
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1518 **Hearing Date:** July 11, 2017
Author: Weber
Version: March 28, 2017
Urgency: No **Fiscal:** No
Consultant: NG

Subject: *Criminal Justice Statistics*

HISTORY

Source: Author

Prior Legislation: AB 1953 (Weber) Chapter 99, Statutes of 2016
AB 953 (Weber) Chapter 446, Statutes of 2015

Support: American Civil Liberties Union of California; California Public Defenders Association

Opposition: None known

Assembly Floor Vote: 75 - 0

ANALYSIS REFLECTS AUTHOR'S AMENDMENTS TO BE OFFERED IN COMMITTEE

PURPOSE

The purpose of this bill is to (1) delay implementation of the Racial and Identity Profiling Act (RIPA) by six months; (2) delay the regulations related to RIPA by one year; (3) specifies that law enforcement agencies are solely responsible to ensure that personally identifiable information of the individual stopped or any other information that is exempt from disclosure pursuant to this section is not transmitted to the Department of Justice in any open text fields; (4) creates technical changes to the Penal Code by replacing the term "citizen" with "civilian."

Existing law requires each state and local agency that employs peace officers shall annually report data to the Department of Justice (DOJ) on all stops conducted by that agency's peace officers. (Gov. Code § 12525.5, subd. (a).)

Existing law specifies that each agency that employs 1,000 or more peace officers shall issue its first round of reports on or before April 1, 2019. Each agency that employs 667 or more, but less than 1,000, peace officers shall issue its first round of reports on or before April 1, 2020. Each agency that employs 334 or more, but less than 667, peace officers shall issue its first round of reports on or before April 1, 2022. Each agency that employs one or more, but less than 334, peace officers shall issue its first round of reports on or before April 1, 2023. (Gov. Code § 12525.5, subd. (a)(2).)

Existing law states that the report shall include, at a minimum, the following information for each stop:

- The time, date, and location of the stop.
- The reason for the stop.
- The result of the stop, such as, no action, warning, citation, property seizure, or arrest.
- If a warning or citation was issued, the warning provided or violation cited.
- If an arrest was made, the offense charged.
- The perceived race or ethnicity, gender, and approximate age of the person stopped, as specified.
- Actions taken by the peace officer, including, but not limited to, the following:
 - a) Whether the peace officer asked for consent to search the person, and, if so, whether consent was provided.
 - b) Whether the peace officer searched the person or any property, and, if so, the basis for the search and the type of contraband or evidence discovered, if any.
 - c) Whether the peace officer seized any property and, if so, the type of property that was seized and the basis for seizing the property. (Gov. Code § 12525.5, subd. (b).)

Existing law provides that law enforcement shall not report the name, address, social security number, or other unique personal identifying information of persons stopped, searched, or subjected to a property seizure, for purposes of this section. Notwithstanding any other law, the data regarding peace officer stops shall be available to the public, except for the badge number or other unique identifying information of the peace officer involved, which shall be released to the public only to the extent that the release is permissible under state law. (Gov. Code § 12525.5, subd. (d).)

Existing law establishes the Racial Identity Profiling Advisory Board (RIPA Board) for the purpose of eliminating racial and identity profiling, and improving diversity and racial and identity sensitivity in law enforcement. (Pen. Code § 13519.4, subd. (j).)

Existing law specifies that no later than January 1, 2017, DOJ, in consultation with stakeholders including the RIPA Board, shall issue regulations for the collection and reporting of data regarding all stops conducted by peace officers, as specified. The regulations shall specify all data to be reported, and provide standards, definitions, and technical specifications to ensure uniform reporting practices across all reporting agencies. (Gov. Code § 12525.5, subd. (e).)

Existing law provides that all data and reports made pursuant to this section are public records, as specified, and are subject to public inspection. (Gov. Code § 12525.5, subd. (f).)

Existing law requires RIPA Board to hold at least three public meetings annually to discuss racial and identity profiling, and potential reforms to prevent racial and identity profiling. Each year, one meeting shall be held in northern California, one in central California, and one in southern California. RIPA shall provide the public with notice of at least 60 days before each meeting. (Pen. Code § 13519.4, subd. (j)(3)(F).)

Existing law defines “state summary criminal history information” as the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person. (Pen. Code § 11105, subd. (a)(2)(A).)

Existing law requires the Department of Justice (DOJ) to collect data necessary for the work of DOJ from all specified persons and agencies. (Pen. Code § 13010, subd. (a).)

Existing law requires DOJ to prepare and distribute to all those persons and agencies required to submit crime statistics, the cards, forms, or electronic means used in reporting data to the departments. The cards, forms, or electronic means may, in addition to other items, include items of information needed by federal bureaus or departments engaged in the development of national and uniform criminal statistics. (Pen. Code § 13010, subd. (b).)

Existing law requires DOJ to periodically review the requirements of units of government using criminal justice statistics, and to make recommendations for changes it deems necessary in the design of criminal justice statistics systems, including new techniques of collection and processing made possible by automation. (Pen. Code § 13010, subd. (b).)

Existing law requires that the information publicly posted on the OpenJustice Web portal to include all of the following:

- The amount and the types of the offense known to the public authorities
- The personal and social characteristics of criminals and delinquents; and
- The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents.
- The total number of each of the following:
 - a) Citizen complaints received by law enforcement agencies
 - b) Citizen complaints alleging racial or identity profiling, as defined, which shall be disaggregated by the specific type of racial or identity profiling alleged, such as based on a consideration of race, color, ethnicity, national origin, religion, gender identity or expression, sexual orientation, or mental or physical disability. (Pen. Code § 13012, subd (a).)

Existing law requires the DOJ to give adequate interpretation of the statistics and to present the information in clear and informative formats on OpenJustice Web portal, which should be presented in a manner that are comparable with national uniform criminal statistics published by federal bureaus or departments. (Pen. Code § 13012, subd. (b).)

Existing law requires DOJ to process, tabulate, analyze, and interpret the data collected from those specified persons and agencies. (Pen. Code § 13013, subd. (e).)

Existing law requires every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State

Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents to do the following:

- To install and maintain records needed for the correct reporting of statistical data required by him or her;
- To report statistical data to the departments at those times and in a manner that the Attorney General prescribes; and
- To give the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title. (Pen. Code § 13020).

Existing law requires DOJ to present data relating to criminal statistics to the public, public officials, and the Governor. This data must be available through DOJ's OpenJustice Web portal. The Attorney General also may issue special reports on aspects of crime statistics (Pen. Code § 13010, subd. (g).)

Existing law prohibits a law enforcement officer from engaging in racial profiling. (Pen. Code § 13519.4, subd. (f).)

Existing law defines, for purposes of this section, racial or identity profiling as the consideration of, or reliance on, to any degree, actual or identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop or in deciding upon the scope or substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in specific suspect description. The activities include, but are not limited to, traffic or pedestrian stops, or actions during a stop, such as asking questions, frisks, consensual and nonconsensual searches of a person or any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest. (Pen. Code § 13519.4, subd. (e).)

This bill delays implementation of the Racial and Identity Profiling Act (RIPA) by six months, to July 1, 2018.

This bill delays the regulations related to RIPA by one year, to January 1, 2018.

This bill specifies that law enforcement agencies are solely responsible to ensure that personally identifiable information of the individual stopped or any other information that is exempt from disclosure pursuant to this section is not transmitted to the Department of Justice in any open text fields;

This bill would delete the term of "citizen" complaints in Penal Code §13012, subdivision (a) and instead refer to them as "civilian" complaints.

COMMENTS

1. Need for This Bill

According to the author:

The Penal Code Section 13012, currently encompasses the term "citizen" rather than "civilian." However, the current operational term being utilized by law enforcement is now "civilian." For example, in 2015, the Legislature passed AB 71 (Rodriguez) a law which now requires law enforcement officers to report incidents of serious/excessive use of force. In order to comply with provisions of the recently enacted law, law enforcement agencies will also field and tally

complaints filed against them. In preparation, agencies have developed forms for this purpose which includes the term “civilian” rather than “citizen.” AB 953 the Racial and Identity Profiling Act of 2015, among other things, revised the content of the DOJ annual report on criminal statistics to report the total number of each of the following “citizen” complaints:

- a) “Citizen” complaints against law enforcement personnel;
- b) “Citizen” complaints alleging criminal conduct of either a felony or misdemeanor;
- c) “Citizen” complaints alleging racial or identity profiling, disaggregated by the specific type of racial or identity profiling alleged.

This proposal seeks to ensure the accurate term “civilian” is reflected in the Penal Code sections and also aims to clarify that all civilians are eligible to file complaints against local law enforcement agencies or officers regardless of citizenship.

2. Modifies Implementation and Record Keeping for RIPA

This bill modifies the dates for the implementation of the Racial and Identity Profiling Act of 2015 due to concerns with potential release of personal information of both law enforcement officers and civilians who have had personal information collected under the provisions of the law. The bill would delay overall implementation of RIPA by six months, and delay compliance with regulations by an additional year. Additionally, the bill will specify that it is the responsibility of local and state law enforcement to maintain confidentiality of persons stopped as well as specified information related to the involved officers.

3. African Americans and Latinos Stopped More Frequently than Members of Other Races and Ethnicities in Oakland

According to the Mercury News:

Police stop and search African-Americans at a far higher rate than other racial groups in Oakland, according to a police report released Monday that has renewed concerns about racial profiling in the city.

African-Americans, who compose 28 percent of Oakland’s population, accounted for 62 percent of police stops from last April to November, the report found. The figures also showed that stops of African-Americans were more likely to result in felony arrests. [African-Americans were stopped a total of 9,034 times, Latinos a total of 2,524, Whites a total of 1,711, and Asians a total of 889 times, from April to November of 2013]

However, while African-Americans were far more likely to be searched by police upon being stopped, officers were no more likely to recover contraband from searching African-Americans than members of other racial groups. Latinos accounted for 17 percent of police stops, whites accounted for 12 percent, Asians 6 percent and “others” 3 percent....

City leaders, cautioned that the report needed further analysis and did not necessarily demonstrate that police were unfairly targeting African-Americans. Several outside police experts informed of the findings pointed to the 14 percent felony arrest rate for African-Americans who were stopped as an indication that police were not profiling....

While traffic issues were the most common reason people were stopped by police, African-Americans were far more likely to be stopped on the basis of “probable cause” or “reasonable suspicion” than members of other racial groups.

African-Americans stopped by police were searched 42 percent of the time, compared to 27 percent for Latinos and 17 percent for whites and Asians. Yet, those searches resulted in the recovery of contraband 27 percent of the time for African-Americans and Latinos, 28 percent of the time for whites and 25 percent of the time for Asians.¹

4. “Citizen” to “Civilian”

This bill makes technical changes in Penal Code § 13012, subdivision (a) by replacing the term “citizen” complains and instead refers to them as “civilian” complaints. According to the author, this change will accurately reflect the term that is currently used by law enforcement agencies to track complaints on a local, state, and federal level.

This bill will also codify the ability of non-citizens residents of California to issue general complains against law enforcement, and complaints in law enforcement’s alleged use of racial or identity profiling.

5. Citizens’ Complaints Against Police Officers 1981 – 2015

According to the Department of Justice, the following statistics are the total amount of citizens’ complaints reported in the state of California from 1981 to 2015 is as follows:²

Year	Total Number of Reported Complaints	Year	Total Number of Reported Complaints
1981	8,686	1999	19,034
1982	11,599	2000	23,395
1983	12,008	2001	22,455
1984	12,875	2002	21,970
1985	13,999	2003	20,937
1986	12,811	2004	20,609
1987	14,180	2005	21,653
1988	13,817	2006	21,620
1989	14,855	2007	24,358

¹ “Report: African-Americans Compose 28 Percent of Oakland’s Population, 62 Percent of Police Stops,” *The Mercury News*, March 24, 2014, accessed July 3, 2017. <http://www.mercurynews.com/2014/03/24/report-african-americans-compose-28-percent-of-oaklands-population-62-percent-of-police-stops/>

² Kamal Harris, Attorney General, “Crime in California, 2015” California Department of Justice, 2015, accessed June 29, 2017, p.59. <https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/candd/cd15/cd15.pdf>

1990	14,755	2008	23,470
1991	16,467	2009	22,614
1992	17,468	2010	22,458
1993	18,931	2011	18,590
1994	19,629	2012	20,363
1995	19,233	2013	17,032
1996	19,376	2014	15,693
1997	16,966	2015	14,402
1998	17,483	—	—

The average amount of complaints per year is 17,880, while the range of this data set is 15, 672. The lowest amount of complaints reported was at 8,686 (in 1981) and the largest amount of complaints reported was at 24,358 (in 2007). Although the data demonstrates a range of 15,672 complaints, the average rate of change for complaints per year was 2%. Stated differently, on average, the amount of complaints rose 2% per year.

6. Argument in Support

According to the American Civil Liberties Union:

The current statute specifies that the report shall include the total number of complaints alleging racial or identi[ty] profiling from “citizens.” This bill would clarify the requirements to refer to complaints filed by “civilians,” rather than “citizens,” to make clear that non-citizens are not prohibited from filing complaints against peace officers. This change also recognizes that law enforcement agencies typically use the word “civilian” when reporting their activities with members of the public.

– END –