



*State of California Racial and Identity
Profiling Advisory Board*

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March 21, 2023

The Honorable Steven Bradford
Chair, Senate Committee on Public Safety
1021 O Street, Suite 7210
Sacramento, California 95814

Submitted via Position Letter Portal

Re: Support for Senate Bill 50, As Amended February 13, 2023 – Vehicles: enforcement

Dear Senator Bradford:

The Racial and Identity Profiling Advisory Board (RIPA Board) submits this letter in support to Senate Bill 50 (SB 50) concerning pretextual stops and civilian traffic enforcement programs. 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 geared to eliminate racial and identity profiling in California.

The RIPA Board wishes to express its support for SB 50, but recommends an amendment to address and incorporate the RIPA Board's recommendation to entirely eliminate pretextual traffic stops and searches. The RIPA Board appreciates SB 50's effort to address disparities in policing by prohibiting stops for a specific traffic offenses to "limit enforcement of traffic laws and minor offenses that pose a low risk to public safety and show significant disparities in the rate of enforcement." However, in its 2023 Report, the RIPA Board made a broader recommendation:

Recommendation 1: Eliminate all pretextual stops and subsequent searches and ensure that a stop or search is based on reasonable suspicion or probable cause, respectively.¹

The issue of pretextual stops is much more pervasive than eliminating enforcement of the Vehicle Code sections identified in SB 50. Without prohibiting the conduct entirely, community members remain vulnerable to pretextual stops; for example, an officer may stop someone for speeding pretextually in order to investigate an unrelated hunch.

¹ Racial and Identity Profiling Advisory Board, Annual Report (2023), p. 89; see also Racial and Identity Profiling Advisory Board, Annual Report (2022), p. 144.

Not only does the Board support the elimination of pretextual stops entirely, the Committee on the Revision of the Penal Code² and the White House have called for an end to the practice. In a 2022 Executive Order, the White House stated its support for this position³:

Building trust between law enforcement agencies and the communities they are sworn to protect and serve also requires accountability for misconduct and transparency through data collection and public reporting. It requires proactive measures to prevent profiling based on actual or perceived race, ethnicity, national origin, religion, sex (including sexual orientation and gender identity), or disability, including by ensuring that new law enforcement technologies do not exacerbate disparities based on these characteristics. **It includes ending discriminatory pretextual stops . . .**⁴

The White House's support for this change in the law underscores the importance of addressing discriminatory stops by ending the practice entirely.⁵

In California, the Los Angeles Police Department (LAPD) – one of the largest law enforcement agencies in the state – adopted new policies requiring officers to have reasonable suspicion or probable cause for *all* stops, searches, and questioning. The LAPD policy addresses the issue of pretext stops, stating: “[P]retextual stops shall not be conducted unless officers are acting upon articulable information in addition to the traffic violation, which may or may not amount to reasonable suspicion, regarding a serious crime (i.e., a crime with potential for great bodily injury or death).”⁶ The policy has an exception that prohibits stops for any traffic infraction unless the violation “significantly interferes with public safety,” giving officers’ broad discretion to determine what stops are for public safety. The policy also allows for pretext stops under certain circumstances, such as suspicion of a serious crime, if the officer can articulate a basis for the search on their body worn camera.⁷

Banning the practice entirely is imperative to addressing profiling and reducing disparities in policing. There are numerous Vehicle and Penal Code violations that can be used as a pretext for a stop. Without a complete ban, the bases for pretext stops can be shifted to codes not listed within the bill, and thus the practice will likely continue. Many agencies have carved out an exception to stops for certain

² See Annual Report and Recommendations, Committee on the Revision of the Penal Code (Dec. 2022) <http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2022.pdf> [as of Mar. 13, 2023].

³ Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety (May 25, 2022) [emphasis added].

⁴ *Ibid.*

⁵ Of note, in his remarks about the department’s investigation into the Louisville Metro Police Department (LMPD), the U.S. Attorney General sharply criticized the use of pretextual stops, noting LMPD relied heavily on pretext stops in Black neighborhoods and officers in specialized enforcement teams frequently made pretext stops in Black neighborhoods. See Attorney General Merrick B. Garland Delivers Remarks on Civil Rights Violations by the Louisville Metro Police Department and Louisville/Jefferson County Metro Government (Mar. 8, 2023) U.S. Department of Justice <<https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-civil-rights-violations-louisville>> [as of Mar. 13, 2023].

⁶ L.A. Police Dept., Limitation on Use of Pretextual Stops: 1/240.06 (“LAPD Limitation on Pretextual Stops”) (Mar. 2022) p. 1.

⁷ *Ibid.*

violations if there is a concern for public safety. If officers can make stops where there is a public safety concern, then a complete ban on pretext stops would merely refocus the stop to one of public safety, rather than a stop based upon pretext. In doing so, resources will be better directed to public safety, as opposed to unfruitful pretext stops that also may be based upon bias.⁸

The RIPA Board, the White House, law enforcement leadership, and advocates have called for the end of pretextual stops. If SB 50 is amended to end the practice, it would be the first statewide policy eliminating the practice entirely and would set a precedent for the rest of the country. We have the opportunity and support to make these changes that may reduce racial and identity profiling within the state.

The RIPA Board would also like to voice its support for SB 50's proposal to amend the Penal Code to allow for municipalities to create civilian traffic enforcement programs. In its 2023 Report, the RIPA Board made the following recommendation:

Recommendation 2: Limit armed law enforcement responses to traffic enforcement by allowing for stops only if there is a concern for public safety and explore amending the vehicle code to more broadly move traffic enforcement out of law enforcement's purview (e.g., to a civilian traffic unit).⁹

The Board would also like to express its support for SB 50's proposal to amend the Penal Code to allow for local governments to create civilian traffic enforcement departments. One approach municipalities are taking to eliminate pretextual stops is the creation of a traffic enforcement program made up of civilians instead of armed officers.¹⁰ "The purpose of removing officers from certain types

⁸ "Specifically, research shows pretextual stops are costly – with limited efficacy in reducing crimes – and utilize valuable resources that could be redirected to more effective public safety measures. Studies of RIPA data show officers spend a significant amount of time – nearly 80,000 hours in 2019 – on traffic stops that lead to no enforcement action or discovery of contraband; for local law enforcement departments, 28,000 of those hours were spent on enforcing non-moving violations, which are more likely to be pretextual. Not only do these stops take away time from investigating crimes that are more serious, they are also costly. One study estimates that Sacramento County Sheriff's Department spent \$35.5 million and San Diego County Sheriff's Department spent \$43.9 million annually on enforcing traffic violations that resulted in a warning or no action taken." Racial and Identity Profiling Advisory Board, Annual Report (2023), pp. 63-64 [citing Lofstrom et al., *Racial Disparities in Law Enforcement Stops* (Oct. 2021) Public Policy Inst. of Cal. (PPIC) <<https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/>> [as of Mar. 13, 2023]]; Reimagining Community Safety in California: From Deadly and Expensive Sheriffs to Equity and Care-Centered Wellbeing (Oct. 2022) Catalyst Cal. and ACLU of Southern Cal. <https://catalyst-ca.cdn.prismic.io/catalyst-ca/126c30a8-852c-416a-b8a7-55a90c77a04e_APCA+ACLU+REIMAGINING+COMMUNITY+SAFETY+2022_5.pdf> [as of Mar. 13, 2023].

⁹ Racial and Identity Profiling Advisory Board, Annual Report (2023), p. 89.

¹⁰ "Berkeley, Oakland, and Los Angeles are all developing traffic safety departments that will absorb some of the responsibilities of police departments. In Berkeley, the new program known as BerkDOT will include an unarmed traffic unit, crossing guards, parking enforcement, paving, collision investigations, and traffic control." Racial and Identity Profiling Advisory Board, Annual Report (2023), p 106, citing Reimagining Public Safety/BerkDOT (May 2021) Task Force Meeting Agenda <<https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/Reimagining-Public-Safety-Task-Force%205-19%20Meeting%20Packet%20%28rev%29.pdf>> [as of Mar. 13, 2023]; Oakland Reimagining Public Safety Task Force: Report and Recommendations (Apr. 2021) City of Oakland, p. 224 <<https://cao-94612.s3.amazonaws.com/documents/Oakland-RPSTF-Report-Final-4-29-21.pdf>> [as of Mar. 13, 2023]; L.A. Motion 20-0875 (2021) Ad Hoc Police Reform, p. 2 <https://clkrep.lacity.org/onlinedocs/2020/20-0875_mot_06-30-2020.pdf> [as of Mar. 13, 2023].

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of traffic enforcement is twofold: to increase public safety by having officers focus their skills and resources on serious criminal activity and to reduce unnecessary interactions between the public and the police.”¹¹

A bill currently pending in Congress would create a program that would award municipalities with a \$100 million grant to develop civilian traffic enforcement agencies.¹² Currently, California limits traffic stops to peace officers because of how “traffic officers” are defined under Vehicle Code, section 21100. Without the proposed amendment to the Vehicle Code, municipalities will not be able to participate in this program. Presently, cities such as Berkeley, Los Angeles, and Oakland are considering creating these programs but cannot move forward until the law is amended. The RIPA Board strongly supports the proposed change in the law that will allow for communities to rethink law enforcement’s role in traffic.¹³

We thank you for your consideration of the Board’s recommendations and encourage the committee to adopt these additional amendments. By eliminating the practice of pretextual stops and reducing law enforcement’s role in traffic enforcement, we can improve public safety, prevent profiling of individuals, and save lives.¹⁴¹⁵

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

¹¹ Racial and Identity Profiling Advisory Board, Annual Report (2023), p. 105.

¹² H.R. 852 (Reg. Sess. 2023-2024) – To direct the Attorney General to establish a grant program for civilian traffic violation enforcement.

¹³ Racial and Identity Profiling Advisory Board, Annual Report (2023), pp. 105-107.

¹⁴ “Throughout the country, during any type of stop, law enforcement killed Black individuals at more than twice the rate of White individuals and Hispanic/Latine(x) individuals at 1.3 to 1.4 times than White individuals. Studies also show “Black Californians are about three times more likely to be seriously injured, shot, or killed by the police relative to their share of the state’s population. A majority of these killings by law enforcement began as a traffic violation stop or police responding to a non-violent offense.” Racial and Identity Profiling Advisory Board, Annual Report (2023), p 63, citing Mapping Police Violence <<https://mappingpoliceviolence.us/>> [as of Mar. 13, 2023]; Lofstrom et al., *Racial Disparities in Traffic Stops* (Oct. 2022) PPIC <<https://www.ppic.org/publication/racial-disparities-in-traffic-stops/>> [as of Mar. 13, 2023]; Washington Post Police Shooting Database: Fatal Force (“Fatal Police Shooting Database”) <<https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>> [as of Mar. 13, 2023].

¹⁵ “Nationally, in just a five-year span, law enforcement killed nearly 600 people after a stop for a traffic ticket. In California during that same five-year span, from 2017 to 2021, police killed 70 people during a traffic stop.” Racial and Identity Profiling Advisory Board, Annual Report (2023), p 63, citing Mapping Police Violence <<https://mappingpoliceviolence.us/>> [as of Mar. 13, 2023]; See also Levin, *US Police have killed nearly 600 people in traffic stops since 2017, data shows* (Apr. 2022) The Guardian <<https://www.theguardian.com/us-news/2022/apr/21/us-police-violence-traffic-stop-data>> [as of Mar. 13, 2022]