

Staff Memorandum 2022-07
**First Contact with the Legal System: Traffic Enforcement and
Assignment of Counsel**

At its September 2022 meeting, the Committee on Revision of the Penal Code will address two issues related to a person's first contact with the criminal legal system: traffic enforcement and assignment of counsel. Current law and practice in both of these areas in California can do more to protect public safety, reduce racial disparities, and improve equity in the criminal legal system.

This memorandum gives general background on both of these issues and presents possible recommendations for the Committee's consideration. A supplement to this memorandum, which will be released shortly, will present written submissions from invited panelists.

Traffic Enforcement

Traffic stops are the most common way that people come into contact with police.¹ Nationally, police pull over more than 50,000 drivers on a typical day, and more than 20 million people every year.² And while there is no data that tracks the total number of traffic stops in California, the latest report from California's Racial Profiling and Identity Act (RIPA) Board — which includes data from the state's 15 largest police agencies — reported nearly 2.5 million stops performed by officers for traffic violations.³ As this data suggests, law enforcement agencies direct a significant amount of their time and resources towards traffic policing — for example, in Los Angeles in 2019, police officers spent almost 200,000 hours on traffic stops alone.⁴ Traffic infractions accounted for 75% of all criminal filings in California with over 3 million cases filed in 2020.⁵

¹ Erika Harell and Elizabeth Davis, *Contacts Between the Police and the Public*, 2018, U.S. Department of Justice Bureau of Justice Statistics, 4 Table 2 (2030). See also Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, *Nature and Human Behavior*, Vol. 4, 736-745 (2020).

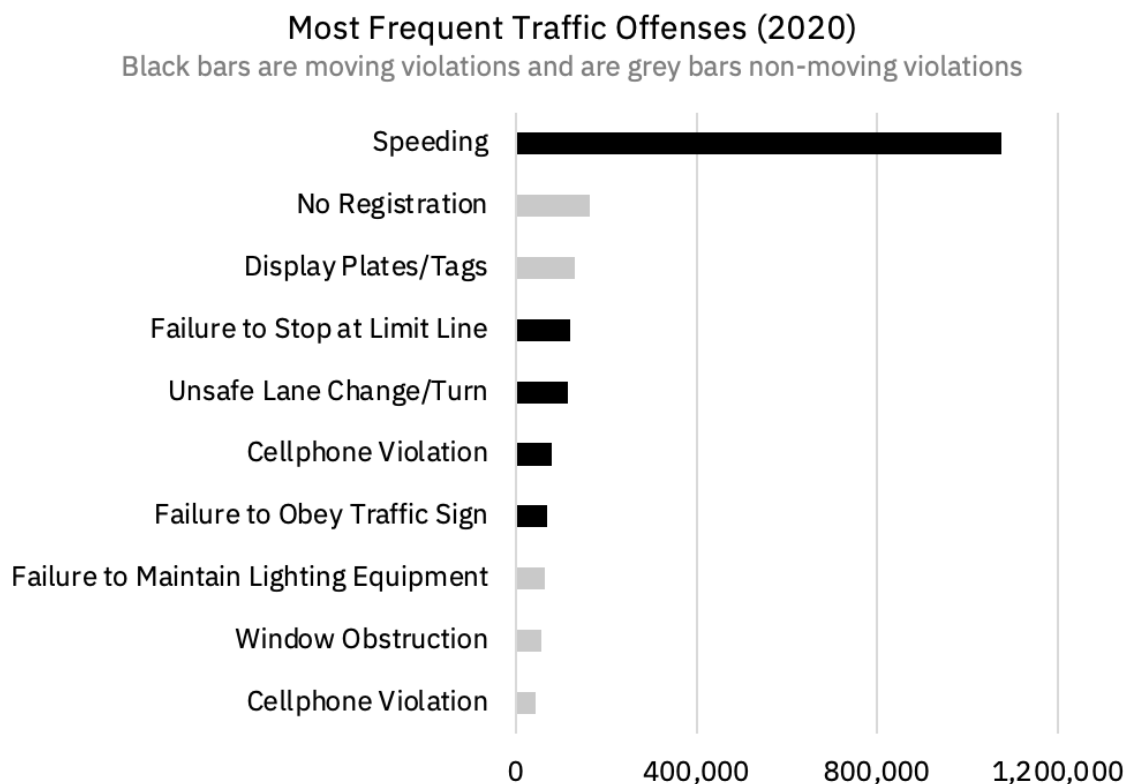
² The Stanford Open Policing Project, *Findings*.

³ Racial & Identity Profiling Advisory Board, *Annual Report 2022*, 27, 32-34. The number of annual stops are likely higher — 3 more agencies submitted data in 2020 than did in 2019, but the total number of stops reported decreased by 26%. The RIPA Board attributes the decline in reported stops to the COVID-19 pandemic. *Id.* at 27.

⁴ Advancement Project California, *Reimagining Traffic Safety & Bold Political Leadership in Los Angeles* (2021). See also Joel Rubin and Ben Poston, *LAPD Responds to a Million 911 Calls a Year, but Relatively Few for Violent Crimes*, *Los Angeles Times* (July 5, 2020) (over a ten-year period, the most common type of police work recorded by LAPD officers was stops of drivers and pedestrians that officers decided to make on their own); Jeff Asher and Ben Horwitz, *How Do the Police Spend Their Time?*, *New York Times* (June 19, 2020) (reporting that police officers in 3 cities, including Sacramento, spend up to 19% of their time addressing minor traffic problems).

⁵ Judicial Council of California, *2021 Court Statistics Report*, 82.

While most traffic stops are for offenses that can endanger public safety — moving violations like speeding, or failure to stop at a limit line — a significant number of traffic stops are for more technical, non-moving violations that may not directly endanger public safety, such as expired registration or failure to display license plates or tags.⁶



Source: California Racial & Identity Profiling Advisory Board Annual Report 2022 Appendices, 47-50, Tables B 1.2 and 1.3. Cellphone violations are marked as moving and non-moving based on the stopping officer's classification.

There is an important caveat to this data: California Highway Patrol officers accounted for nearly 58% of stops reported to the RIPA Board in 2020.⁷ The traffic enforcement practices of municipal police agencies can differ substantially from those of CHP. For example, analysis of the data provided by all reporting agencies in 2020 found that nearly 60% of moving violation traffic stops were for speeding, but when CHP data was excluded, speeding accounted for less than 40% of stops.⁸

⁶ Racial & Identity Profiling Advisory Board, *Annual Report 2022 Appendices*, 47-50, Tables B 1.2, 1.3.

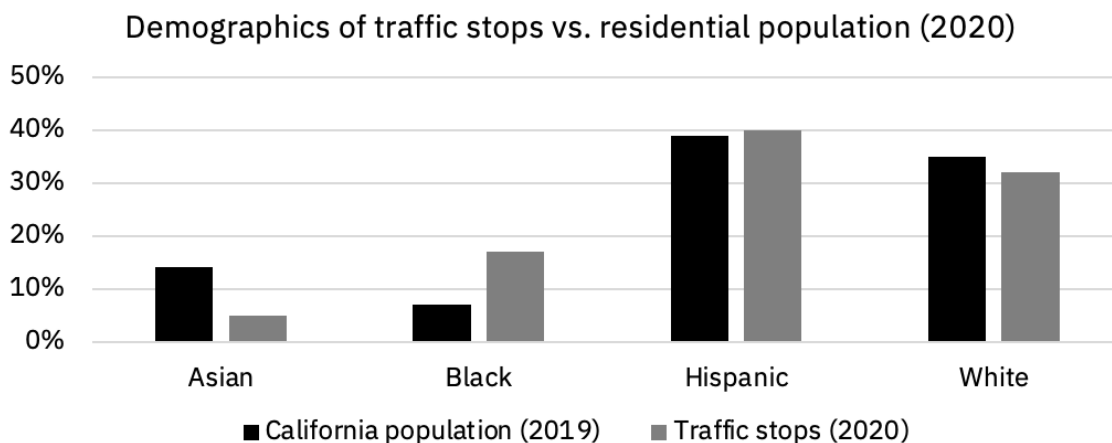
⁷ Racial & Identity Profiling Advisory Board, *Annual Report 2022*, 133, fn 369.

⁸ *Id.* at 134, Figure 58.

Racial and other disparities in traffic enforcement

Data collected from California law enforcement agencies by the California RIPA Board reveal significant disparities in several areas related to traffic enforcement.⁹ The data track the reporting officer's perception of a person's racial identity, not the person's stated identity, to better capture how that perception impacts who is stopped.¹⁰

In 2020, Black people were stopped 112% and Hispanic people 9% more frequently than expected based on their proportion of California's residential population, while white people were stopped 7% less frequently than expected.¹¹



Source: California Racial & Identity Profiling Advisory Board, *Annual Report 2022*, 51, Figure 21. Residential population demographics were weighted to show a distribution reflecting the areas served by the 18 agencies reporting RIPA data.

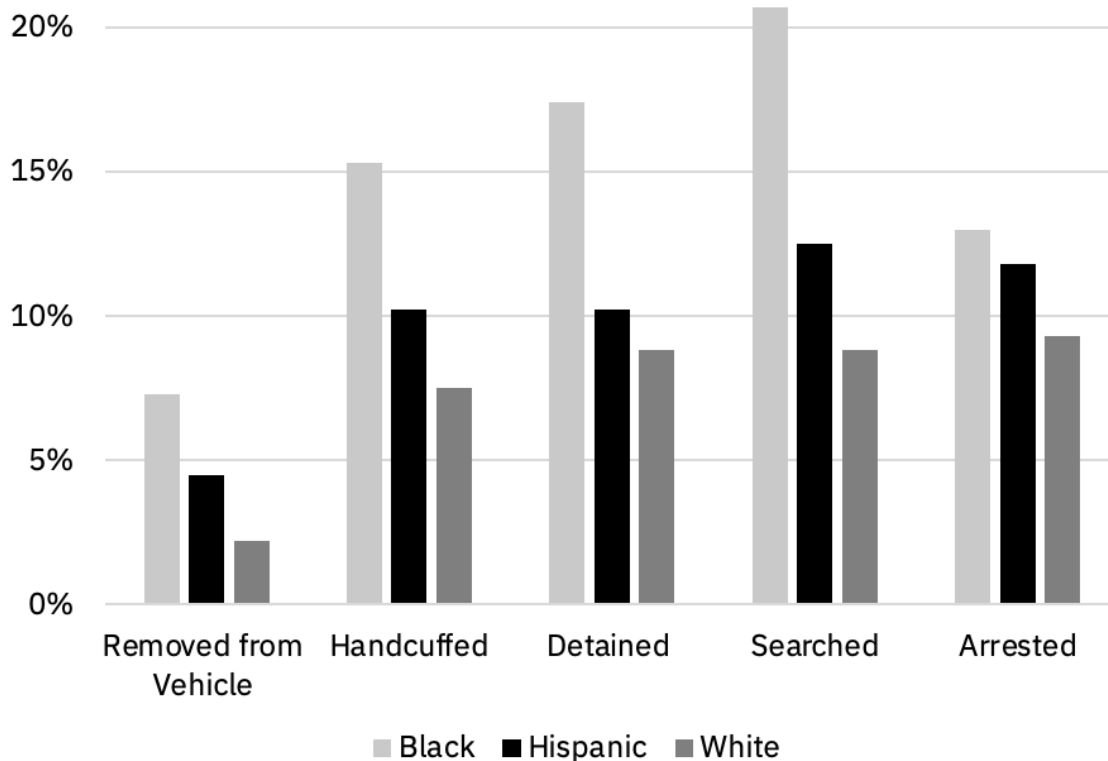
⁹ This memorandum uses the labels for race and other demographic information provided in the original sources of data, even when different sources use different words for the same demographic.

¹⁰ Racial & Identity Profiling Advisory Board, *Annual Report 2022*, 28.

¹¹ *Id.* at 51.

In addition to stopping drivers of color more frequently, police officers took action beyond the stop against people of color more frequently than white people.

Actions Taken During Stop by Race (2020)



Source: California Racial & Identity Profiling Advisory Board, Annual Report 2022 Appendices, 14-15, 27, Tables A.7 & A.13. Officers can select up to 23 different actions and are supposed to indicate every action taken, not just the most intrusive.

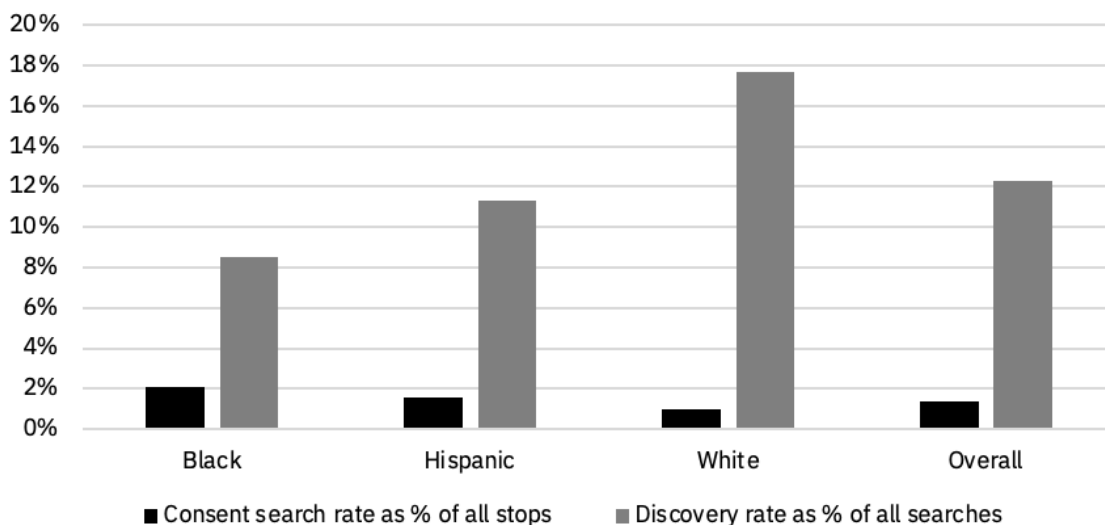
The rate at which officers conducted “consent-only searches” also varied by racial group. Police officers were more likely to perform these types of searches in stops of Black and Hispanic people than in stops of white people, despite it being less likely that they would find contraband or evidence.¹² National research has reached similar conclusions.¹³ In California, the overall discovery rate for anything illegal in consent-only searches was only 12% – about half that of other types of searches and so low that, according to the RIPA Board, they are difficult to justify as a benefit to public safety.¹⁴

¹² *Id.* at 55.

¹³ The Stanford Open Policing Project, Findings. See also Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, *Nature and Human Behavior*, Vol. 4, 737-38 (2020).

¹⁴ *Id.* at 103, 105.

Consent Search Rate & Discovery Rate by Race (2020)



Source: California Racial & Identity Profiling Advisory Board, Annual Report 2022 Appendices, 30-31, Tables A.15 and A.16.

Data from selected jurisdictions in California give more examples of racial disparities:

- The LAPD Inspector General found significant racial disparities in stop rates by the Los Angeles Police Department in 2019. Racial disparities were more pronounced in traffic stops and post-stop activities conducted by units focused on crime suppression, such as gang units, than those focused specifically on traffic enforcement.¹⁵ The report concluded that the disparities resulted from use of these stops to attempt to identify or suppress other crimes — a strategy that was of limited effectiveness in finding illegal firearms or other serious contraband.¹⁶
- A *Los Angeles Times* analysis of more than 44,000 bike stops conducted by Los Angeles County Sheriff’s deputies found that 70% were of Latino cyclists.¹⁷ The investigation found that deputies searched 85% of the people stopped, but that 92% of the searches did not find anything illegal,

¹⁵ Los Angeles Police Commission, Office of the Inspector General, *Review of Stops Conducted by the Los Angeles Police Department in 2019*, 28-29 (2020) (registration and license plate violations accounted for over 22% of stops).

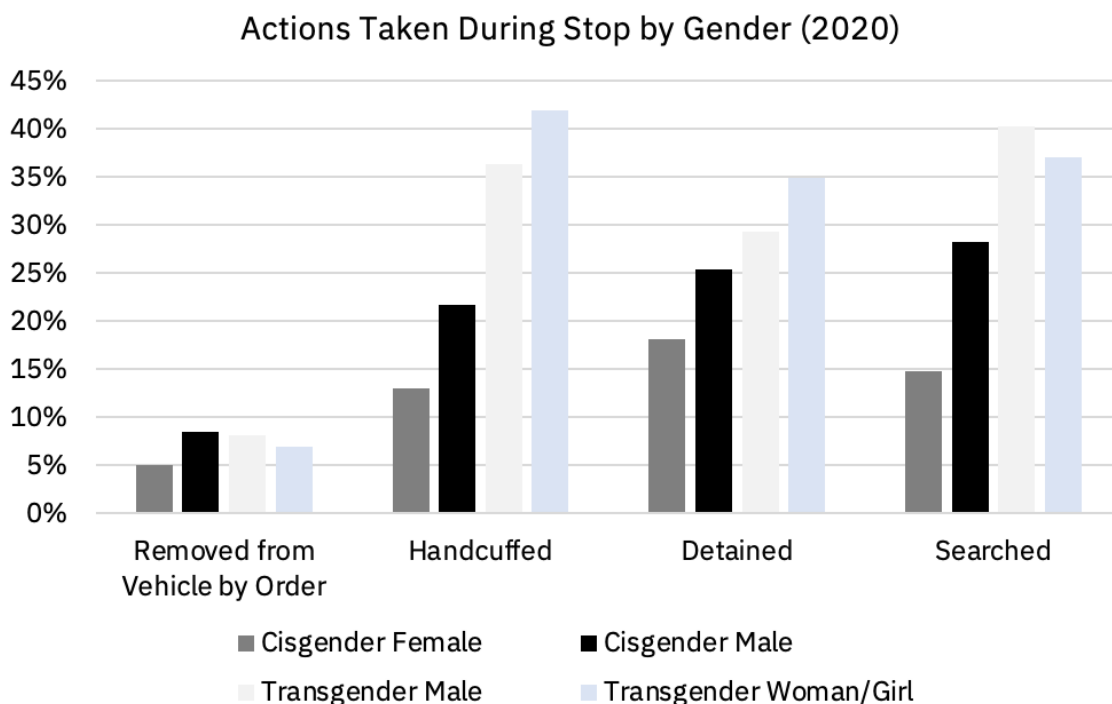
¹⁶ The recovery rate for serious contraband, such as a firearm, was around 2%. *Id.* at 36.

¹⁷ Alene Tchekmedyan, Ben Poston, and Julia Barajas, *L.A. Sheriff’s Deputies Use Minor Stops to Search Bicyclists, With Latinos Hit Hardest*, *Los Angeles Times* (Nov. 4, 2021).

less than 6% recovered illegal drugs, and less than 0.5% recovered weapons.¹⁸

- A study of policing in San Diego County found that Black people were stopped at higher rates than white people in the vast majority of beats patrolled by officers, and that police were 44% more likely to search Latinx people and 133% more likely to search Black people than white people during traffic stops.¹⁹

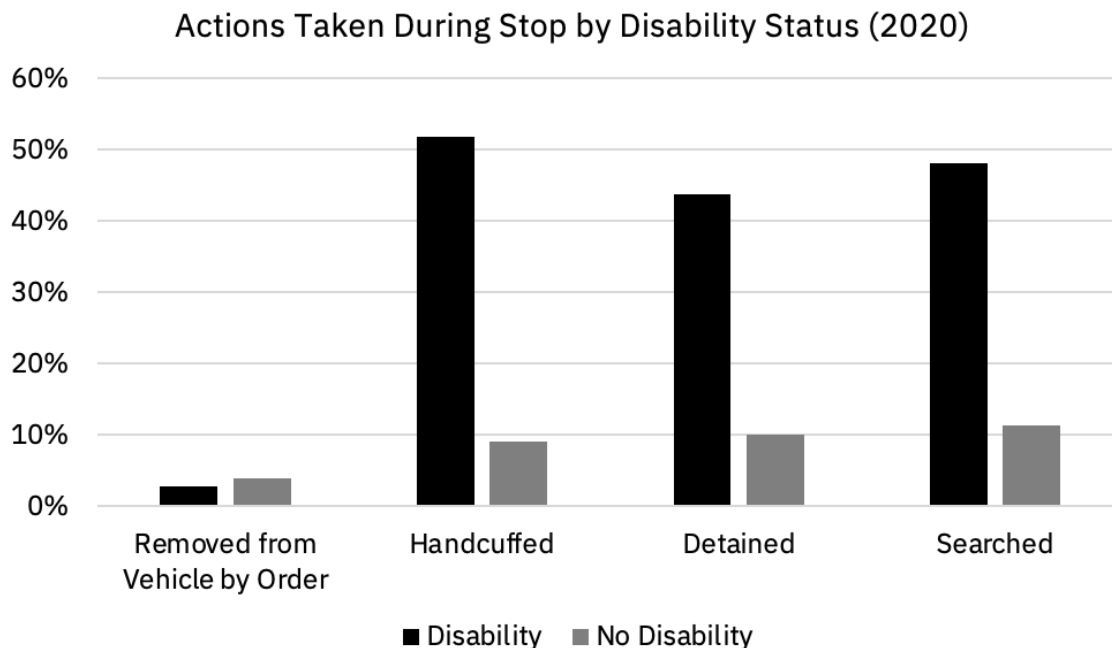
RIPA data also reflect disparities based on other demographic characteristics, such as perceived gender or disability (including mental health issues).



Source: California Racial & Identity Profiling Advisory Board, Annual Report 2022 Appendices, 14-15, Table A.7.

¹⁸ *Id.* See also Nicole Santa Cruz and Alene Tchekmedyan, *Deputies Killed Dijon Kizzee After a Bike Stop. We Found 15 Similar Law Enforcement Shootings, Many Fatal*, Los Angeles Times (Oct. 16, 2020).

¹⁹ Samuel Sinyangwe, *Evaluating Policing in San Diego*, 8, Police Scorecard.



Source: California Racial & Identity Profiling Advisory Board, Annual Report 2022 Appendices, 14-15, Table A.7.

Implicit bias and pretext stops

California’s extensive Vehicle Code covers all aspects of driving²⁰ and allows police officers to stop almost anyone — no matter how minor the violation — because most people break at least some traffic laws while driving.²¹ In some circumstances, officers use this extremely broad power to pull people over for traffic violations as a basis for a general investigation. A 1996 United States Supreme Court decision, *Whren v. United States*, held that these “pretext stops” are permissible under the Fourth Amendment.²²

Supporters of pretext stops believe that increased traffic enforcement can deter crime by creating a visual police presence in an area and opportunities to identify suspects or seize contraband.²³ But pretext stops are ripe for racial profiling — suspecting people of crime based on their race²⁴— because

²⁰ See Vehicle Code §§ 22348-22366 (speeding); 22100-22113 (stopping, turning, signaling); 24250-24953 (lighting equipment); 26700-26712 (windshields and mirrors).

²¹ See, e.g., David A. Harris, “Driving While Black” and All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops, 87 J. Crim. L. & Criminology 555, 599 (1997) (noting that “with the traffic code in hand, any officer can stop any driver at any time”).

²² *Whren v. United States*, 517 U.S. 806, 813 (1996).

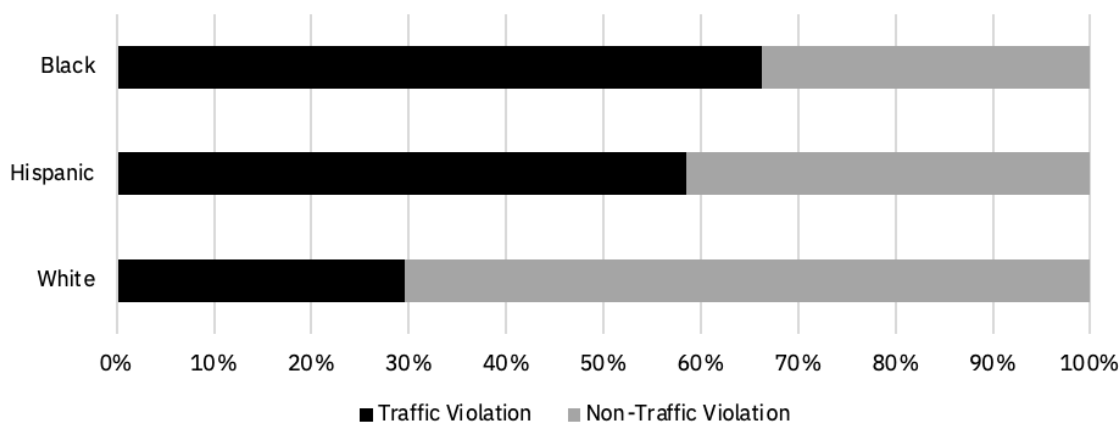
²³ Policing Project at New York University School of Law, *An Assessment of Traffic Stops and Policing Strategies in Nashville*, 7.

²⁴ See Gabriel J. Chin and Charles J. Vernon, *Reasonable but Unconstitutional: Racial Profiling and the Radical Objectivity of Whren v. United States*, 83 Geo. Wash. L. Rev. 882, 941 (2015).

stereotypes and implicit biases associating people of color, particularly Black people, with criminal behavior can influence who officers choose to target.²⁵

Though there is no direct data on the number of pretextual traffic stops conducted in California, the RIPA Board uses two measures to indirectly examine this issue, which both indicate racial disparities in the use of pretext stops. First, the RIPA Board suggests that consent-only searches can be a proxy for pretext stops because stops made for the sole purpose of traffic enforcement should not typically lead to a search.²⁶ Data shows racial disparities in the frequency of consent-only searches made during traffic stops, which suggests that officers may perform pretext stops at different rates across race and ethnicity groups.²⁷

Reason for Stops With Consent-Only Searches by Race (2020)



Source: California Racial & Identity Profiling Advisory Board, *Annual Report 2022*, 106, Figure 44.

Second, what happens at the end of the stop may also show whether the stop was pretextual.²⁸ Most people stopped are issued a citation (53%) or a warning (28%) and officers reported taking no action in only 7% of stops.²⁹ But officers reported taking no action in 39% of stops in which they conducted a consent-only search, and the rate varied by race.³⁰ Lack of further action in stops with consent-only searches may be further confirmation that these stops are done for pretextual reasons and not to correct a traffic violation.

²⁵ See Katherine B. Spencer, Amanda K. Charbonneau & Jack Glaser, *Implicit Bias and Policing*, 10 *Soc. & Personality Psych. Compass*, 50 (2016). See also Amanda Charbonneau and Jack Glaser, *Suspicion and Discretion in Policing: How Laws and Policies Contribute to Inequity*, 11 *U.C. Irvine L. Rev.* 1327, 1336 (2021) (discussing studies).

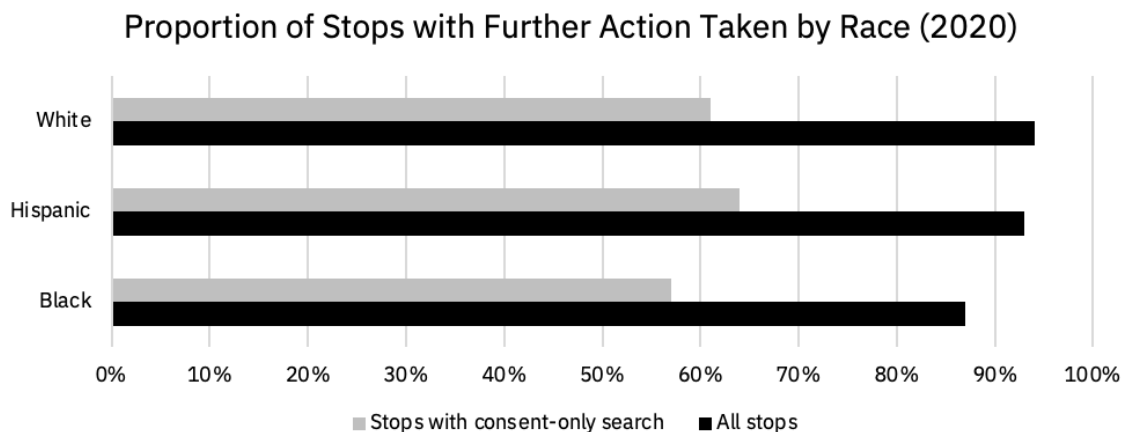
²⁶ Racial & Identity Profiling Advisory Board, *Annual Report 2022*, 106.

²⁷ *Id.*

²⁸ *Id.* at 106-107.

²⁹ *Id.* at 43.

³⁰ *Id.* at 106-107.



Source: California Racial & Identity Profiling Advisory Board, Annual Report 2022, 107, Figure 45, and 44, Figure 15.

Public and officer safety

Evidence on the effectiveness of using traffic enforcement to deter nontraffic crimes is mixed,³¹ but a study of traffic stops in Nashville, Tennessee, conducted by the New York University School of Law Policing Project concluded that traffic stops do not have a significant impact on short- or long-term crime trends.³² Similarly, the end of widespread “stop-question-frisk” practices of pedestrians in New York City — which were found to have unconstitutional racial disparities — did not lead to a rise in crime.³³

In general, increased enforcement of traffic violations is associated with decreases in traffic crashes and injuries from accidents,³⁴ but one recent study found that increasing traffic stops for violations that actually endangered public safety (as opposed to regulatory, equipment, or investigatory stops) resulted in better traffic safety outcomes.³⁵

Traffic stops can be dangerous for officers, but research has found that violence against officers during traffic stops is rare and that incidents involving violence

³¹ Jordan B. Woods, *Traffic Without the Police*, at 1541.

³² NYU School of Law Policing Project, *An Assessment of Traffic Stops and Policing Strategies in Nashville*, 3 (2018).

³³ See James Cullen, *Ending New York’s Stop-And-Frisk Did Not Increase Crime*, Brennan Center for Justice (Apr. 11, 2016). See also Dylan Matthews, *Here’s What You Need to Know About Stop and Frisk — And Why the Courts Shut it Down*, Washington Post (Aug. 13, 2013).

³⁴ Jordan B. Woods, *Traffic Without the Police*, 73 Stan. L. Rev. 1471, 1536 (2021) (citing studies).

³⁵ Mike Dolan Fliss et al., *Re-Prioritizing Traffic Stops to Reduce Motor Vehicle Crash Outcomes and Racial Disparities*, *Injury Epidemiology* 7:3 (2020) (finding that prioritization of safety-related stops resulted in a decrease in the number of total crashes (-13%), injurious crashes (-23%), and traffic fatalities (-28%).)

typically do not involve weapons.³⁶ In circumstances where officers are suspicious about weapons, the law allows them to conduct pat-down searches of a person's outer clothing and car.³⁷

Community perceptions of law enforcement

Encounters with police during traffic stops can be inconvenient, frightening, humiliating, and dangerous.³⁸ And perceptions of police legitimacy can impact people's likelihood to comply with laws and cooperate with the police.³⁹ Noting that most interactions between police and civilians occur during traffic stops, researchers have suggested that improving interactions during traffic encounters has the potential to alter general perceptions about the police.⁴⁰

³⁶ Jordan Blair Woods, *Policing, Danger Narratives, and Routine Traffic Stops*, 117 Mich. L. Rev. 635, 681-84 (2019) (reviewing traffic stops conducted in Florida over a ten-year period and finding that the rate for a felonious killing of an officer during a routine traffic stop was 1 in every 6.5 million stops, the rate for an assault on an officer resulting in serious injury was 1 in every 361,111 stops, and the rate of an assault (whether resulting in injury or not) was 1 in every 6,959 stops.)

³⁷ *Terry v. Ohio*, 392 U.S. 1, 22 (1968); *Michigan v. Long*, 463 U.S. 1032, 1049 (1983).

³⁸ David A. Sklansky, *Traffic Stops, Minority Motorists, and the Future of the Fourth Amendment*, Sup. Ct. Rev. 271, 272 (1997). See also Elizabeth Davis, Anthony Whyde, and Lynn Langton, *Contacts Between the Police and the Public, 2015*, U.S. Dept. of Just. Bureau of Just. Stat. at 16 (2018) (approximately 1 million of the nearly 53.5 million people who had contact with the police in the previous 12 months experienced nonfatal threats or use of force and only 1% of white civilians experienced the threats compared to 3% of Black and Hispanic civilians); Frank Edwards, Hedwig Lee and Micael Esposito, *Risk of Being Killed by Police Use of Force in the United States by Age, Race-Ethnicity, and Sex*, 116 PNAS 16793, 16795-96 (2019) (noting that police use of force is one of the leading causes of death for young men of color, especially Black men).

³⁹ Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 Yale L. J. 778, 797 (2021) (citing studies). See also Matthew Desmond, Andrew V. Papachristos, and David S. Kirk, *Police Violence and Citizen Crime Reporting in the Black Community*, Am. Soc. Rev., Vol. 81(5), 857-876, 867-68 (2016) (describing research conducted in Milwaukee that found that that a high-profile incident of police violence resulted in over 22,000 fewer calls for emergency services.)

⁴⁰ Daniel P. Mears et al., *Thinking Fast, Not Slow: How Cognitive Biases May Contribute to Racial Disparities in the Use of Force in Police-Citizen Encounters.*, 53 J. Crim. Just. 12, 20 (2017).

Alternative models

Law enforcement agencies in Los Angeles,⁴¹ Oakland,⁴² San Francisco⁴³, and Berkeley⁴⁴ have recently developed (or are in the process of developing) policies that limit traffic enforcement and pretext stops. Data from these efforts is not yet available or limited, but early results from Los Angeles show a reduced number of traffic stops and a greater proportion made for moving violations after the change in policy.⁴⁵

In 2020, the state of Virginia passed legislation limiting stops for low-level traffic violations.⁴⁶ Philadelphia has also recently implemented a policy that bans traffic stops of low-level infractions related to vehicle registration and equipment violations.⁴⁷

Assignment of Counsel

After someone is arrested, California law requires them to be taken to court for an arraignment within 48 hours (not including Sundays and holidays).⁴⁸ But California law does not require that people be provided lawyers at their arraignment; instead it only requires they be told that they have a right to counsel at a later date.⁴⁹ As a result, many people who cannot afford to hire an attorney do not have the assistance of counsel when they enter their first plea in

⁴¹ Los Angeles Police Department Manual Section 1/240.06, *Policy – Limitation on Use of Pretextual Stops*. The policy directs officers to make stops for minor equipment violations only when the violation interferes with public safety, to articulate the public safety reason for the stop on their body-worn video, to not conduct pretext stops unless they are acting on articulable information regarding a serious crime, and to limit all their actions during stops to the original basis of the stop in most circumstances.

⁴² See Oakland Police Department, Office of the Chief of Police, *2016-18 Racial Impact Report* (2019) (finding that a directive that Oakland Police officers focus less on enforcement of vehicle code violations and more on conducting intelligence-led stops led to a 43% and 35% reduction in the number of Black and Hispanic people stopped respectively.)

⁴³ San Francisco Police Department, *Draft General Order 9.01*. The proposed order limits the use of pretext stops, stops for minor offenses, and searches and questioning after stops.

⁴⁴ Rigel Robinson and Ben Gerhardstein, *How Berkeley is De-Policing Traffic Enforcement*, *Vision Zero Cities Journal* (2021).

⁴⁵ See Written Submission of Lizabeth Rhodes to Committee on Revision of the Penal Code, September 2, 2022.

⁴⁶ Virginia SB 5029 (Lucas), 2020 Special Session I. Legislation reversing the law is currently moving forward in the legislature. Virginia HB 79 (Campbell), 2022 Session.

⁴⁷ City of Philadelphia Bill No. 210636-A

⁴⁸ Penal Code §§ 825, 849.

⁴⁹ Penal Code § 987. The federal Sixth Amendment similarly does not require representation at a first court appearance. *Rothgery v. Gillespie County*, 554 U.S. 191, 211-212 (2008) (holding that a person's first appearance triggers the right to counsel, and that counsel must be appointed within a reasonable time after, but not explicitly requiring that counsel assist during the first appearance.)

the case, hear the charges against them, and when a court decides whether to keep them in jail.

Other states, including Massachusetts⁵⁰ and New York⁵¹ require that people be represented during their initial appearance. Some jurisdictions in California have also experimented with similar approaches, as will be explored at the Committee meeting on this topic.

Pleading guilty without a lawyer

California law allows people to plead guilty at arraignment, even if they have never consulted with an attorney.⁵² If a person is unrepresented by counsel they must be advised of their rights, including the right to counsel, and expressly waive those rights before entering a guilty or no contest plea.⁵³ In misdemeanor cases, courts are allowed to give a mass advisement of rights to a group of charged people, but must take individual waivers of those rights.⁵⁴

There is no statewide data on the number of plea dispositions entered into without the assistance of counsel at arraignment or at other stages of a case, but, according to experts and practitioners consulted by Committee staff, the practice is common throughout the state.⁵⁵ For example, data from Kern County shows one-third of people arraigned on misdemeanors pled guilty or no contest at arraignment without the assistance of counsel over a 7-year period – more than 67,000 individual cases.⁵⁶

Criminal convictions can have lasting consequences, even for minor misdemeanor offenses.⁵⁷ And pleading guilty without counsel is especially treacherous for noncitizens, who may face immigration consequences as a result of their conviction, but not be given sufficient information about them before entering a guilty plea.⁵⁸ According to the Immigrant Legal Resource Center,

⁵⁰ *Lavallee v. Justices in the Hampden Superior Court*, 812 N.E.2d 895, 902 (2004).

⁵¹ *Hurrell-Harring v. New York State*, 15 N.Y.3d 8, 20–22 (2010); N.Y. Crim. Proc. Law § 180.10(3).

⁵² The Penal Code allows people to plead guilty or no contest without an attorney in all cases except those where the punishment is death or life without the possibility of parole. Penal Code §§ 987, 1018.

⁵³ Cal. Const. Art. I, § 13; *Boykin v. Alabama*, 395 U.S. 238 (1969); *In re Tahl*, 1 Cal.3d 122 (1969). See also *Faretta v. California*, 422 U.S. 806, 855 (1975).

⁵⁴ *Mills v. Municipal Court*, 10 Cal.3d 288, 307 (1973).

⁵⁵ See Letter from ACLU of Northern California and Southern California to the Committee on Revision of the Penal Code (Aug. 19, 2022). This letter will be provided in a supplement to this memorandum.

⁵⁶ *Id.*

⁵⁷ See, e.g., Alexandra Napatoff, *Misdemeanors*, 85 Southern Calif. L. Rev. 101, 1323-28 (2012).

⁵⁸ See Letter from the Immigrant Legal Resource Center to the Committee on Revision of the Penal Code (Aug. 19, 2022). Defense attorneys are required to provide accurate advice about the immigration consequences of a plea to their clients. *Padilla v. Kentucky*, 559 U.S. 356, 369 (2010); Penal Code § 1016.3. When a person pleads guilty to an offense without counsel, courts are only

noncitizen defendants account for up to 1 out of every 8 criminal defendants in California.⁵⁹

Benefits to public safety and cost savings of early representation

Providing legal assistance earlier in the criminal legal process can have important public safety benefits. Recent research using data from nearly 100,000 cases in Philadelphia found that people who were provided assistance from the public defender's office before their bail hearings were 64% less likely to have a bail violation and 26% less likely to be arrested during the pendency of the case.⁶⁰ Representation by a bail advocate was also associated with a decrease in the likelihood of a guilt determination, less harsh sentences, and a reduction in racial disparities in pretrial release rates.⁶¹

People represented by counsel at their first court appearance are more likely to be released pretrial⁶² and this can result in significant cost savings. When the Alameda County Public Defender's Office began to represent people at their first court hearing, the pretrial release rate increased from 1% to 20%.⁶³ A study of early representation in Cook County, Illinois, found that providing counsel within 24 hours of arrest would save between \$12 and \$44 million per year.⁶⁴

Areas for Further Exploration

The Committee may wish to consider the following possible proposals to address the issues raised in this memorandum:

- **Prohibit traffic stops for non-safety-related traffic offenses.** Many traffic stops are for offenses that do not directly endanger public safety. Prioritizing enforcement of offenses directly related to public safety may help reduce disparities and improve community trust and public safety.⁶⁵ (Note that such a reform would have an uncertain effect on criminal cases

required to give them a general advisement that the plea can carry negative immigration consequences. Penal Code § 1016.5.

⁵⁹ *Id.* This letter will be provided in a supplement to this memorandum.

⁶⁰ Paul Heaton, *Enhanced Public Defense Improves Pretrial Outcomes and Reduces Racial Disparities*, Indiana Law Journal, Vol. 96, Iss. 3, Article 2, 724-25 (2021).

⁶¹ *Id.* at 725-28.

⁶² See National Legal Aid and Defender Association, *Access to Counsel at First Appearance: A Key Component of Pretrial Justice*, 15-25 (2020).

⁶³ Danielle Soto and Mark Lipkin, *Representation at Arraignment: The Impact of "Smart Defense" on Due Process and Justice in Alameda County*, Impact Justice, 20 (2018).

⁶⁴ Bryan L. Sykes, Eliza Solowiej, and Evelyn J. Patterson, *The Fiscal Savings of Accessing the Right to Counsel Within Twenty-Four Hours of Arrest: Chicago and Cook County, 2013*, 5 U.C. Irvine L. Rev. 813, 829 (2015).

⁶⁵ An unsuccessful bill introduced this year (SB 1389 (Bradford)) would have prohibited police from making stops for certain low-level traffic infractions.

because violation of search and seizure rules existing only under state law will not necessarily lead to exclusion of evidence.⁶⁶)

- **Limit pretextual stops.** Using traffic enforcement as a pretextual means to begin a general investigation has limited effectiveness, allows racial profiling, and can strain relations between the police and the communities they serve. Limiting the use of pretext stops may encourage the development and use of strategies that are more effective and less harmful.
- **Establish additional guidelines for warrantless searches during traffic stops.** Searches based entirely on a person’s consent to the search have very low rates of discovering evidence of crime and are disproportionately directed at people of color. Establishing clear guidelines for when these types of searches are allowed could promote more efficient strategies to improve public safety and reduce bias.
- **Require appointment of counsel within sufficient time to provide meaningful representation at the first court appearance.** Representation at the first court appearance can have important public safety benefits and cost-savings, and also recognizes that people should be treated equally regardless of how much money they have.

Conclusion

Traffic stops and assignment of counsel are many people’s first contact with the criminal legal system. But each of these areas has room for significant advancements to improve public safety and increase equity. The Committee should consider what can be done to improve these systems.

Respectfully submitted,

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⁶⁶ The United States Supreme Court has held that an officer’s failure to comply with state statutory requirements governing search and seizure does not necessarily violate the federal Fourth Amendment, and that an arrest is “reasonable” when a person commits even a minor crime. *Virginia v. Moore*, 553 U.S. 164, 169 (2008); *Atwater v. Lago Vista*, 532 U.S. 319 (2000). See also *California v. Greenwood*, 486 U.S. 35, 43 (1988) (whether a search is reasonable within the meaning of the Fourth Amendment does not depend on the laws of a particular state.) Proposition 8, approved by voters in 1982, added article 1, § 28(f)(2) to the California constitution, which bars suppression of evidence seized in violation of California law but not in violation of the federal Fourth Amendment.