When reporting this data element, the officer shall select all of the following data values that apply:

(A) Deafness or difficulty hearing

(B) Speech impairment or limited use of language

(C) Blind or limited vision

(D) Mental health condition

(E) Intellectual or developmental disability, including dementia

(F) Other disability

(G) None. If “None” is selected, no other data values can be selected.

(10) “Reason for Stop” refers to the primary reason why the officer stopped the person.

(A) When reporting this data element, the officer shall identify only the primary reason for stopping a person, by selecting one of the following data values. Justifications that did not inform the officer’s primary reason for the stop shall not be selected.

1. Traffic violation. When selecting this data value, the officer shall also identify the applicable Vehicle Code section and subdivision using the Department’s standard California Justice Information Services (CJIS) Offense Table. When the person stopped is the driver, the officer shall also designate the primary type of violation:

- a. Moving violation
- b. Equipment violation
- c. Non-moving violation, including registration violation

2. Reasonable suspicion that the person was engaged in criminal activity. This data value should not be selected if “Traffic violation” is the reason for the stop. When selecting this data value, the officer shall select all applicable circumstances that gave rise to the officer’s reasonable suspicion from the list provided below. In addition, using the Department’s standard CJIS Offense Table, the officer shall identify the primary code section and subdivision of the suspected violation of law that formed the basis for the stop, if known to the officer.

- a. Officer witnessed commission of a crime
- b. Matched suspect description
- c. Witness or victim identification of suspect at the scene
- d. Carrying suspicious object
- e. Actions indicative of casing a victim or location
- f. Suspected of acting as a lookout
- g. Actions indicative of a drug transaction
- h. Actions indicative of engaging in a violent crime
- i. Other reasonable suspicion of a crime

3. Known to be on parole/probation/PRCS/mandatory supervision. The officer shall select this data value if the officer stopped the person because the officer knows that the person stopped is a supervised offender on parole, on probation, on post-release community supervision (PRCS), or on mandatory supervision. The officer shall not select this data value if the officer learns that the person has this status only after the person is stopped.

4. Knowledge of outstanding arrest warrant/wanted person. The officer shall select this data value if the officer stopped the person because the officer knows that the person stopped is the subject of an outstanding arrest warrant or is a wanted person. The officer shall not select this data value if the officer learns, after the person is

stopped, that the person is the subject of an outstanding arrest warrant or is a wanted person.

5. Investigation to determine whether the person is truant.

6. Consensual encounter resulting in a search. A consensual encounter is an interaction in which the officer does not exert any authority over, or use any force on, a person, and the person is free to leave. The officer shall only select this data value if a consensual encounter results in a search, regardless of whether the resulting search is consensual.

a. Example: During the course of a witness interview in which the person is free to leave, the officer asks to search the person's bag, and the person consents. In this case the reason for stop is a "consensual encounter resulting in a search."

(B) When reporting the "Reason for Stop," the officer shall also provide a brief explanation (250-character maximum) regarding the reason for the stop. This explanation shall include additional detail beyond the general data values selected for the "Reason for Stop." Officers shall not include any personal identifying information of the persons stopped or Unique Identifying Information of any officer in this explanation.

1. Example: If the officer selected "Reasonable suspicion that the person was engaged in criminal activity/Actions indicative of a drug transaction," the officer must use this field to briefly note the specific nature of the actions indicative of a drug transaction and why they were suspicious.

2. Example: If the officer selected "Vehicle Code 26708 (Material Obstructing or Reducing the Driver's View)" from the Department's standard CJIS Offense Table, the officer shall use this field to briefly note the specific nature of the obstruction/reduction of the driver's view (i.e., what specifically did the officer observe and how was such item obstructing or reducing the driver's view).

(11) "Stop Made in Response to a Call for Service." The officer shall only select this data element if the stop was made in response to a call for service, radio call, or dispatch. An interaction that occurs when an officer responds to a call for service is only reportable if the interaction meets the definition of "stop," as specified in section 999.224, subdivision (a)(14). A call for service is not a reason for a stop.

(12) "Actions Taken by Officer During Stop" refers to an officer's actions toward the person stopped.

(A) The reporting officer shall select all of the following data values that apply, even if any or all of the actions were undertaken by another officer:

1. Person removed from vehicle by order

2. Person removed from vehicle by physical contact

3. Field sobriety test conducted

4. Curbside detention. This refers to any time an officer directs the person to sit on the sidewalk, curb, or ground.
5. Handcuffed or flex cuffed
6. Patrol car detention
7. Canine removed from vehicle or used to search
8. Firearm pointed at person
9. Firearm discharged or used
10. Electronic control device used
11. Impact projectile discharged or used (e.g., blunt impact projectile, rubber bullets or bean bags)
12. Canine bit or held person
13. Baton or other impact weapon used
14. Chemical spray used (e.g., pepper spray, mace, or other chemical irritants)
15. Other physical or vehicle contact. This refers to any of the following contacts by the officer, when the purpose of such contact is to restrict movement or control a person's resistance; any physical strike by the officer; instrumental contact with a person by an officer; or the use of significant physical contact by the officer. Examples of such contacts include, but are not limited to, carotid restraints, hard hand controls, the forcible taking of a subject to the ground, or use of vehicle in apprehension.
16. Person photographed
17. Asked for consent to search person
 - a. Consent given
 - b. Consent not given
18. Search of person was conducted. This data value should be selected if a search of the person was conducted, regardless of whether the officer asked for or received consent to search the person.
19. Asked for consent to search property
 - a. Consent given
 - b. Consent not given
20. Search of property was conducted. This data value should be selected if a search of the person's property was conducted, regardless of whether the officer asked for or received consent to search the property.
21. Property was seized
22. Vehicle impounded

23. None. This data value should only be selected if none of the enumerated data values apply. If “None” is selected, no other data values can be selected.

(B) “Basis for Search.” If, during the stop, the officer conducted a search of the person, the person’s property, or both, the officer shall report the basis for the search.

1. The officer shall identify the basis for the search by selecting all of the following data values that apply:

- a. Consent given
- b. Officer safety/safety of others
- c. Search warrant
- d. Condition of parole/probation/PRCS/mandatory supervision
- e. Suspected weapons
- f. Visible contraband
- g. Odor of contraband
- h. Canine detection
- i. Evidence of crime
- j. Incident to arrest
- k. Exigent circumstances/emergency
- l. Vehicle inventory (for search of property only)

2. When reporting the “Basis for Search,” the officer shall also provide a brief explanation (250-character maximum) regarding the basis for the search. This explanation shall include additional detail beyond the general data values selected for “Basis for Search.” Officers shall not include any personal identifying information of the persons stopped or Unique Identifying Information of any officer in this explanation. If the basis for the search is “Condition of parole/probation/PRCS/mandatory supervision,” this explanation is not required.

- a. Example: If the officer selected “Suspected weapons” as the “Basis for Search,” the officer must use this field to explain the specific nature of the suspected weapons (i.e., what were the specific objects, shapes, and/or movements observed that made the officer suspicious and what type of weapons were suspected).

(C) “Contraband or Evidence Discovered, if Any.” The officer shall indicate whether contraband or evidence was discovered during the stop, including contraband or evidence discovered in plain view or as the result of a search, and the type of contraband or evidence discovered, by selecting all of the following data values that apply:

- 1. None. If “None” is selected, no other data values can be selected.
- 2. Firearm(s)
- 3. Ammunition

- 4. Weapon(s) other than a firearm
- 5. Drugs/narcotics
- 6. Alcohol
- 7. Money
- 8. Drug paraphernalia
- 9. Suspected stolen property
- 10. Cell phone(s) or electronic device(s)
- 11. Other contraband or evidence

(D) Additional Data Regarding Type of Property Seized.

1. "Basis for Property Seizure." If the officer seized property during the stop, regardless of whether the property belonged to the person stopped, the officer shall report the basis for the property seizure by selecting all of the following data values that apply:

- a. Safekeeping as allowed by law/statute
- b. Contraband
- c. Evidence
- d. Impound of vehicle
- e. Abandoned Property

2. "Type of Property Seized." If the officer seized property during the stop, regardless of whether the property belonged to the person stopped, the officer shall report the type of property seized, by selecting all of the following data values that apply:

- a. Firearm(s)
- b. Ammunition
- c. Weapon(s) other than a firearm
- d. Drugs/narcotics
- e. Alcohol
- f. Money
- g. Drug paraphernalia
- h. Suspected stolen property
- i. Cell phone(s) or electronic device(s)
- j. Vehicle
- k. Other contraband or evidence

(13) "Result of Stop" refers to the outcome of the stop. When reporting this data element, the officer shall select all of the following data values that apply. In addition, for warnings,

citations, cite and release, and custodial arrests (with the exception of an arrest pursuant to an outstanding warrant) the officer shall also, using the Department's standard CJIS Offense Table, identify the code, including the section number and appropriate subdivision, that is the basis for the warning, citation, cite and release, or custodial arrest, where applicable. If more than one code section forms the basis for the warning, citation, cite and release or custodial arrest, the officer shall identify all applicable code sections and subdivisions. If the Result of Stop is based on an ordinance, the officer shall select "local ordinance viol" from the Department's CJIS Offense Table without the need for the specific section number.

(A) No action. If "No Action" is selected, no other data values can be selected.

(B) Warning (verbal or written)

(C) Citation for infraction

(D) In-field cite and release

(E) Custodial arrest pursuant to outstanding warrant

(F) Custodial arrest without warrant

(G) Field interview card completed

(H) Noncriminal transport or caretaking transport. This includes transport by an officer, transport by ambulance, or transport by another agency.

(I) Contacted parent/legal guardian or other person responsible for the minor

(J) Psychiatric hold (pursuant to Welfare & Institutions Code sections 5150 and/or 5585.20)

(K) Contacted U.S. Department of Homeland Security (e.g., Immigration and Customs Enforcement, Customs and Border Protection)

(14) "Officer's Identification (I.D.) Number" refers to a permanent identification number assigned by the reporting agency to the reporting officer, which shall be used for all reporting to the Department required under this chapter. For purposes of these regulations, an Officer's I.D. Number shall be considered Unique Identifying Information.

(15) "Officer's Years of Experience" refers to the officer's total number of years he or she has been a peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code. When reporting this data element, the officer shall count the total number of years he or she has been a peace officer, and not the number of years at his or her current agency. If the officer has served as a peace officer intermittently or part-time, he or she shall only count the time actually worked as a peace officer. In providing this information, the officer shall input an Arabic numeral (e.g., 1, 2, 3, 4) rounded up to the closest whole number.

(16) "Type of Assignment of Officer" refers to the type of assignment to which an officer is assigned at the time of the stop. When reporting this data element, the officer shall select one of the following data values:

(A) Patrol, traffic enforcement, field operations

(B) Gang enforcement

(C) Compliance check (e.g., parole/probation/PRCS/mandatory supervision)

(D) Special events (e.g., sports, concerts, protests)

(E) Roadblock or DUI sobriety checkpoint

(F) Narcotics/vice

(G) Task force

(H) K-12 Public School, including school resource officer or school police officer

(I) Investigative/detective

(J) Other. If other is selected, the officer shall specify the type of assignment.

Note: Authority cited: Section 12525.5, Government Code. Reference: Section 12525.5, Government Code.

Article 4. Reporting Requirements

§ 999.227

(a) General Reporting Requirements.

(1) Peace officers subject to the reporting requirements of this chapter shall submit the data elements described in section 999.226, subdivision (a) for every person stopped by the officer, except as provided in subdivisions (b), (c), (d) and (e) of this section.

(2) The data elements described in section 999.226, subdivision (a) are the minimum that a reporting agency shall collect and report. Nothing in this section prohibits a reporting agency from voluntarily collecting additional data.

(3) Nothing in this section prohibits an agency not subject to these regulations from submitting stop data voluntarily to the Department.

(4) When two or more reporting agencies are involved in a stop, only the primary agency shall submit a report. The primary agency is the agency with investigative jurisdiction based on local, county, or state law or applicable interagency agreement or memoranda of understanding. If there is uncertainty as to the primary agency, the agencies shall agree on which agency is the primary agency for reporting purposes. If a stop is done in conjunction

with a reporting agency and an agency that is not subject to the reporting requirements of this chapter, the reporting agency is required to submit data on the stop, even if it is not the primary agency responsible for the stop.

(5) If more than one peace officer of a reporting agency conducts a stop, only one officer shall collect and report the information required to be reported in this chapter. The officer with the highest level of engagement with the person stopped shall submit the full report for all data elements, regardless of whether that officer performed the specific action(s) reported.

(A) Example: If Officer A stops a person, questions them, and conducts a subsequent consensual search that results in the discovery of narcotics, but Officer B handcuffs the person and takes the person into custody, Officer A would complete the stop report and include all relevant actions of both Officer A and B in that stop report.

(6) If multiple persons are stopped during one incident, then applicable stop data shall be submitted for each person within a single report, except that passengers in a vehicle that is stopped shall be reported only as set forth in subdivision (b) of this section.

(7) Nothing prohibits agencies subject to this chapter from providing information to the Department earlier than the deadlines set forth in Government Code section 12525.5, subdivision (a).

(8) On January 1 of each year until the agency begins reporting data to the Department, each reporting agency shall count the number of peace officers it employs who are subject to this chapter to determine the date that agency must start collecting stop data and reporting to the Department pursuant to Government Code section 12525.5, subdivisions (a)(1) and (a)(2).

(9) An officer shall complete all stop reports for stops made during his or her shift by the end of that shift, unless exigent circumstances preclude doing so. In such circumstances, the data shall be completed as soon as practicable.

(10) In order to ensure compliance with these regulations, a reporting agency, its officers, or both may review the stop data to correct errors before submitting the stop data to the Department. Once the stop data is submitted to the Department, however, an agency can only revise stop data through the Department's error resolution process.

(11) Reporting agencies shall create the Officer's I.D. Number defined at section 999.226, subdivision (a)(14) for each officer required to report stops under these regulations. Stop reports submitted to the Department shall include the Officer's I.D. Number, but shall not include the officer's name or badge number. However, each reporting agency shall maintain a system to match an individual officer to his or her Officer's I.D. Number.

(b) Reporting Requirements for Passengers in Vehicle Stops.

(1) Peace officers shall not submit the data elements described in section 999.226, subdivision (a) for passengers in vehicles subject to a stop unless either of the following applies:

(A) The passenger is observed or suspected of violating the Vehicle Code or any other applicable law or ordinance.

1. Example: An officer pulls over a vehicle because he or she observes the passenger of a vehicle throw a cigarette outside of the vehicle. The "Reason for Stop" is that the passenger was suspected of violating the Vehicle Code.

(B) The passenger is subjected to any of the actions identified as data values in section 999.226, subdivision (a)(12)(A), excluding "Vehicle impounded" and "None."

1. Example: An officer stops a speeding SUV containing a woman and her two small children. During the stop, the officer learns that the woman's license has been revoked. The officer then orders the family to exit the vehicle and sit on the curb while he or she questions the woman. The officer shall submit stop data for each person, because ordering persons to sit on the curb is a data value in section 999.226, subdivision (a)(12)(A).

2. Example: An officer stops a speeding truck containing a woman and her two teenage children. During the stop, the officer learns that the vehicle is stolen, and must impound the vehicle. The officer arrests the woman, and then asks the teenage children to exit the car so that he can impound the vehicle. The officer shall not submit stop data for the two children because "Vehicle impounded" is excluded from the data values under section 999.226, subdivision (a)(12)(A) that trigger the reporting of stop data regarding passengers.

(c) Peace Officer Interactions that Are Not Reportable. The following interactions, even if they otherwise meet the definition of "detention" set forth in this chapter, shall not be construed to be "detentions" and shall not be reported as stops.

(1) Stops during public safety mass evacuations, including bomb threats, gas leaks, flooding, earthquakes and other similar critical incidents, are not subject to the reporting requirements of this chapter.

(2) Stops during an active shooter incident, meaning an individual is actively engaged in killing or attempting to kill people in a populated area, are not subject to the reporting requirements of this chapter.

(3) Stops that occur during or as a result of routine security screenings required of all persons to enter a building or special event, including metal detector screenings, including any secondary searches that result from that screening, are not subject to the reporting requirements of this chapter.

(d) Peace Officer Interactions that Are Reportable Only if the Officer Takes Additional Specified Actions

(1) Interactions that take place during the following circumstances shall only be reported if the person is detained based upon individualized suspicion or personal characteristics and/or

the officer engages in any of the actions described in the data values set forth in section 999.226, subdivision (a)(12)(A), excluding "None":

(A) Traffic control of vehicles due to a traffic accident or emergency situation that requires that vehicles are stopped for public safety purposes.

(B) Any type of crowd control in which pedestrians are made to remain in a location or routed to a different location for public safety purposes.

(C) Interactions during which persons are detained at a residence only so that officers may check for proof of age for purposes of investigating underage drinking.

1. Example: An officer is dispatched to a residence to investigate a noise complaint. Upon arrival, the officer suspects that some of the persons at the house party are engaged in underage drinking and he or she detains the persons to request identification to verify proof of age. Because the only action the officer takes is to detain the persons for the sole purpose of verifying proof of age, these interactions are not reportable.

2. Example: At that same party, the officer, in addition to detaining a person to question him/her, also asks to search the person. Regardless of whether the person consents to the search or is actually searched, that interaction is reportable because asking for consent to search and/or conducting a search are data values under section 999.226, subdivision (a)(12)(A) that trigger reporting of stop data in these settings.

(D) Checkpoints or roadblocks in which an officer detains a person as the result of a blanket regulatory activity or neutral formula that is not based on individualized suspicion or personal characteristics.

1. Example: A checkpoint or roadblock, including a DUI sobriety checkpoint, that stops all vehicles or stops randomly selected vehicles using a neutral formula, i.e., not based on individualized suspicion or personal characteristics, is not subject to the reporting requirements of this chapter.

(2) Interactions that take place with a person in his or her residence who is the subject of a warrant or search condition are not subject to the reporting requirements of this chapter. A peace officer shall, however, report any interactions with persons in the home who are not the subject of the warrant or search condition, if the officer takes any of the following actions: handcuffs or flex cuffs the person; arrests the person; points a firearm at the person; discharges or uses a firearm, electronic control device, impact projectile, baton or other impact weapon, or chemical spray on the person; or if a canine bit/held the person.

(3) Interactions that take place with a person in his or her residence who is the subject of home detention or house arrest while an officer is on home detention or house arrest assignment, are not subject to the reporting requirements of this chapter. A peace officer shall, however, report any interactions with persons in the home who are not the subject of the home detention or house arrest, if the officer takes any of the following actions:

handcuffs or flex cuffs the person; arrests the person; points a firearm at the person; discharges or uses a firearm, electronic control device, impact projectile, baton or other impact weapon, or chemical spray on the person; or if a canine bit/held the person.

(e) Reporting Requirements for Stops of Students at a K-12 Public School.

(1) Stops of persons who are not students are subject to the reporting requirements set forth in section 999.227, subdivision (a) – (d), even if the stop takes place at a K-12 Public School.

(2) The exceptions to reporting set forth at section 999.227, subdivision (b), (c), and (d) shall apply to stops in K-12 Public School, regardless of whether the stops are of students or non-students.

(3) In addition, in a K-12 Public School, an officer shall report only the following interactions with students as stops:

(A) Any interaction that results in a temporary custody under Welfare and Institutions Code section 625, citation, arrest, permanent seizure of property as evidence of a criminal offense, or referral to a school administrator because of suspected criminal activity.

(B) Any interaction in which the student is questioned for the purpose of investigating whether the student committed a violation of law, including violations of Education Code sections 48900, 48900.2, 48900.3, 48900.4, and 48900.7, or to determine whether the student is truant.

(C) Any interaction in which an officer engages in one or more of the data values set forth in section 999.226, subdivision (a)(12)(A), excluding “None.” This does not include a detention or search that is conducted of all persons as part of a neutrally applied formula that is not based upon personal characteristics. This includes searches conducted at the entries and exits of school facilities by screening devices, and secondary screenings that result from that initial screening.

1. Example: All students entering a school are required to pass through a metal detector. A school police officer searches a student’s person or belongings because a metal detector is activated. The interaction shall not be reported.

2. Example: An officer searches a student’s backpack because he or she suspects the backpack contains narcotics. The interaction is reportable.

(4) In reporting interactions with students at a K-12 Public School, the officer shall utilize the data elements and corresponding data values set forth in section 999.226, with the addition of the following data values, which the officer shall select if applicable:

(A) “Location of Stop.” In addition to reporting the data values in section 999.226, subdivision (a)(3)(A) and (B) above, the officer shall provide the name of the school where the stop took place. To ensure uniformity, the Department of Justice shall provide a list of the names of K-12 Public Schools, using information obtained from the Department of Education. The officer shall also indicate that the stop is of a student.

(B) “Perceived or Known Disability.” If the stop of a student takes place at a K-12 Public School, in addition to selecting all applicable data values in section 999.226, subdivision (a)(9) above, the officer shall also select the following data value if applicable:

1. Disability related to hyperactivity or impulsive behavior

(C) “Reason for Stop.” When reporting this data element, the officer shall select the primary reason for the stop from among the data values in section 999.226, subdivision (a)(10) as well as the additional data values provided below. “Student violated school policy” should only be selected if other options related to violations of law (e.g., Penal Code or Education Code) do not apply.

1. Possible conduct warranting discipline under Education Code sections 48900, 48900.2, 48900.3, 48900.4, and 48900.7. When selecting this data value, the officer shall identify the primary code section and subdivision from the following options: 48900(a) through 48900(r); 48900.2; 48900.3; 48900.4; and 48900.7(a).

2. Determine whether the student violated school policy

(D) “Actions Taken by Officer During Stop.” When reporting this data element, in addition to selecting the applicable data values in section 999.226, subdivision (a)(12)(A) above, the officer shall also select the following data value if applicable:

1. Admission or written statement obtained from student

(E) “Basis for Search.” When reporting this data element, in addition to selecting the applicable data values in section 999.226, subdivision (a)(12)(B) above, the officer shall also select the following data value if applicable:

1. Suspected violation of school policy

(F) “Basis for Property Seizure.” When reporting this data element, in addition to selecting the applicable data values in section 999.226, subdivision (a)(12)(D)1 above, the officer shall also select the following data value if applicable:

1. Suspected violation of school policy

(G) “Result of Stop.” When reporting this data element, in addition to selecting the applicable data values in section 999.226, subdivision (a)(13) above, the officer shall also select the following data values if applicable:

1. Referral to school administrator

1. Referral to school counselor or other support staff

Note: Authority: Section 12525.5, Government Code. Reference: Section 12525.5, Government Code.

Article 5. Technical Specifications and Uniform Reporting Practices

§ 999.228

(a) Electronic System. The system developed by the Department shall require the electronic submission of data from reporting agencies.

(b) Submission of Data. Reporting agencies shall be provided with the following options to submit their stop data to the Department: (1) a web-browser based application, which shall include mobile capabilities for agencies that choose to use the Department's developed and hosted solution to submit stop data; (2) a system-to-system web service for agencies that elect to collect the data in a local system and then submit the data to the Department; and (3) a secured file transfer protocol for agencies that elect to collect the data in a local repository and then submit the data to the Department. Agencies that select option 3 shall be permitted to submit batch uploads of stop data in Excel spreadsheets and other delimited text formats of electronic documentation that complies with the Department's interface specifications.

(c) Reporting Schedule. Nothing in this section prohibits a reporting agency from submitting this data more frequently than required under Government Code section 12525.5, subdivision (a)(1). Due to the volume of the data, it is recommended that reporting agencies submit stop data on a monthly or quarterly basis. The Department shall accept data submitted on a more frequent basis, including data submitted daily.

(d) Reporting Responsibilities. Law enforcement agencies are solely responsible to ensure that neither personally identifiable information of the person stopped, nor any other information that is exempt from disclosure pursuant to Government Code section 12525.5, subdivision (d), is transmitted to the Department in the data element entitled "Location of Stop" required by section 999.226, subdivision (a)(3) and the explanatory fields required by section 999.226, subdivisions (a)(10)(B) and (12)(B)2. Unless otherwise provided, all information submitted in the stop data report, including the information entered into the data element entitled "Location of Stop" required by section 999.226, subdivision (a)(3) and the explanatory fields required by section 999.226, subdivisions (a)(10)(B) and (12)(B)2, is subject to public disclosure consistent with Government Code section 12525.5, subdivision (d).

(e) System Security. The Department shall design its system to be easily accessible for authorized users, confidential, and accurate. The system will provide role-based authorization services. Reporting agencies will be required to authorize and remove users to the system as necessary. Automated systems handling stop data and the information derived therein shall be secure from unauthorized access, alteration, deletion or release.

(f) Data Standards. The Department shall publish a data dictionary and interface specifications to ensure uniform and complete reporting of stop data. These documents will define each required data element and acceptable data values. These data standards shall be consistent with the definitions and technical specifications set forth in this chapter.

(g) Data Publication. Data submitted to the Department will be published, at the discretion of the Attorney General and consistent with Government Code section 12525.5, on the Department's OpenJustice website. The data published shall include disaggregated statistical data for each

reporting agency. The Department shall not release to the public the Officer's I.D. Number or Unique Identifying Information. Nothing in this section prohibits the Department from confidentially disclosing all stop data reported to the Department to advance public policy through scientific study and pursuant to the Department's data security protocols, which will ensure that the publication of any data, analyses, or research will not result in the disclosure of an individual officer's identity.

(h) Retention Period. The Department shall retain the stop data collected indefinitely. Each reporting agency shall keep a record of its source data for a minimum of three years, and shall make this data available for inspection by the Department should any issues arise regarding the transfer of data to the Department. If a reporting agency elects to use the Department's web-browser based application, the Department shall host the data for the agency for the requisite retention period of three years or transfer this data back to the agency for storage, at the agency's election.

Note: Authority cited: Section 12525.5, Government Code. Reference: Section 12525.5, Government Code.

Article 6. Audits and Validation

§ 999.229

(a) The Department shall keep an audit log of incoming and outgoing transactions for each agency's submission of stop data. The Department shall retain this audit log for a minimum of three years.

(b) The Department shall perform data validation on stop data submitted to ensure data integrity and quality assurance. Each reporting agency shall be responsible for ensuring that all data elements, data values, and narrative explanatory fields conform to these regulations and for correcting any errors in the data submission process, and shall do so through the Department's error resolution process.

(c) Agencies submitting records via the system-to-system web service or the secure file transfer protocol shall include a unique stop record number for each stop. The Department will use this record number to relay information on errors when necessary.

Note: Authority cited: Section 12525.5, Government Code. Reference: Section 12525.5, Government Code.



Downtown Campus, Suite 212
Central Connecticut State University
185 Main Street
New Britain, CT 06050

May 12, 2015

Assemblymember Jimmy Gomez
Chair of the Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, CA 95814

Dear Assemblymember Jimmy Gomez,

We are writing to you regarding Assembly Bill 953, a bill related to racial profiling. The state of Connecticut recently underwent a three-year process to implement changes to our statewide racial profiling law. In 1999, Connecticut passed an anti-racial profiling law, entitled The Alvin W. Penn Racial Profiling Prohibition Act (Connecticut General Statutes Sections 54-11 and 54-1m). The law required law enforcement agencies to collect and submit traffic stop information on an annual basis for analysis. In 2012, the Department of Justice conducted an investigation into a local police department for civil rights violations of Hispanic residents. As a result of that investigation, Connecticut lawmakers became aware that a majority of police departments were not in compliance with the 1999 law. The Connecticut General Assembly significantly modified the law during the 2012 legislative session. The intent of revising this legislation was to ensure a more rigorous application of the initial law, while allowing for methods and guidelines to be put in place that would effectively infuse current and future best practices into all facets of its key provisions (e.g. the data collection/analysis, training, and complaint processes).

The Institute for Municipal and Regional Policy (IMRP) at Central Connecticut State University was tasked by Governor Dannel P. Malloy to work with the newly established racial profiling advisory board to implement the changes to the law. Over a 12 month period, the advisory board met to identify the important information that should be collected. In total, Connecticut collects 26 pieces of information for each traffic stop. On average, it takes an officer between one and two minutes to properly record this information. Please note that not all data fields need to be completed for each traffic stop (ex. search information is not completed when no search is conducted, etc...)

The greatest challenge we faced was developing a standard system to electronically collect traffic stop information from 106 law enforcement agencies. Law enforcement agencies use a variety of different record management systems (RMS) to capture information. It was quickly determined that the most efficient way to implement a standard system was to develop a variety of options that would transmit information into one system. The process developed is outlined below.

1. In 2008, Connecticut established the Criminal Justice Information System (CJIS) to be a repository for criminal justice information. We contracted with CJIS to be the data repository and to develop a technical schema (set of instructions) for records management system vendors to

t (860) 832-1871
f (860) 832-1877
www.ccsu.edu/imrp



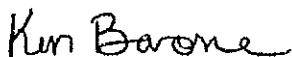
connect to the state portal. The total cost for development of the data repository and technical documentation was approximately \$150,000.

2. Law enforcement agencies that preferred to use their RMS vendor to collect and submit traffic stop information could do so at their own expense. However, the technical document developed by CJIS dramatically reduced the cost for agencies. In most cases the RMS vendor modified the system at no cost to the law enforcement agency due to the terms of the annual maintenance contract.
3. For those agencies that did not modify their RMS program, the state offered two options a no cost to the police agencies.
 - a. Connecticut funded a web-based data collection portal which is connected to the state data repository. This program required internet access and could be available in the police cruiser, dispatch or the records department. If the system was available in the police cruiser, the information could be entered at the time of the stop. If there is no internet access in the police cruiser, officers either record the information on a paper form and records clerks enter the information into the system or dispatch enters the information over the police radio. The total cost for the development of this system was approximately \$45,000.
 - b. Connecticut also funded modifications to the Connecticut On-Line Law Enforcement Communications Teleprocessing System (COLLECT). Every police agency has access to this system in the police cruiser, dispatch or records departments. This system was modified to be capable of collecting and transmitting traffic stop information to the state data repository at a cost of approximately \$50,000.

Law enforcement agencies had four months to implement the new data collection system. We are happy to report that 105 out of 106 agencies were in full compliance with the law almost immediately. The program in Connecticut has been extremely successful due to the commitment of our law enforcement agencies. In an effort to be transparent, all information is available on-line and updated quarterly. In addition, state law mandates that the information be analyzed annually. In April 2015, the first analysis was published since the implementation of the revised racial profiling law. For a copy of the full report, please visit our project website: www.ctrp3.org.

Please feel free to contact me at baroneket@ccsu.edu or (860)832-1872 if I can be of assistance over the coming months.

Sincerely,



Ken Barone
Research and Policy Specialist

cc: Assemblymember Shirley Weber,
Assemblymember Pedro Reyes,
Chief Consultant to the Assembly Appropriations Committee

January 25, 2017

Catherine Z. Ysrael
Deputy Attorney General
Civil Rights Enforcement Section
California Office of the Attorney General
300 South Spring Street, First Floor
Los Angeles, CA 90013

Kathleen V. Radez
Deputy Attorney General
California Department of Justice
Civil Rights Enforcement Section
P.O. Box 70550
Oakland, CA 94612

RE: Proposed AB 953 Regulations

Dear Ms. Ysrael and Ms. Radez,

On behalf of a diverse coalition of organizations that co-sponsored and supported the passage of AB 953, we submit these written comments to the Office of Attorney General (OAG) and California Department of Justice (DOJ) on the proposed regulations for the Racial and Identity Profiling Act of 2015, referred to hereinafter as AB 953.

Background

The purpose of AB 953 is to collect data about interactions between individuals and law enforcement during investigations to identify and illuminate bias and to provide data necessary to develop evidence-based solutions to racial profiling and improve policing outcomes. AB 953 established the Racial and Identity Profiling Advisory (RIPA) Board that is tasked with analyzing the reported data to examine where disparities based on race and identity occur in law enforcement action, where bias plays a role and where it does not, and how bias operates; and recommending potential solutions. For the RIPA Board's ultimate data analysis to be sound, the data collected must capture a complete and accurate picture of law enforcement's investigatory interactions with the public.

An essential part of the effective implementation of AB 953 is adoption of regulations that identify all data to be reported and provide standards, definitions, and technical specifications to ensure uniform reporting. AB 953 and its effective implementation provides an opportunity to understand the full extent and breadth of disparities in policing based on perceived race and identity and will be an

important step towards eliminating discrimination in policing. Although we recognize the need to minimize the burden on peace officers in the data collection process, the regulations cannot sacrifice the accuracy and completeness of the data required to be collected. Instead, the breadth of data elements and the depth of data values must be specifically designed and mandatory open-text fields that capture necessary context must be used in order to collect sufficient data to permit the type and scope of analysis intended under the statute.

We commend the OAG and CA DOJ for the proposed regulations that reflect the discussion and public comment over the last several months before the RIPA Board, including letters sent by advocacy organizations outlining specific recommendations that have been included in the rulemaking file. However, we submit these written comments to object to certain proposed provisions and to recommend specific changes to the proposed regulations to ensure that the full promise of AB 953 is realized.

General Recommendations

1. **Data collection for data elements “Reason for Stop” and “Basis for Search” must include mandatory open-text fields to ensure complete and accurate data collection.** Peace officers providing stop data must be allowed to provide factually specific information to explain the reason for the stop as well as other circumstances. Although numerous data elements lend themselves to defined data values, the “Reason for Stop” and “Basis for Search” are data elements where officers should be required to provide additional context for why the stop was initiated or search was conducted by completing an open-text field in addition to selecting the appropriate specifically identified data value.

An officer’s decision to conduct a stop or a search may be based on a wide variety of reasons — any reason or set of reasons that gives rise to reasonable suspicion or probable cause that criminal activity is afoot, or evidence of criminal activity will be found, under the “totality of the circumstances” analysis adopted by courts. *See, e.g., Illinois v. Gates*, 462 U.S. 213, 238 (1983). Accordingly, an open-text field is essential for an officer to briefly and accurately respond to these data elements and for the proper analysis required by the statute. This is especially true since there is no way to encompass in a drop down menu of specified data values all of the myriad reasons officers may have for suspecting criminal activity. Moreover, such specified data values will not describe the reasons for a stop or search with the detail necessary to determine if the reasons may be insufficient or themselves the product of bias.

Finally, the importance of open-text fields has been previously identified by RIPA Board member Jennifer Eberhardt, who also stated that the use of open-text fields can help identify additional specified data values that should be added to the data collection process. In addition, California Justice Information Services Division (CJIS) representatives made clear during RIPA subcommittee meetings that there are no technological barriers to the use of open-text fields as part of the data collection process.¹

¹ During various Technology subcommittee meetings of the RIPA Board, CJIS representatives stated that narrative fields could be incorporated into the data collection software being developed and also expressed a commitment to minimizing peace officer burden in the data collection process as well as

We object to the omission of mandatory open-text fields and recommend that the proposed regulations be revised to include a mandatory open-text field in response to the data elements of “Reason for Stop” and “Basis for Search” to ensure the collection of accurate and complete stop data as required by statute.

2. **For any data value that references “Other”, there should be a mandatory open-text field.** Similar to the above, any data element that allows an officer to select a data value of “Other” must include an open-text field that allows the officer to provide additional factual information to understand what scenarios are not covered by the specified data values. Although data collection must balance the need for efficiency with the need for completeness, officers must submit – and those analyzing the data must be provided – the necessary information and context to allow for complete and thorough analysis so appropriate responses to biased policing can be formed and implemented. In addition, the use of open-text fields will assist in identifying additional, often-used responses that should be added as specified data values.

We object to the omission of a requirement to use open-text fields and recommend that the proposed regulations be revised to include a mandatory open-text field for all data values referencing “Other”² to ensure the collection of accurate and complete stop data as required by statute.

3. **The regulations should specifically address standards for any intended trainings related to data collection to ensure uniform reporting pursuant to the statute.** The proposed regulations do not currently set forth any training standards related to the process of data collection. However, during various subcommittee meetings, several RIPA Board members referenced “trainings” as a means of ensuring consistent and uniform data reporting. Moreover, law enforcement members of the RIPA Board expressed concern related to whether officers would know how to appropriately report perceptions related to identity data fields, particularly those related to gender identity and membership in the Lesbian, Gay, Bisexual and Transgender (LGBT) community.

We strongly recommend that to the extent data collection trainings are contemplated as part of the implementation process that minimum standards be specifically established in the AB 953 regulations to ensure that officers correctly and accurately collect and report data.

Specific Comments on Proposed Regulations

Article 1. Definitions, 11 CCR § 999.224.

1. **“Detention”.** The definition of “Detention” should be strengthened to guard against narrow interpretations of the term. Although section 999.224(a)(7) sufficiently defines the scope of the

attempting to help manage costs for agencies by providing the technology CJIS is developing directly to subject agencies.

² Specifically, the following provisions permit a data value of “Other” and all should include a mandatory narrative field to provide necessary context as is already required with §999.266(a)(15)(I): §999.266(a)(4)(A)(2)(d); §999.266(a)(4)(A)(5)(g); §999.266(a)(4)(A)(7); §999.266(a)(4)(A)(10); §999.266(a)(5)(A)(2)(i); §999.266(a)(6)(A)(9); §999.266(a)(6)(B)(2)(k); §999.266(a)(6)(B)(2)(l); §999.266(a)(6)(C)(2)(l); §999.266(a)(6)(C)(2)(m); and §999.266(a)(7)(F)(8).

detention, an explanatory example may be useful to ensure that officers accurately and consistently capture reportable stop data. Specifically, an example should be added under the definition of “Detention” to clarify the scope of interactions implicated by the term, including initial questioning by officers generally perceived by individuals as interactions where they are not free to leave.

Although we do not object to the definition of “Detention”, we do strongly recommend that the proposed regulations be revised to add a clarifying example to the definition of “Detention” that reads as follows:

Example: A peace officer who inquires about an individual’s presence or activities (e.g. “What are you doing?”, “Why are you here?”, “Where are you going?”, “What is in your pocket?”, “Do you have drugs on you?”, etc.) would record the interaction pursuant to Government Code section 12525.5.

2. **“Stop”.** Section 999.224(a)(14) sets forth the definition of “Stop”, but fails to reflect the definition used in the statute. Specifically, AB 953 makes clear that a “stop” is defined as “any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, *including a consensual search, of the person’s body or property in the person’s possession or control.*” The regulations should reflect the exact language of the statute to guard against any confusion that any search – consensual or not – is subject to reporting under the statute and the regulations.

We object to the definition of “Stop” and recommend that the proposed regulations be revised so that the definition of “Stop” read as explicitly stated in the statute.

Article 3. Data Elements to Be Reported, 11 CCR § 999.226.

1. **“Duration of Stop”.** Section 999.226(a)(2)(C) requires officers to provide the duration of the stop and sets forth five data values: 0-10 minutes, 11-20 minutes, 21-30 minutes, 31-60 minutes, and over 60 minutes. However, the duration of a stop is a significant data value that can distinguish between a brief stop and more significant stops. Reporting the duration of a stop in 10 minute increments loses valuable information by lumping substantially different stops into a single category. For instance, the difference between a one-minute stop and a ten-minute stop is considerable to both the individual stopped and the officer making and reporting the stop. Instead of collecting the data element of “Duration of Stop” through a limiting bracket system, simply allowing an officer to estimate the duration of the stop in minutes (as done by departments such as NYPD) requires that the officer enter one or two digits, which is no more burdensome than checking a box, and provides important information that will help evaluate the nature of stops and the types of bias that may be at play.

We object to the use of bracketed time frames for the data values responsive to the data element of “Duration of Stop” and recommend that the proposed regulations be revised so the responsive data value is simply a mandatory open-text field where officers are instructed to provide the best estimate for the duration of the stop.

2. **“Location and Type of Stop”.** Section 999.226(a)(3) requires officers to provide specific geolocation information or street address to describe the location of the stop. However, the provision does not require officers to provide a description of the location that will be essential for thorough and complete data analysis. In particular, when examining and providing solutions to bias currently embedded in policing, it is important to note when stops are occurring on sidewalks as

opposed to public transportation, at private homes as opposed to public housing complexes, or at a public park or a commercial location. Providing this necessary level of detail will allow researchers and the RIPA Board that is charged with analyzing and identifying solutions to biased policing to better understand what types of locations individuals are most frequently stopped.

We object to the omission of descriptive data values to identify the location of a stop and recommend that the proposed regulations be revised to include a data element for “Description of Location of Stop” with the following primary and secondary data values:

- Vehicle Stop
 - Public Street
 - Highway
 - Parking lot
- Pedestrian Stop
 - Public street/sidewalk
 - Public transportation/transit
 - Public housing/Section 8 housing
 - Private home/apartment
 - Public park/playground
 - Government building
 - Commercial/business location
 - On K-12 school grounds or at school perimeter
 - Community college/state college/university
 - Other

We further recommend an officer be required to complete a mandatory open-text field when selecting the “Other” data value.

3. **“Reason for Presence at Scene of Stop”.** Section 999.226(a)(4)(A) sets forth 10 primary data values in response to the data element of “Reason for Presence at Scene of Stop” and officers are required to select as many of these primary data values that may apply. Yet, several primary data values would seem more logical as secondary data values. For example, “Welfare check” and “Other community caretaking” (*see* §999.226(a)(4)(A)(6) and (7)) are listed as primary data values; however, both would be more appropriately listed as secondary data values under both “Radio calls/dispatch” and “Citizen-initiated contact”. In addition, “Witness interviews” (*see* §999.226(a)(4)(A)(3)) seems vague and subject to broad interpretation. A better data value would be “Officer-initiated investigatory activity” in order to capture witness interviews, stakeouts, drug buy and busts, and other similar activities. Finally, there is no data value that captures when an officer is at the scene due to a joint operation with another agency and a corresponding mandatory open-text field where the officer can identify the other agency.

The data values for “Reason for Presence at Scene of Stop” should be mutually exclusive and mutually exhaustive to ensure both accurate and consistent reporting and appropriate data analysis. Accordingly, we believe the current data values for “Reason for Presence at Scene of Stop” should be revised and recommend that the data values be reorganized into the following nine primary data values:

- Patrol (currently §999.266(a)(4)(A)(1))

- Radio calls/dispatch (currently §999.226(a)(4)(A)(2))
- Officer-initiated investigative activity
- Citizen-initiated contact (currently §999.266(a)(4)(A)(4))
- Warrants and programmatic operations (currently §999.266(a)(4)(A)(5))
- “K-12 public school assignment” (currently §999.266(a)(4)(A)(8))
- Civil disorder (currently §999.266(a)(4)(A)(9))
- Rally/protest
- Joint operation with another agency
- Other

We also recommend that the secondary data values for specific primary data values be revised as follows:

- Under “Patrol” the following secondary data values should be added:
 - “Foot”
 - “Vehicle”
- Under “Radio calls/dispatch” and “Citizen-initiated contact” the following secondary data elements should be added:
 - “Welfare check”
 - “Other community caretaking”

We further recommend an officer be required to complete a mandatory open-text field when selecting the “Joint operation with another agency” data value so the officer can identify the specific agency.

We further recommend that officers be allowed to select only one data value in response to “Reason for Presence at Scene of Stop” and instructed to select the data value that reflects the primary reason.

4. **“Reason for Stop”.** Section 999.226(a)(5)(A) sets forth six primary data values in response to the data element of “Reason for Stop” and officers are required to select as many data values that may apply. However, as previously stated, a mandatory open-text field should be required in addition to selecting any applicable specifically identified data values. Although requiring officers to cite the specific code section and subdivision that formed the basis for the stop (i.e. “Reasonable suspicion”, section 999.226(a)(5)(A)(2)) and basis for the probable cause to arrest (i.e. “Probable cause to arrest”, section 999.226(a)(5)(A)(3)) is advisable and should remain in the regulations, such citations are not enough to provide the necessary context and information related to a stop to ensure proper analysis of stop data.

In addition, although secondary data values are provided for some primary data values, e.g. “Reasonable suspicion” (*see* §999.226(a)(5)(A)(2)), there are no secondary data values for “Probable cause to arrest” and “Probable cause to search” (*see* §§999.226(a)(5)(A)(3) and (4), respectively). The legal standard for probable cause is fact intensive and is a higher standard than reasonable suspicion. Accordingly, it is essential to capture the factual context of any specific stop to ensure complete and accurate data collection relating to stops made on the basis of probable cause.

We object to the exclusion of certain data values in response to the “Reason for Stop” data element and recommend that the proposed regulations be revised to include the following changes to the data values for “Reason for Stop”:

- Add a mandatory open-text field to be completed in addition to selecting any applicable specifically identified data values
- Add the secondary data values identified in sections 999.266(a)(5)(A)(2)(a)-(i) as secondary data values for both “Probable cause to arrest” and “Probable cause to search”
- The primary data values should be reordered so that “Traffic violation” is not the first data value, but the fifth data value in the list

5. Distinction between “Reason for Presence at Scene of Stop” and the “Reason for Stop”.

Section 999.226(a)(5)(B) provides guidance distinguishing between the data elements of “Reason for Presence at Scene of Stop” and the “Reason for Stop”. Yet, the third example in this provision is erroneous and must be corrected to ensure accurate reporting of stop data. Specifically, the example establishes a scenario where an officer pulls over a vehicle for a broken taillight and the officer then observes a switchblade on the lap of the passenger. The example then states that “the ‘Reason for Stop’ of the passenger will be ‘Reasonable suspicion that the person stopped was engaged in criminal activity (other than traffic violation)’”.

As written, the example instructs officers to conflate two different situations, which would lead to underreporting of stops and inaccurate data collection and analysis. There are actually two reportable interactions in this scenario: one with the driver and one with the passenger. The “Reason for the Stop” for the driver would actually be “Traffic violation”, “Equipment violation” as stated in §999.226(a)(5)(A)(1)(b). The “Reason for Stop” for the passenger would be “Reasonable suspicion that the person stopped was engaged in criminal activity (other than traffic violation)”. To permit officers to only report the stop of the passenger is inconsistent both with the statute and the proposed regulations. The stop of the driver is a reportable stop as it does not fall within the exception found in section 999.227(c)(1)(A) because the stop was not made in conjunction with a traffic accident or emergency situation.

We object to the third example provided in section 999.226(a)(5)(B)(3) and recommend the proposed regulations be revised to edit the example to read:

Example: An officer pulls over a car for a broken taillight, and subsequently observes a switchblade in the lap of the passenger in the vehicle. The officer then asks the passenger to exit the vehicle. There are two reportable interactions under this scenario: one with the driver and one with the passenger.

- (1) The interaction with the driver is reportable with the “Reason for Presence at Scene of Stop” reported as “Patrol” and the “Reason for Stop” reported as “Traffic violation”, “Equipment violation”.
- (2) The interaction with the passenger is reportable with the “Reason for Presence at Scene of Stop” reported as “Patrol” and the “Reason for Stop” reported as “Reasonable suspicion that the person stopped was

engaged in criminal activity (other than traffic violation),” followed by selection of the Penal code section for possession of a switchblade.

6. **“Actions Taken by Officer During Stop”**. Section 999.226(a)(6)(A) requires officers to select one or more 15 primary data values and numerous secondary data values to report what happened during the course of a stop.

- “Handcuffed”, section 999.266(a)(6)(A)(4). This provision needs to be modified to clarify that any restraints, including zip ties, that are used during a stop, must be reported.

We object to this data value and recommend the proposed regulations be revised so this data value reads: “Handcuffed, zip tied or otherwise restrained”.

- “Use of canine in apprehension”, section 999.266(a)(6)(A)(6). The inclusion of “in apprehension” places an unnecessary limitation on when a canine may be used and seems to foreclose the possibility of a data value that will capture when officers may use a canine for a search, such as looking for drugs.

We object to this data value and recommend the proposed regulations be revised to delete the phrase “in apprehension” from this data value.

- “Other use of force”, section 999.266(a)(6)(A)(9). This provision needs to include an open-text field where officers can briefly describe the use of force employed during the stop.

We object to this data value and recommend the proposed regulations be revised to add a mandatory open-text field to correspond to this data value.

- The data element for “Actions Taken by Officer During Stop” does not include a data value to capture those instances where a field sobriety or drug test are conducted during the course of the stop. Such actions are significant in nature both in terms of conducting the test as well as the potential ramifications for the individual stopped based on the results of the test.

We recommend the proposed regulations be revised to add the following data value in response to “Actions Taken by Officer During Stop”: “Field sobriety or drug test”.

- The data element for “Actions Taken by Officer During Stop” does not include a data value where an officer can indicate when another agency was contacted in conjunction with a stop. For instance, an officer may call a mental health agency for support during a stop or may contact the Immigration and Customs Enforcement (ICE) or Drug Enforcement Administration (DEA). Such instances are significant and there should be specified data value that allows an officer to indicate that another agency was called to the scene and the officer should be further required to use an open-text field to indicate the specific agency contacted, such as ICE or DEA.

We recommend the proposed regulations be revised to add the following data value in response to “Actions Taken by Officer During Stop”: “Other agency called to scene”. This data value should also have a corresponding mandatory open-text field where the specific agency can be identified.

- The data element for “Actions Taken by Officer During Stop” does not include a data value for instances where an officer does not remove or brandish a weapon, but takes actions consistent with a threat of use or brandishing a weapon, such as unbuttoning the holster or grabbing the weapon while it remains in the officer’s holster. Such actions are intimidating and threatening to an individual and significantly changes the nature of interaction between individuals and law enforcement, thus should be captured in the interest of accurate and comprehensive data analysis.

We recommend the proposed regulations be revised to add the following data value in response to “Actions Taken by Officer During Stop”: “Unbuttoning the holster or grabbing the weapon”.

- The data element for “Actions Taken by Officer During Stop” does not include a data value related to information or documentation taken as part of the stop, including the completion of a field interview card or other documentation used for subsequent investigation.

We recommend the proposed regulations be revised to add the following data value in response to “Actions Taken by Officer During Stop”: “Completion of field interview card or other investigatory documentation”.

7. **“Basis for search”.** Section 999.226(a)(6)(B)(1) requires officers to provide information related to the basis for a search. As previously stated, a mandatory open-text field should be required in addition to selecting any applicable specifically identified data values. Moreover, there should be a specific data value for “Other basis” that can be used in the event that none of the currently identified specific data values captures the basis for the search. As with any selection of a specific data value, an officer would be required to complete the open-text field to provide additional factual detail and context when selecting the “Other basis” data value.

In addition, two of the data values specifically identified may be part of an officer’s decision to search, or to do so without a warrant, but are insufficient legal basis for a search, specifically “Officer safety” and “Exigent circumstances/emergency” (*see* §999.226(a)(6)(B)(1)(b) and (l), respectively). The presence of these choices further underscores the need for an open-text field to allow officers to explain the basis for safety concerns or exigency.

We object to the omission of a mandatory open-text field in response to the “Basis for Search” data element and recommend the proposed regulations be revised to:

- Add a mandatory open-text field to be completed in addition to selecting any applicable specifically identified data values
- Add a data value of “Other basis” in response to this data element

8. **“Result of Stop.”** Section 999.226(7) requires officers to report the result of stops and specifically provides a data value for “Person taken into custody (other than for arrest)”. This data value lists multiple secondary data values, including “Referred to U.S. Citizenship and Immigration Services” (*see* §999.226(7)(F)(7)), which is misleading as drafted. Because U.S. Citizenship and Immigration Services is not an enforcement agency, a more appropriate secondary data value would reference actual immigration enforcement agencies, such as Customs and Border Protection (CBP) or ICE. Moreover, there is not a secondary data value that captures when an individual is transported to another agency that is not specifically identified.

We object to the current secondary data value identified in section 999.226(7)(F)(7) and recommend the proposed regulations be revised so that this secondary data value reads: “Referred to immigration agency (e.g. CBP, ICE, etc.)”.

We further recommend the proposed regulations be revised to add an additional secondary data value to “Result of Stop”: “Transferred/released to other agency”. This data value should also have a corresponding mandatory open-text field where the specific agency can be identified.

9. **“Perceived Gender of Person Stopped.”** Section 999.226(9) requires officers to report the perceived gender of a person stopped and sets forth generally appropriate data values. However, in the context of reporting stops related to children, which is particularly important in the school setting, the data values from this provision should also include references to “boy” and “girl”. Accordingly, the data values should be modified.

We recommend the proposed regulations be revised to change the data values found in sections 999.226(9)(A)(1)-(5) to read as follows:

- Man/Boy
- Woman/Girl
- Transgender Man/Boy
- Transgender Woman/Girl
- Gender non-conforming

10. **“Perceived Age of Person Stopped”.** Section 999.226(10) requires an officer to report the perceived age of the individual stopped and provides nine data values with bracketed age ranges. However, the age ranges reflected in these specifically identified data values do not sufficiently distinguish between substantially different age ranges. For instance, the stop of a five-year old child is significantly different than the stop of a nine-year old. Similarly, the stop of a 10-year old is different than that of a 14-year old. Officers are required to report their perception of the age of an individual stopped and officers should be provided with meaningful age ranges to distinguish between different age groups.

We object to the data values currently set forth in response to this data element and recommend that the responsive data values for “Perceived Age of Person Stopped” read as follows:

- 0-6
- 7-9
- 10-12
- 13-14
- 15-17
- 18-24
- 25-29
- 30-39
- 40-49
- 50-59
- 60 and older

11. **“Person Stopped had Limited English Fluency or Pronounced Accent”.** Section 999.226(11) requires an officer to indicate when an individual stopped has limited English fluency or a pronounced accent. Although this is an important data element, the inclusion of “pronounced accent” is confusing and may lead to the collection of data related to whether an individual has a regional U.S. accent.

We object to the inclusion of “pronounced accent” and recommend that the data element be limited to “Person Stopped had Limited English Fluency”.

12. **“Perceived or Known Disability of Person Stopped”.** Section 999.226(12) requires an officer to indicate when an individual stopped has displayed signs of one or more conditions. In addition to the specific data values offered, an additional data value related to when an individual stopped has limited use of language should be included. Such a data value is different from the English Fluency data element because it captures those instances when someone is not capable of speech or has pronounced problems in speaking.

We recommend the proposed regulations be revised to add the following data value in response to “Perceived or Known Disability of Person Stopped”: “Limited use of language”.

13. **Perceived Membership in the LGBT Community.** The proposed regulations fail to include a data element to allow collection of any data related to perceived membership in the LGBT community, despite efforts by advocacy groups to include such information. Failure to collect such information will result in the loss of significant and meaningful data related to when interactions with law enforcement may be the result of bias against a member of the LGBT community, which is distinct from bias on the basis of perceived gender identity.

We recommend the proposed regulations be revised to add a data element for “Perceived Membership in the LGBT Community” where officers may simply check a box to indicate such a perception or choose between the data values of “yes” or “no”.

14. **Race and Gender of Officer.** Although section 999.226 requires the collection of officer specific information, including an “Officer’s Unique Identifier” (*see* §999.226(13)), the proposed regulations do not require the reporting of an officer’s race and gender. For accurate and effective data analysis, it is essential to capture the race and gender of officers. Without such information, a complete data analysis related to how and why biased policing occurs will not be possible. For instance, it will be important to know whether race or gender identity impact the prevalence of racial disparities in policing. These data elements will allow for greater understanding of whether there is a correlation between disparities and various characteristics of peace officers.

We strongly object to the failure to collect race and gender identity information for officers making stops and recommend that the proposed regulations be revised to include data elements collecting officer race and gender consistent with the data values provided in sections 999.226(8) and (9). In the alternative, we recommend the proposed regulations should be revised to require that race and gender information be embedded in each officer’s unique identifier required in section 999.226(a)(13) such that the race and gender of the officer recording the stop is made available to researchers and others conducting data analysis that is required under the statute.

15. **“Officer’s Years of Experience”.** Section 999.226(a)(14) requires the reporting of officer years of experience; however, the data values available as a response are large and do not provide sufficient detail for thorough analysis.

We object to the data values currently set forth in response to this data element and recommend that the responsive data values for “Officer’s Years of Experience” read as follows:

- 0-4
- 5-9
- 10-14
- 15-19
- 20-24
- 25-29
- 30-34
- More than 34

Article 4. Reporting Requirements, 11 CCR § 999.227.

1. **General Reporting Requirements.** Section 999.227(a)(4) addresses a scenario when two or more reporting agencies are involved in a stop. However, this provision and the remainder of the proposed regulations appear to be silent on what occurs when a stop is conducted in conjunction with one or more non-reporting agencies.

We recommend the proposed regulations be revised to add clarifying language that officers subject to these reporting requirements are always required to report a stop, even if a stop is done in conjunction with one or more non-reporting agencies.

2. **Peace Officer Interactions That Are Reportable Only If the Officer Takes Additional Specified Actions.** Section 999.227(c)(1) and (2) require officers to report interactions where additional specified actions and then references “the data values set forth in section 999.226, subdivision (a)(6)(A)”. However, the actions listed in subdivision (a)(6)(A) include a data value for “None of the above”. To ensure clarity, the reference to section 999.226 should be revised.

We recommend the proposed regulations be revised to change the references in sections 999.227(c)(1) and (2) to “subdivision (a)(6)(A)” to explicitly exclude “None of the above”, currently section 999.226(a)(6)(A)(15).

3. **Traffic control of vehicles due to a traffic accident or emergency situation.** Section 999.227(c)(1)(A) excludes from reporting requirements “[t]raffic control of vehicles due to a traffic accident or emergency situation that requires that vehicles are stopped for public safety purposes.” While the exclusion of traffic control in accidents or emergencies is appropriate, we are concerned that this language could be interpreted to include some traffic stops based on individualized suspicion of traffic or equipment violations if there is a justifiable public safety purpose behind enforcement – such as a stop for a broken tail-light. Because an individualized traffic stop outside a traffic accident or emergency situation may be a pretext for other enforcement, it is crucial that such stops be recorded.

We recommend that this exception be clarified to indicate that stops of particular vehicles based on individualized suspicion of suspected traffic or equipment violations must always be reported.

The undersigned signatories to these written comments commend the OAG and DOJ for incorporating feedback from community groups and organizations working with and on behalf of individuals most impacted by frequent law enforcement interactions and stops. In addition to previously submitted recommendations, we sincerely hope OAG and DOJ consider the objections and recommendations contained within this letter and revise the proposed regulations to reflect comprehensive and robust data collection that will allow both law enforcement and the public to determine when and where biased policing exists so that evidence-based and meaningful solutions may be implemented.

Sincerely,

ACLU of California
AIDS/HIV Health Alternatives
Alliance for Boys and Men of Color
A New PATH (Parents for Addiction Treatment & Healing)
Anti-Recidivism Coalition
Asian Americans Advancing Justice – Asian Law Caucus
Asian Americans Advancing Justice – Los Angeles
Bend the Arc: A Jewish Partnership for Justice Southern California
CADRE (Community Asset Development Re-defining Education)
Center for Neighborhood Leadership, Arizona
Central American Resource Center – LA
Children’s Defense Fund – California
Communities United for Restorative Youth Justice
Community Health Councils
Conservatives for Judicial Change
Council on American-Islamic Relations, California Chapter (CAIR-CA)
Dignity in Schools Campaign
Drug Policy Alliance
Ella Baker Center
Equality California
Equal Justice Society
Faith In The Valley
Fathers and Families of San Joaquin
Felony Murder Elimination Project
Flip the Script – KPFK Radio
Healing Dialogue and Action
L.A.U.R.A. (Life After Uncivil Ruthless Acts Crime Victims/Survivors Support Group)
Lawyers’ Committee for Civil Rights of the San Francisco Bay Area
Los Angeles LGBT Center
Mariposa House
Menlo House
National Center for Youth Law
National Compadre Network
National Juvenile Justice Network
PolicyLink
Public Advocates

Public Counsel
Racial Justice Now, Ohio
Sadler Healthcare
Santa Monica Coalition for Police Reform
Silicon Valley De-Bug
South Bay Packers Youth Football Organization
S.T.O.P. Police Violence Family and Community Coalition (Los Angeles)
Urban Peace Institute
Western Pacific Re-Hab
White People for Black Lives
Wilks Law
Youth Justice Coalition, LA

Rabbi Neil Comess-Daniels, Beth Shir Shalom
Rabbi Morley T. Feinstein, University Synagogue and Immediate Past President, Board of Rabbis of
Southern California

Cc: RIPA Board Members (*via* request to the Attorney General's Office)

April 19, 2017

Xavier Becerra
Attorney General of California
1300 I Street
Sacramento, CA 95814

RE: Proposed AB 953 Regulations

Dear Attorney General Becerra,

Thank you for taking the time to meet with us on April 4, 2017 to discuss the next steps in the process of finalizing implementing regulations for the Racial and Identity Profiling Act of 2015, or AB 953. On behalf of the various organizations that met with you, we submit this letter to further clarify our position with respect to the draft regulations.

Recommendation

As we discussed in our meeting, the proposed regulations issued by the Department of Justice reflect the process before the Racial and Identity Profiling Advisory (RIPA) Board since July 2016 where community and advocacy organizations, law enforcement organizations and representatives, and other stakeholders were able to provide input at Board and subcommittee meetings on the effective and robust implementation of AB 953. This process culminated in the January 26, 2017 RIPA Board meeting where the RIPA Board set forth specific recommendations related to the proposed regulations. We strongly believe that your office should honor this process by adopting the proposed regulations along with the specific recommendations made by the RIPA Board.

Moreover, those of us in attendance spoke regarding specific data elements that we believe to be essential to the robust collection of data intended with the passage of AB 953. In particular, we identified the following items:

- Retaining the data element for collection of a unique identifier for each reporting peace officer.
- Adding narrative fields for responses to “Reason for Stop”, “Basis for Search,” and all data values where there is an option for “Other”.
- Adding a data element for the collection of data relevant to perceived sexual orientation.
- Retaining the data element for collection of data relevant to perceived disability.
- Adding specific data values related to stops made in the school setting as further articulated by California Rural Legal Assistance (CRLA) in its response to the proposed regulations during the written comment period.

As we stated during our discussion, these items must be retained or added to ensure the type of accurate, robust and comprehensive data collection and analysis envisioned when AB 953 was passed. Accordingly, we hope that you strongly consider our recommendation that the proposed regulations be adopted as originally drafted along with the specific recommendations from the RIPA Board and the specific recommendations made during our meeting.

Narrative Fields

During our conversation, you expressed reservations about including narrative fields based on the argument that it may take too long to complete such fields and it is unclear how such narrative content can be analyzed. With respect to these issues, there are some points we wish to emphasize.

1. Narrative content can be straightforward to analyze.

The question how to analyze narrative content is not new, and researchers in fields from anthropology to medicine to political science have developed methodologies for analyzing texts, broadly described as “content analysis” — indeed, the development of content analysis methodologies is itself its own area of research and publication. These content analysis methodologies could be used to analyze narrative fields in stop data forms: Once narrative content is digitized, software already exists that would allow researchers to analyze text data in large quantities to identify recurrent themes or concepts and translate those themes into quantitative data, making narrative data no more difficult to analyze than the checkbox data. For example, a computer analysis could examine whether terms to justify the stops for similar code violations varied according to the race of the person stopped. Analysts could examine the data to see what terms or clusters of terms are used more often, and whether particular terms are associated with more intrusive stops (where there are searches or other post-stop actions) or lower quality stops (which do not result in arrest or citation), or whether particular terms were used more frequently with particular racial or identity groups in otherwise similar types of stops. Human researchers can review narrative fields from a representative but manageable sample of forms and code them according to a set of standards, allowing quantitative analysis of the text responses and helping develop automated analysis. Where a closer analysis is warranted, because data show unusually high (or low) racial disparities, researchers could also perform a qualitative analysis on the comparatively richer narrative field data on a manageable sample of stop forms.

As an example, researchers at Stanford University used two of these methods to analyze narrative data from Oakland Police Department’s stop data forms. Researchers developed a coding scheme with human analysts to code for the basis and severity of stops and compare with race data. They then “developed advanced natural-language-processing and machine-learning techniques for coding the narratives in the stop data forms.” The researchers predicted, “Once refined, these techniques will eliminate the need for human coders, and allow the OPD and other law enforcement agencies to analyze large quantities of narrative data cheaply, quickly, and reliably.”¹

¹ Vinodkumar Prabhakaran, Ph.D., Nicholas P. Camp, M.S., Dan Jurafsky, and Jennifer L. Eberhardt, Ph.D., “Chapter 3: Expert and Automated Analysis of Officer Narratives,” in *Strategies for change: Research initiatives and recommendations to improve police-community relations in Oakland, Calif.*, Jennifer L. Eberhardt, Ph.D., ed., Stanford University (June 20, 2016), available at <https://stanford.app.box.com/v/Strategies-for-Change>.

2. Narrative analysis adds substantial value.

An officer's decision to stop a person or conduct a search can be based on any of myriad reasons to suspect the person involved is engaged in criminal activity, or that a search will turn up evidence. Courts have recognized this in adopting a "totality of the circumstances" approach to reasonable suspicion for stops and probable cause for searches. A limited number of checkboxes cannot capture the nearly unlimited reasons that an officer may decide to stop or search someone. By including narrative fields, researchers will have a much fuller context to understand when and why identity-based disparities in policing occur and can provide a richer analysis, particularly of departments identified as having particularly high levels of racial disparities in law enforcement activities.

3. Without narrative fields, the proposed checkbox data values fall short of the statute's directive to report the "reason for the stop" and "basis for the search"

AB 953 specifies that the law enforcement agencies report data on each stop conducted that includes, among other information, "[t]he reason for the stop" and, if a search was conducted, "the basis for the search." Gov't Code 12525.5(b)(2), (b)(7)(B). But the regulations as proposed, without narrative fields, do not meet this objective because the choices offered do not probe the *reasons* for a stop or search, but rather ask about the officer's *conclusions* as to why the action was justified.

For example, according to the proposed regulations, officers will be asked to check a boxes indicating they had reasonable suspicion (and choose from eight possible grounds for reasonable suspicion), probable cause, consent, or a parole/probation violation, and to list the code provision of a suspected violation. The code provisions and even several of the possible grounds for reasonable suspicion (for example, actions indicative of a drug transaction" or "actions indicative of engaging in a violent crime") provide the officers' *conclusions* as to why the stop was justified, but not the facts that provide the *reasons* or basis for those conclusions. The data values that do arguably set forth "reasons" — such as "[p]erson matched suspect description" or "[w]itness or victim identification of suspect at the scene" — are general in nature that they do not, on their own, provide meaningful information on the reason for the stop. As such, without narrative fields, the proposed regulations do not meet the statutory objective of requiring officers to report the "reason for the stop," or "basis for the search." A narrative field asking for the reasons the officer conducted a stop or search would provide the needed data and clearly satisfy the statutory requirement.

4. Narrative fields can help identify flaws in the current system by allowing officers to enter information that is not currently listed as an option.

Narrative fields allow officers to enter options not listed in the list of data values provided by check-box questions. If officers frequently list a particular data value, RIPA and the DOJ can identify that response as one that should be provided as a check-box option, thus helping ensure that the RIPA data collection remains efficient and complete. For instance, Prof. Eberhardt mentioned how the Oakland survey was updated to differentiate between moving violations and equipment failures after the narrative data uncovered that these two types of traffic violations were significantly different in terms of racial disparities. But without narrative fields, gaps or inefficiencies in the forms used for data collection may go

unidentified and uncorrected, making data less complete and accurate and collection less efficient.

Potential Revisions

As part of our discussion, you asked us to identify the most important data elements and requirements that we believe should either be retained or added to the proposed regulations. As referenced above, we strongly recommend that the DOJ adopt the proposed regulations as originally drafted along with the recommendations from the RIPA Board and the recommendations we made during our April 4, 2017 discussion. However, we recognize that you are faced with balancing a variety of issues and demands from a diverse group of stakeholders. Accordingly, we detail below some potential revisions that could reduce the amount of data collected.

Below are possible revisions we would recommend, in order of preference:

- **Limit narrative fields to “Reason for stop” and “basis for the search.”** As set for the above, we believe that narrative fields provide enormous value. However, because the narrative fields seem to be a primary concern in terms of both the time it takes to input narrative data and concerns about how it would be analyzed, a first revision could be to eliminate the require narrative fields for the various instances an officer responds with an “other” choice, and leave narrative fields only the two crucial places: “Reason for the stop” and “basis for the search.” That will allow the additional detail narrative provides on arguably the two most important questions the data must probe, and ones specified in the statute.
- **Removing “reason for presence at scene” variable.** We believe that the proposed regulations set forth an efficient approach that seeks only information highly relevant to probing racial and identity profiling. However, if the DOJ determines it needs to remove any of the currently proposed variables, we believe that removing the “reason for presence at scene” would have the least impact on the analysis. While this variable can provide valuable insight into the events leading up to a stop and the extent to which law enforcement had discretion, some of the most useful information about whether the stop was mandatory or discretionary and why the officer might have initiated the stop can be gleaned from the type of officer assignment and through the “reason for the stop” variable (both checkboxes, perhaps with some additional options currently in this variable, and narrative field).

These measures are significant concessions to efficiency, as they would result in the loss of useful data. But if you feel such additional concessions are necessary, we believe these reflect the steps that will produce the greatest impact on the collection time with the least harmful impact on the resulting data.

Conclusion

We remain committed to the robust and comprehensive implementation of AB 953 and its evidenced-based approach to the problem of biased policing. We hope that you seriously consider retaining the proposed regulations as originally drafted and the recommendations for modification made by the RIPA Board and those of us attending the April 4, 2017 meeting.

Thank you for taking the time to meet with us to discuss the current process, your concerns, and our position with respect to the proposed regulations for AB 953.

Sincerely,

ACLU of California
Alliance for Boys & Men of Color
Asian Americans Advancing Justice – California
California Rural Legal Assistance (CRLA)
Equality California
National Center for Youth Law
PICO California
PolicyLink

Cc: Angela Sierra, Sr. Assistant Attorney General, Civil Rights Enforcement Section
Nancy Beninati, Supervising Deputy Attorney General, Civil Rights Enforcement Section
Shannon Hovis, Senior Policy Advisor, Civil Rights Enforcement Section

ATTACHMENT 4

STATE OF MAINE
CUMBERLAND COUNTY, ss

SUPERIOR COURT
SITTING AT: PORTLAND
CRIMINAL ACTION
DOCKET NO. CUMCD-CR-2019-0623
CUMCD-CR-2017-6994

STATE OF MAINE,

Plaintiff

v.

KAM LEUNG,

Defendant

MOTION TO SUPPRESS
PURSUANT TO
M.R.Crim.P. 41A

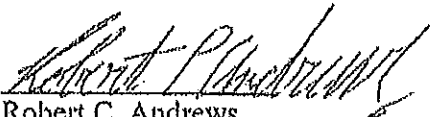
NOW COMES the Defendant, Kam Leung, by and through his Attorney, Robert C. Andrews and respectfully requests this Court to grant this Motion to Suppress for the following reasons:

1. Charges against if operating after suspension and violation of conditions of release are currently pending in the Superior Court in Cumberland County.
2. The charges are in whole or in part based on evidence that was illegally obtained.
3. The evidence was obtained in violation of the United States Constitution and the Constitution of the State of Maine.
4. Maine State Trooper Patrick Flanagan and Maine State Trooper Robert Burke are engaged in selective law enforcement tactics that involve discrimination based on race in violation of the Due Process and Equal Protection clauses of United States Constitution and the Constitution of the State of Maine. See State v. Soto, 734 A.2d 350 (N.J. 1996)

WHEREFORE, the Defendant, Kam Leung, requests this Court to ORDER:

1. All evidence illegally obtained and all evidence obtained as a result of illegally obtained evidence be suppressed and excluded from the State's case in chief.

Dated: August 16, 2019


Robert C. Andrews
Bar Number 8980
117 Auburn St., Suite 201
Portland, Maine 04103
207-879-9850

PROPOSED ORDER

It is hereby **ORDERED** after hearing and consideration that the Motion to Suppress is:

GRANTED

DENIED

Dated: _____

Justice, Maine Superior Court