

*State of California Racial and Identity
Profiling Advisory Board*



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March 16, 2023

The Honorable Isaac Bryan
Chair, Senate Committee on Public Safety
P.O. Box 942849
Sacramento, California 94249-0055

Submitted via Position Letter Portal

Re: Support for Assembly Bill 93, As Amended February 23, 2023 – Criminal procedure:
consensual searches

Dear Assembly Member Bryan:

The Racial and Identity Profiling Advisory Board (RIPA Board) submits this letter in strong support to Assembly Bill 93 (AB 93). Under the Racial and Identity Profiling Act of 2015 (RIPA), the Legislature established the RIPA Board as a nineteen-member state advisory board composed of civil rights advocates, clergy, academics, and law enforcement. The RIPA Board's primary duty is to review and analyze policies and practices as well as analyzing stop data and civilian complaint data in order to make recommendations aimed at eliminating racial and identity profiling in California.

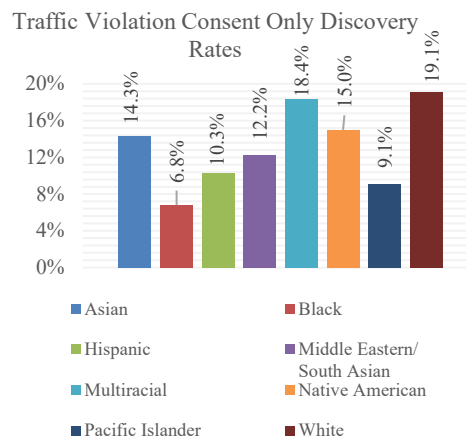
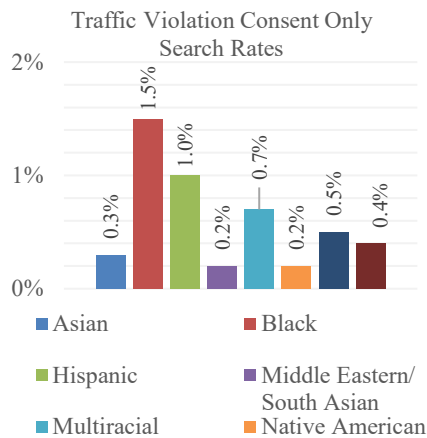
The RIPA Board applauds the efforts to address disparities in policing by prohibiting the practice of consent searches entirely. The Board would like to encourage the Legislature to consider introducing legislation in the future that will adopt the RIPA Board's recommendation to end all suspicionless searches, including probation or supervision searches and inquiries.¹

The Board's research and data show that suspicionless searches are a significant source of disparities in policing. One possibility for these disparities is because there are no objective criteria of who to search and why, making the stops vulnerable to the explicit and implicit biases of the officer conducting the search.² In the Board's annual 2023 Report, the data on consent only searches

¹ Racial and Identity Profiling Advisory Board, Annual Report (2023), p 89.

² See generally Ridgeway, *Assessing the Effect of Race Bias in Post-Traffic Stop Outcomes Using Propensity Scores* (2006) 22 J. Quant. Criminol. 1 <<https://www.rand.org/pubs/reprints/RP1252.html>> [as of Mar. 13, 2023]; see also, e.g., Eberhardt, *How racial bias works -- and how to disrupt it* (June 2020) TED <https://www.ted.com/talks/jennifer_1_eberhardt_how_racial_bias_works_and_how_to_disrupt_it/transcript?language=en> [as of Mar. 13, 2023]; Quattlebaum, *Let's Get Real: Behavioral Realism, Implicit Bias, and the Reasonable Police Officer* (2018) 14 Stan. J. C.R. & C.L. 1, 17 <<https://law.stanford.edu/publications/lets-get-real-behavioral-realism-implicit-bias-and-the-reasonable-police-officer/>> [as of Mar. 13, 2023].

(searches for which the only basis provided by the officer is “consent given”) revealed that stopped individuals perceived as Black were 4 times as likely, individuals perceived as Hispanic/Latine(x) were 2.4 times as likely, and individuals perceived as Multiracial were 2.2 times as likely to be asked for consent to search during a traffic stop than individuals perceived as White.³ During traffic stops, individuals perceived as Black were searched with the sole basis for search reported as “consent given” 3.75 times more and individuals perceived as Hispanic/Latine(x) 2.5 times more than individuals perceived as White.⁴



After examining stop data from 2020 and 2021, the RIPA Board recommended the following in its 2023 Report:

*Recommendation: Prohibiting certain searches, such as consent searches or supervision searches, and instead requiring probable cause for any search.*⁵

Several agencies and states have already adopted policies to eliminate consent searches; notably the California Highway Patrol (CHP) had a moratorium on consent searches from 2001 to 2006.⁶ The recommendation to prohibit consent searches originally came from a team of managers at CHP after reviewing consent search data showing significant disparities.⁷ As evidenced by the RIPA data, the CHP makes the most total stops of any law enforcement agency in California. An analysis of the 2021

³ Racial and Identity Profiling Advisory Board, Annual Report (2023), p 71.

⁴ Racial and Identity Profiling Advisory Board, Annual Report (2023), p. 72.

⁵ Racial and Identity Profiling Advisory Board, Annual Report (2023), pp. 89, 96; Racial and Identity Profiling Advisory Board, Annual Report (2022), pp. 116, 130.

⁶ California Highway Patrol Bans Consent Searches Following Review of Data Collection Showing Discriminatory Pattern (Apr. 2001) ACLU <<https://www.aclu.org/press-releases/california-highway-patrol-bans-consent-searches-following-review-data-collection>> [as of Mar. 13, 2023].

⁷ California Highway Patrol Bans Consent Searches Following Review of Data Collection Showing Discriminatory Pattern (Apr. 2001) ACLU <<https://www.aclu.org/press-releases/california-highway-patrol-bans-consent-searches-following-review-data-collection>> [as of Mar. 13, 2023].

RIPA data showed that CHP rarely uses consent searches compared to other agencies, and in 2021, the CHP⁸:

- Reported asking for consent to search a person or their property during roughly 0.1 percent of stops, whereas the other 57 law enforcements agencies that collected data in 2021 reported asking for consent to perform searches during 7.7 percent of stops.
- Reported conducting consent only searches during approximately 0.01 percent of stops, whereas the other collecting agencies reported conducting consent only searches during 2.7 percent of stops.

The data from 2021 demonstrate that, despite making over half (54.9%) of the overall stops reported in 2021, the CHP conducted a much smaller proportion of total stops which involved asking for consent to perform a search (0.9%) or conducting a consent-only search (0.5%).

As the Board identified in its 2022 RIPA report, several states, including Connecticut,⁹ Minnesota,¹⁰ New Jersey,¹¹ and Rhode Island,¹² have imposed limits on consent searches, either through their legislatures or court rulings. In 2020, the state of Connecticut also restricted consent searches by passing a law banning officers from requesting consent to search a vehicle stopped for a motor vehicle violation.¹³ One agency who adopted the policies found that by prohibiting consent searches, “[p]olice searches were more successful at finding contraband, i.e. a 63-percentage point increase, and the department ceased to be identified as having a disparity in subsequent annual analyses.”¹⁴

Given likely disparities in enforcement, the low discovery rates (rate of finding contraband or evidence) during stops where officers performed these searches, and the success of agencies and states who have adopted these policies, the Board is encouraged to see the Legislature taking action to eliminate them.

Similar to consent searches, supervision searches¹⁵ and inquiries are vulnerable to the same biases because officers have wide discretion regarding who to ask about their supervisions status and whether they conduct a search.

One area the bill could address is preventing supervision inquiries – or an officer asking if someone is on supervision. Studies have shown that Black community members are more likely to be asked if they

⁸ Racial and Identity Profiling Advisory Board, Annual Report (2023), p. 32.

⁹ Conn. Gen. Stats. §§ 54-33b; 54-33o.

¹⁰ See *State v. Fort* (Minn. 2003) 660 N.W.2d 415, 416.

¹¹ See *State v. Carty* (2002) 170 N.J. 632.

¹² See R.I. Gen. Laws, § 31-21.2-5.

¹³ Conn. Gen. Stats. §§ 54-33b; 54-33o.

¹⁴ Ross et al., *Testing for Disparities in Traffic Stops: Best Practices from the Connecticut Model* (2020) Criminology & Public Policy, p. 1297 <<https://onlinelibrary.wiley.com/doi/epdf/10.1111/1745-9133.12528>> [as of Mar. 13, 2023].

¹⁵ In California, there are multiple forms of state and local supervision, including parole, probation, post-release community supervision (PRCS), and mandatory supervision. If a person is on supervision, they may be searched by officers only if it is an explicit term of the person’s supervision conditions. See Cal. Code Regs., tit. 15, § 2355; Cal. Pen. Code, § 1203; Cal. Pen. Code § 3450; Cal. Code Regs., tit. 15, §§ 3079-3079.1; al. Pen. Code § 1170 (h)(5)(B); *People v. Sanders* (2003) 31 Cal. 4th 318, 333; *People v. Reyes* (1998) 19 Cal. 4th 743, 750-754; *In re Jaime P.* (2006) 40 Cal. 4th 128.

are on supervision than White community members. In a study reviewing Oakland Police Department's stop data and comparing it to body worn camera footage, researchers found "officers were more likely to mention the word probation in conversations with African American community members" and also used more severe legal words – such as "arrest" or "prison" – in comparison to White community members.¹⁶ Several agencies have adopted policies preventing these inquiries in an effort to rebuild trust between the community and law enforcement, including the Oakland Police Department¹⁷ and the Berkeley Police Department.¹⁸ For law enforcement agencies, prohibiting supervision inquiries is a policy change that could lead to big gains in community trust and respect that ultimately improve public safety.¹⁹

In addition to eliminating supervision inquiries, the Board recommends that the Legislature also severely limit supervision searches. The Oakland Police Department²⁰ and the Berkeley Police Department²¹ both have policies that limit when an officer can conduct a supervision search and instead require all searches to be based on probable cause or reasonable suspicion. The 2023 RIPA Report noted that traffic stops involving supervision only searches (searches where the stopped person's supervision status was the only basis provided for performing the search) were highest among individuals perceived to be Black (2.6%). All other racial or ethnic groups had a lower percentage of stops involving supervision only searches (Hispanic/Latine(x) - 0.9%, Multiracial - 0.9%, Pacific Islander - 0.6%, Native American - 0.5%, White - 0.5%, Asian - 0.2%, and Middle Eastern/South Asian - 0.2%).²² Disparities in supervision search rates during traffic violation stops led to more than twice as many supervision searches of individuals perceived as Black (9,863) compared to individuals perceived as White (4,172).²³

Research has shown that supervision searches are not an effective crime-fighting tool. As the below graph shows, contraband was discovered during only fifteen percent of all traffic violation stops involving supervision only stops.²⁴ Stops for traffic violations involving supervision only searches for individuals perceived to be Black or Hispanic/Latine(x) resulted in contraband discovery less frequently (12.3% and 14.2%, respectively) compared to all other racial or ethnic groups.²⁵ These statistics suggest that these suspicionless searches are not as effective as other types of stops and searches in locating contraband.

¹⁶ See Eberhardt, J. L., Stanford Univ. SPARQ, *Strategies for Change: Research Initiatives and Recommendations to Improve Police-Community Relations in Oakland, Calif.* (June 2016) p. 17 <<https://stanford.app.box.com/v/Strategies-for-Change>> [as of Mar. 13, 2023].

¹⁷ Oakland Police Dept., Dept. General Order R-02: Searches of Individuals on Probation, Parole, Mandatory Supervision and PRCS (Post-Release Community Supervision) ("Dept. General Order R-02") (Oct. 2019).

¹⁸ Berkeley Police Dept., Law Enforcement Services Manual, Policy 311 Search and Seizure ("Policy 311 Search and Seizure") (2021), Section 311.5.

¹⁹ Racial and Identity Profiling Advisory Board, Annual Report (2022), pp. 127-128 (discussing law enforcement agency policies and rationales).

²⁰ Berkeley Police Dept. Policy 311 Search and Seizure, Section 311.

²¹ Oakland Police Dept., Dept. General Order R-02.

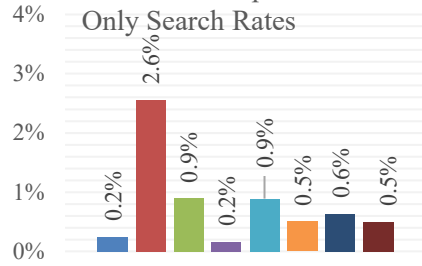
²² Racial and Identity Profiling Advisory Board, Annual Report (2023), p. 73.

²³ Racial and Identity Profiling Advisory Board, Annual Report (2023), p. 73.

²⁴ Racial and Identity Profiling Advisory Board, Annual Report (2023), p. 73.

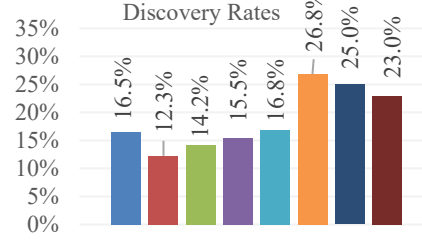
²⁵ Racial and Identity Profiling Advisory Board, Annual Report (2023), p. 73.

Traffic Violation Supervision



- Asian
- Black
- Hispanic
- Middle Eastern/South Asian
- Multiracial
- Native American

Traffic Violation Supervision Only



- Asian
- Black
- Hispanic
- Middle Eastern/South Asian
- Multiracial
- Native American
- Pacific Islander

The Board is pleased to support AB 93, and hopes to work with you in a future year to amend the Penal Code to prohibit probation inquiries and searches to situations where the law enforcement officer has reasonable suspicion or probable cause the person committed a crime.

Thank you for your time and attention. Please do not hesitate to contact us if you would like to discuss these important matters further.

Regards,

Andrea Guerrero
RIPA Board Co-Chair

cc: Caleb.Rabinowitz@asm.ca.gov