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January 26, 2016

PUBLIC SAFETY COMMITTEE
OAKLAND CITY COUNCIL
Oakland, California 94612

Re: California's New Racial and Identity Profiling Act of 2015 (AB 953)

Dear Chairperson Brooks and Members of the Committee:

I. Introduction

The Rules Committee scheduled a report from the City Attorney regarding California's Racial and identity Profiling Act of 2015 ("the Act" or "new law") which became effective on January 1, 2016. The California Legislature passed the Act and Governor Brown signed it into law. Assemblywoman Shirley Weber is the author of the legislation, Assembly Bill 953 ("Bill"). The Bill adds Section 12525.5 to the Government Code and amends Sections 13012 and 13519.4 of the Penal Code. Copies of the pertinent statutes are attached for your reference.

II. Overview

The Act (1) adds new police officer training requirements on racial and identity profiling, (2) adds new stop data collection and reporting requirements and (3) increases state agency oversight of stop data that the Act requires local law enforcement agencies to report.

III. Discussion of Provisions

Racial profiling is unlawful and violates constitutional and statutory protections of individual liberty and equal protection of the laws under the Fourth Amendment and the Equal Protection clause of the Fourteenth Amendment of the U.S. Constitution. See, *United States v. Montero-Camargo*, 208 F.3d 1122 (9th Cir. 2000); *United States v. Avery*, 137 F.3d 343, 355 (6th Cir. 1997). The California Legislature codified the prohibition against racial profiling in 1990 with the passage of Cal. Penal Code section 13519.4 and other related laws.

ITEM #6
PUBLIC SAFETY COMMITTEE
JANUARY 26, 2016

A. Changes to the Definition of Racial and Identity Profiling

Prior to the effective date of the Act, state law defined racial profiling as the practice of detaining a suspect based on a broad set of criteria that cast suspicion on an entire class of people without any individualized suspicion of the person who is being stopped. Cal.Pen. Code §13519.4(e).¹ The Act changed the definition of "racial profiling" to include "identity profiling" based on gender, national origin, and other individual characteristics that are protected against discrimination. The Act's new racial and identity profiling definition is contained in Section 13519.4(e) of the Cal. Penal Code and reads as follows:

"Racial or identity profiling, for purposes of this section, is the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender 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 a 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."

Specifically, the new law on racial and identity profiling:

- adds a provision that prohibits "identity profiling" and affirms that police action that is based on constitutionally protected classes such as race, color, ethnicity, national origin, age, religion, gender identity, sexual orientation, or mental or physical disability is prohibited;
- clarifies that racial profiling may occur not only during an initial police stop but also in connection with subsequent police action. The Act lists several decision points when profiling may occur, such as when an officer decides to question, frisk, or search a person or his/her property, seize property, issue a citation, and/or execute an arrest. In the context of a traffic stop, the new law states that profiling may occur during police activity that involves the decision to remove vehicle occupants, issue a citation, or make an arrest;

¹ The United States Department of Justice defines "racial profiling" as concerning "... the invidious use of race or ethnicity as a criterion in conducting stops, searches and other law enforcement investigative procedures." Guidance Regarding the Use of Force by Federal Law Enforcement Agencies, U.S. Dep't. of Justice, Civil Rights Div., p. 1 (June 2003).

- clarifies that police officers may consider and rely upon individual characteristics related to race, gender, etc., if those characteristics are related to or listed in a specific suspect description, and states that this practice is not racial or identity profiling.

The City of Oakland adopted a policy prohibiting racial profiling consistent with policies of other police departments. This policy is codified in Oakland Police Department General Order M-19 ("GO M-19") and related special orders.² GO M-19 is attached to this report. The Oakland Police Department has informed us that it is currently in discussions with the California Attorney General's office about the Act's mandates and OPD's obligations to adjust its policies to incorporate the new requirements.

B. New Requirements for Police Training on Racial and Identity Profiling

The Act amends Section 13519.4 of the Penal Code which prescribes the POST training certification requirements for all California police officers. The new law requires additional training in "identity profiling" practices. The training should be practical and cover scenarios involving motorists, pedestrians, users of public transportation, and vehicular occupants, who are stopped, searched, interrogated, or subjected to property seizure by a peace officer "for no reason" other than the color of their skin, national origin, and religion, gender identity or expression, housing status, sexual orientation, or mental or physical disability," and are subjected to discriminatory practices. Cal. Gov. Code §13519.4 (d)(4).

The Act also requires training that includes and examines "evidence-based patterns, practices, and protocols that make up racial or identity profiling, including implicit bias." Specifically, the Act provides that instruction should address "identity profiling, the negative impact of intentional and implicit biases; . . . how historical perceptions of discrimination have harmed policy-community relations and contributed to injury, death, disparities in arrest detention and incarceration rights, and wrongful convictions." Cal. Gov. Code 13519.4(h).

The Act does not change the number of training hours that police officers are required to complete. All California peace officers are required to take an initial five-hour course on racial profiling during their basic academy instruction. Cal. Pen. Code §13519.4(b). Thereafter, they are required to take an updated refresher course of two hours every five years. Cal. Pen. Code §13519.4(i). Cities and police departments may provide more frequent training. Cal. Gov. Code 13519.4(i).

² See March 4, 2015 Racial and Religious Profiling Report from the Oakland Police Department on the April 14, 2015 Public Safety Committee meeting agenda.

C. New Stop Data Recording and Reporting Requirements for Law Enforcement Agencies

The Act requires that law enforcement agencies collect and record racial and identity characteristics of all persons who are stopped or detained by police officers. For purposes of the reporting requirements, " ... 'stop' means 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." Cal. Gov. Code § 12525.5(g)(2).

The Act also mandates that law enforcement agencies provide a report to the Attorney General on all stops, as defined, that the agency's peace officers conducted during the preceding calendar year. Cal. Gov. Code §12525.5 (a)(1). For the Oakland Police Department and other agencies that employ between 667 and 1,000 officers, the first stop data report is due by April 1, 2020.³ Stop data collection was not previously required.

Under the new Section §12525.5(b) of the Government Code, the minimum stop data information that must be collected and reported includes:

- (1) the time, date, and location of the stop.
- (2) the reason for the stop.
- (3) the result of the stop, such as, no action, warning, citation, property seizure, or arrest.
- (4) if a warning or citation was issued, the warning provided or violation cited.
- (5) if an arrest was made, the offense charged.
- (6) the perceived race or ethnicity, gender, and approximate age of the person who was stopped, provided that the identification of these characteristics shall be based on the observation and perception of the peace officer who made the stop, and that the information shall not be requested from the person stopped. For motor vehicle stops, this paragraph only applies to the driver, unless any actions specified under paragraph (7) below apply in relation to a passenger, in which case the characteristics specified in this paragraph shall also be reported for him or her.

³ Current state law requires that law enforcement agencies collect and report data and other statistics at the request of the Attorney General and in the manner prescribed by the Attorney General. The areas covered include juvenile crimes, homicide cases, obscenity laws and hate crimes, among others. The information to be reported included arrests, charges and case disposition. California Penal Code Title 3, Chapter 1, Articles 1, 2 and 3.

- (7) actions taken by the peace officer⁴ during the stop, 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.

The Act limits the reporting requirements in several ways. For incidents involving several officers, only one officer is required to report stop data information. Moreover, the Act prohibits law enforcement agencies from reporting personal identifying information of a person who is stopped, such as the name, address, social security number, or other unique personal information. The Act also prohibits reporting of personal identifying information of a police officer, such as the badge number or other unique identifying information. Otherwise, all stop data reported under the Act is subject to public disclosure unless exempted by other laws. Cal. Gov. Code §12525.5(d).

The Act requires that the Attorney General adopt implementing regulations for stop data collection and reporting no later than January 1, 2017. The Attorney General must consult with the Racial and Identity Profiling Advisory Board; federal, state, and local law enforcement agencies and community; and with professional, academic, research, and civil and human rights organizations in establishing the regulations. The regulations must specify the data that must be reported, and provide standards, definitions, and technical specifications to ensure uniform reporting practices for all reporting agencies. To the greatest extent possible, the regulations should be compatible with any similar federal data collection or reporting program. Cal. Gov. Code §12525.5 (e).

D. New Racial and Identity Profiling Advisory Board ("RIPA")

The Act requires that the Attorney General establish the Racial and Identity Profiling Advisory Board ("RIPA") no later than July 1, 2016. Cal. Penal Code §13519.4(j)(1). The Act prescribes RIPA's membership which must include representatives from the Attorney General's Office, the California Public Defenders Association, the California Police Chiefs Association, and members from academia, civic, community, human rights, criminal justice, and clergy organizations. The Act provides that the Governor, the President Pro Tempore of the Senate, and the Speaker of the Assembly may appoint up to two members each. Cal. Penal Code §13519.4(j)(2).

⁴ The Act exempts probation officers and officers in a custodial setting from the stop data reporting requirements of the statute. GC 12525.5(g)(1).

RIPA is responsible for advising the Attorney General and state and local law enforcement agencies on best practices for combatting racial and identity profiling and improving diversity and racial sensitivity within law enforcement agencies. RIPA is also charged with analyzing racial and identity profiling policies and reviewing evidence-based research on intentional and implicit biases relative to police enforcement stops, searches, and seizure tactics. Cal. Penal Code §13519.4(j)(3).

RIPA is also required to issue an annual public report on stop data. The first annual report shall be issued no later than January 1, 2018. The report must include a comprehensive analysis of stop data, detailed findings on past and current initiatives for eliminating racial and identity profiling, and specific policy recommendations.⁵ Each report must include disaggregated statistical data for each reporting law enforcement agency. The report shall include, at minimum, each reporting law enforcement agency's total results for each data collection criteria under subdivision (b) of Section 12525.5 of the Government Code for each calendar year. The reports must be retained and made available to the public by posting those reports on the Department of Justice's Internet Web site. RIPA must also hold at least three public meetings annually to discuss racial and identity profiling and potential reforms. Each year, one meeting shall be held in northern California, one in central California, and one in southern California. The public meetings must be noticed at least 60 days in advance. Cal. Gov. Code §12525.5 (j).

IV. Summary of City's New Duties Under the Act

As we discuss above, the Act imposes a number of new or revised duties on the City. We provide a bullet list that summarizes the City's new duties:

- collect and record additional information on racial and identity characteristics of the persons stopped by a police officer, including the perceived race, ethnicity, gender, age and disability;
- establish additional minimum stop data collection requirements that include reporting of the time, date, and location of the stop, the reason and result of the stop, whether a warning was issued; whether property was seized; and whether an arrest was made and the charges;
- record the specific actions taken by a police officer during a stop, including whether the stop involved a consensual search of a person or property, the basis for the search and whether contraband or other evidence was discovered; and whether the property was seized;
- provide an annual report to the Attorney General regarding the data collected on all the required stops the previous year;

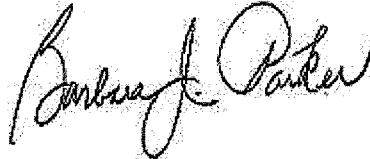
⁵ Previous law required that the state's Legislative Analyst study and analyze stop data to the extent that law enforcement agencies had a data collection program and voluntarily agreed to provide the data to the state for analysis.

- change academy and continuing training for police officers to include practical information and examples of race and identity profiling practices.

V. Conclusion

This report provides an overview of the major provisions of the new Racial and Identity Profiling Act of 2015. We defer to the City Administrator's Office and the Oakland Police Department to provide information regarding city compliance with state mandates, implementation of state regulations, and the costs and fiscal impacts attendant to compliance. Our Office will work closely with the City Administration to provide advice and counsel regarding the Act's requirements.

Respectfully submitted,



BARBARA J. PARKER
City Attorney

Assigned Attorney:

Rocio Fierro, Supervising Deputy City Attorney

Attachments

cc: Sabrina Landreth, City Administrator
Police Chief Sean Whent

1836383

West's Annotated California Codes
Government Code (Refs & Annos)
Title 2. Government of the State of California
Division 3. Executive Department (Refs & Annos)
Part 2. Constitutional Officers (Refs & Annos)
Chapter 6. Attorney General (Refs & Annos)
Article 2. General Powers and Duties (Refs & Annos)

West's Ann. Cal. Gov. Code § 12525.5

§ 12525.5. Reports on stops conducted by peace officers; included information; regulations; public inspection

Effective: January 1, 2016

Currentness

(a)(1) Each state and local agency that employs peace officers shall annually report to the Attorney General data on all stops conducted by that agency's peace officers for the preceding calendar year.

(2) 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.

(b) The reporting shall include, at a minimum, the following information for each stop:

(1) The time, date, and location of the stop.

(2) The reason for the stop.

(3) The result of the stop, such as, no action, warning, citation, property seizure, or arrest.

(4) If a warning or citation was issued, the warning provided or violation cited.

ATTACHMENT 1

- (5) If an arrest was made, the offense charged.
- (6) The perceived race or ethnicity, gender, and approximate age of the person stopped, provided that the identification of these characteristics shall be based on the observation and perception of the peace officer making the stop, and the information shall not be requested from the person stopped. For motor vehicle stops, this paragraph only applies to the driver, unless any actions specified under paragraph (7) apply in relation to a passenger, in which case the characteristics specified in this paragraph shall also be reported for him or her.
- (7) Actions taken by the peace officer during the stop, 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.
- (c) If more than one peace officer performs a stop, only one officer is required to collect and report to his or her agency the information specified under subdivision (b).
- (d) State and local law enforcement agencies 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 reported 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 the release is permissible under state law.
- (e) Not later than January 1, 2017, the Attorney General, in consultation with stakeholders, including the Racial and Identity Profiling Advisory Board (RIPA) established pursuant to paragraph (1) of subdivision (j) of Section 13519.4 of the Penal Code, federal, state, and local law enforcement agencies and community, professional, academic, research, and civil and human rights organizations, shall issue regulations for the collection and reporting of data required under subdivision (b). 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. To the best extent possible, such regulations should be compatible with any similar federal data collection or reporting program.
- (f) All data and reports made pursuant to this section are public records within the meaning of subdivision (e) of Section 6252, and are open to public inspection pursuant to Sections 6253 and 6258.

(g)(1) For purposes of this section, “peace officer,” as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, is limited to members of the California Highway Patrol, a city or county law enforcement agency, and California state or university educational institutions. “Peace officer,” as used in this section, does not include probation officers and officers in a custodial setting.

(2) For purposes of this section, “stop” means 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.

Credits

(Added by Stats.2015, c. 466 (A.B.953), § 2, eff. Jan. 1, 2016.)

West’s Ann. Cal. Gov. Code § 12525.5, CA GOVT § 12525.5
Current with all 2015 Reg.Sess. laws, and Ch. 1 of 2015-2016 2nd Ex.Sess.

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West's Annotated California Codes
Penal Code (Refs & Annos)
Part 4. Prevention of Crimes and Apprehension of Criminals (Refs & Annos)
Title 4. Standards and Training of Local Law Enforcement Officers (Refs & Annos)
Chapter 1. Commission on Peace Officer Standards and Training (Refs & Annos)
Article 2. Field Services and Standards for Recruitment and Training (Refs & Annos)

West's Ann.Cal.Penal Code § 13519.4

§ 13519.4. Racial, identity, and cultural diversity training; racial or identity profiling

Effective: January 1, 2016

Currentness

(a) The commission shall develop and disseminate guidelines and training for all peace officers in California as described in subdivision (a) of Section 13510 and who adhere to the standards approved by the commission, on the racial and cultural differences among the residents of this state. The course or courses of instruction and the guidelines shall stress understanding and respect for racial, identity, and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a diverse racial, identity, and cultural environment.

(b) The course of basic training for peace officers shall include adequate instruction on racial, identity, and cultural diversity in order to foster mutual respect and cooperation between law enforcement and members of all racial, identity, and cultural groups. In developing the training, the commission shall consult with appropriate groups and individuals having an interest and expertise in the field of racial, identity, and cultural awareness and diversity.

(c) For the purposes of this section the following shall apply:

(1) "Disability," "gender," "nationality," "religion," and "sexual orientation" have the same meaning as in Section 422.55.

(2) "Culturally diverse" and "cultural diversity" include, but are not limited to, disability, gender, nationality, religion, and sexual orientation issues.

(3) "Racial" has the same meaning as "race or ethnicity" in Section 422.55.

ATTACHMENT 2

(4) “Stop” has the same meaning as in paragraph (2) of subdivision (g) of Section 12525.5 of the Government Code.

(d) The Legislature finds and declares as follows:

(1) The working men and women in California law enforcement risk their lives every day. The people of California greatly appreciate the hard work and dedication of peace officers in protecting public safety. The good name of these officers should not be tarnished by the actions of those few who commit discriminatory practices.

(2) Racial or identity profiling is a practice that presents a great danger to the fundamental principles of our Constitution and a democratic society. It is abhorrent and cannot be tolerated.

(3) Racial or identity profiling alienates people from law enforcement, hinders community policing efforts, and causes law enforcement to lose credibility and trust among the people whom law enforcement is sworn to protect and serve.

(4) Pedestrians, users of public transportation, and vehicular occupants who have been stopped, searched, interrogated, and subjected to a property seizure by a peace officer for no reason other than the color of their skin, national origin, religion, gender identity or expression, housing status, sexual orientation, or mental or physical disability are the victims of discriminatory practices.

(5) It is the intent of the Legislature in enacting the changes to this section made by the act that added this paragraph that additional training is required to address the pernicious practice of racial or identity profiling and that enactment of this section is in no way dispositive of the issue of how the state should deal with racial or identity profiling.

(e) “Racial or identity profiling,” for purposes of this section, is the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender 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 a 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.

(f) A peace officer shall not engage in racial or identity profiling.

(g) Every peace officer in this state shall participate in expanded training as prescribed and certified by the Commission on Peace Officers Standards and Training.

(h) The curriculum shall be evidence-based and shall include and examine evidence-based patterns, practices, and protocols that make up racial or identity profiling, including implicit bias. This training shall prescribe evidenced-based patterns, practices, and protocols that prevent racial or identity profiling. In developing the training, the commission shall consult with the Racial and Identity Profiling Advisory Board established pursuant to subdivision (j). The course of instruction shall include, but not be limited to, significant consideration of each of the following subjects:

(1) Identification of key indices and perspectives that make up racial, identity, and cultural differences among residents in a local community.

(2) Negative impact of intentional and implicit biases, prejudices, and stereotyping on effective law enforcement, including examination of how historical perceptions of discriminatory enforcement practices have harmed police-community relations and contributed to injury, death, disparities in arrest detention and incarceration rights, and wrongful convictions.

(3) The history and role of the civil and human rights movement and struggles and their impact on law enforcement.

(4) Specific obligations of peace officers in preventing, reporting, and responding to discriminatory or biased practices by fellow peace officers.

(5) Perspectives of diverse, local constituency groups and experts on particular racial, identity, and cultural and police-community relations issues in a local area.

(6) The prohibition against racial or identity profiling in subdivision (f).

(i) Once the initial basic training is completed, each peace officer in California as described in subdivision (a) of Section 13510 who adheres to the standards approved by the commission shall be required to complete a refresher course every five years thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing racial, identity, and cultural trends.

(j)(1) Beginning July 1, 2016, the Attorney General shall establish the Racial and Identity Profiling Advisory Board (RIPA) for the purpose of eliminating racial and identity profiling, and improving diversity and racial and identity sensitivity in law enforcement.

(2) RIPA shall include the following members:

(A) The Attorney General, or his or her designee.

(B) The President of the California Public Defenders Association, or his or her designee.

(C) The President of the California Police Chiefs Association, or his or her designee.

(D) The President of California State Sheriffs' Association, or his or her designee.

(E) The President of the Peace Officers Research Association of California, or his or her designee.

(F) The Commissioner of the California Highway Patrol, or his or her designee.

(G) A university professor who specializes in policing, and racial and identity equity.

(H) Two representatives of human or civil rights tax-exempt organizations who specialize in civil or human rights.

(I) Two representatives of community organizations who specialize in civil or human rights and criminal justice, and work with victims of racial and identity profiling. At least one representative shall be between 16 and 24 years of age.

(J) Two religious clergy members who specialize in addressing and reducing racial and identity bias toward individuals and groups.

(K) Up to two other members that the Governor may prescribe.

(L) Up to two other members that the President Pro Tempore of the Senate may prescribe.

(M) Up to two other members that the Speaker of the Assembly may prescribe.

(3) Each year, on an annual basis, RIPA shall do the following:

(A) Analyze the data reported pursuant to Section 12525.5 of the Government Code and Section 13012 of the Penal Code.

(B) Analyze law enforcement training under this section.

(C) Work in partnership with state and local law enforcement agencies to review and analyze racial and identity profiling policies and practices across geographic areas in California.

(D) Conduct, and consult available, evidence-based research on intentional and implicit biases, and law enforcement stop, search, and seizure tactics.

(E) Issue a report that provides RIPA's analysis under subparagraphs (A) to (D), inclusive, detailed findings on the past and current status of racial and identity profiling, and makes policy recommendations for eliminating racial and identity profiling. RIPA shall post the report on its Internet Web site. Each report shall include disaggregated statistical data for each reporting law enforcement agency. The report shall include, at minimum, each reporting law enforcement agency's total results for each data collection criteria under subdivision (b) of Section 12525.5 of the Government Code for each calendar year. The reports shall be retained and made available to the public by posting those reports on the Department of Justice's Internet Web site. The first annual report shall be issued no later than January 1, 2018. The reports are public records within the meaning of subdivision (d) of Section 6252 of the Government Code and are open to public inspection pursuant to Sections 6253, 6256, 6257, and 6258 of the Government Code.

(F) 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.

(4) Pursuant to subdivision (e) of Section 12525.5 of the Government Code, RIPA shall advise the Attorney General in developing regulations for the collection and reporting of stop data, and ensuring uniform reporting practices across all reporting agencies.

(5) Members of RIPA shall not receive compensation, nor per diem expenses, for their services as members of RIPA.

(6) No action of RIPA shall be valid unless agreed to by a majority of its members.

(7) The initial terms of RIPA members shall be four years.

(8) Each year, RIPA shall elect two of its members as cochairpersons.

Credits

(Added by Stats.1990, c. 480 (S.B.2680), § 1. Amended by Stats.1992, c. 1267 (A.B.401), § 2; Stats.2000, c. 684 (S.B.1102), § 1; Stats.2001, c. 854 (S.B.205), § 63; Stats.2004, c. 700 (S.B.1234), § 28; Stats.2015, c. 466 (A.B.953), § 4, eff. Jan. 1, 2016.)

West's Ann. Cal. Penal Code § 13519.4, CA PENAL § 13519.4
Current with all 2015 Reg.Sess. laws, and Ch. 1 of 2015-2016 2nd Ex.Sess.

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Part 4. Prevention of Crimes and Apprehension of Criminals (Refs & Annos)
Title 3. Criminal Statistics (Refs & Annos)
Chapter 1. Department of Justice (Refs & Annos)
Article 1. Duties of the Department (Refs & Annos)

West's Ann.Cal.Penal Code § 13012

§ 13012. Contents of annual report

Effective: January 1, 2016

Currentness

(a) The annual report of the department provided for in Section 13010 shall contain statistics showing all of the following:

- (1) The amount and the types of offenses known to the public authorities.
- (2) The personal and social characteristics of criminals and delinquents.
- (3) 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.
- (4) The administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies, including those in the juvenile justice system, in dealing with minors who are the subject of a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court.
- (5)(A) The total number of each of the following:
 - (i) Citizen complaints received by law enforcement agencies under Section 832.5.
 - (ii) Citizen complaints alleging criminal conduct of either a felony or misdemeanor.

ATTACHMENT 3

(iii) Citizen complaints alleging racial or identity profiling, as defined in subdivision (e) of Section 13519.4. These statistics 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.

(B) The statistics reported under this paragraph shall provide, for each category of complaint identified under subparagraph (A), the number of complaints within each of the following disposition categories:

(i) "Sustained," which means that the investigation disclosed sufficient evidence to prove the truth of allegation in the complaint by preponderance of evidence.

(ii) "Exonerated," which means that the investigation clearly established that the actions of the personnel that formed the basis of the complaint are not a violation of law or agency policy.

(iii) "Not sustained," which means that the investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation in the complaint.

(iv) "Unfounded," which means that the investigation clearly established that the allegation is not true.

(C) The reports under subparagraphs (A) and (B) shall be made available to the public and disaggregated for each individual law enforcement agency.

(b) It shall be the duty of the department to give adequate interpretation of the statistics and so to present the information that it may be of value in guiding the policies of the Legislature and of those in charge of the apprehension, prosecution, and treatment of the criminals and delinquents, or concerned with the prevention of crime and delinquency. The report shall also include statistics which are comparable with national uniform criminal statistics published by federal bureaus or departments heretofore mentioned.

(c) Each year, on an annual basis, the Racial and Identity Profiling Board (RIPA), established pursuant to paragraph (1) of subdivision (j) of Section 13519.4, shall analyze the statistics reported pursuant to subparagraphs (A) and (B) of paragraph (5) of subdivision (a) of this section. RIPA's analysis of the complaints shall be incorporated into its annual report as required by paragraph (3) of subdivision (j) of Section 13519.4. The reports shall not disclose the identity of peace officers.

Credits

§ 13012. Contents of annual report, CA PENAL § 13012

(Added Stats.1955, c. 1128, p. 2122, § 1. Amended by Stats.1972, c. 1377, p. 2855, § 119.4; Stats.1980, c. 1340, § 26, eff. Sept. 30, 1980; Stats.1995, c. 803 (A.B.488), § 3, eff. Oct. 13, 1995; Stats.2001, c. 468 (S.B.314), § 2, eff. Oct. 4, 2001; Stats.2015, c. 466 (A.B.953), § 3, eff. Jan. 1, 2016.)

Notes of Decisions (1)

West's Ann. Cal. Penal Code § 13012, CA PENAL § 13012
Current with all 2015 Reg.Sess. laws, and Ch. 1 of 2015-2016 2nd Ex.Sess.

End of Document

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DEPARTMENTAL
GENERAL
ORDER

New Order
Effective Date
15 Nov 04

M-19

Index as:

Bias-Based Policing
Prohibitions Regarding Racial Profiling
and Other Bias-Based Policing
Racial Profiling

**PROHIBITIONS REGARDING RACIAL PROFILING AND
OTHER BIAS-BASED POLICING**

I. PURPOSE

- A. The purpose of this policy is to reaffirm the Oakland Police Department's commitment to providing service and enforcing laws in a fair and equitable manner, and to establish a relationship with the community based on trust and respect. Whenever our practices are, or are perceived to be, biased, unfair, or disrespectful, we lose public trust and support and diminish our effectiveness.
- B. The Department recognizes that there has been a growing national perception that law enforcement action is too often based on racial stereotypes ("racial profiling") or other bias-based policing – whether it is against African Americans, Latinos, Asians, Middle Easterners, South Asians, or any other race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability. In Oakland, there is concern within our communities that some members may engage in this behavior. Whether individual members agree or not, we, as an organization, must recognize that this concern exists and be responsive to it.
- C. California Penal Code Section 13519.4(e) prohibits racial profiling by law enforcement officers. This Department policy explicitly prohibits racial profiling and other bias-based policing. It also states the limited circumstances in which members can consider race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability in making law enforcement decisions and actions.

II. DEFINITION OF RACIAL PROFILING

The use of race, ethnicity, or national origin in determining reasonable suspicion, probable cause or the focus or scope of any police action that directly or indirectly imposes on the freedoms or free movement of any person, unless the use of race, ethnicity, or national origin is used as part of a specific suspect description.

III. POLICY

- A. Investigative detentions, traffic stops, arrests, searches and property seizures by officers shall be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution.
- B. Members shall articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative detentions, pedestrian, bicycle, or vehicle stops, arrests, non-consensual searches and property seizures.
- C. Members shall not consider actual or perceived race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability in establishing either reasonable suspicion or probable cause or when carrying out law enforcement activities EXCEPT when credible and reliable information links specific suspect descriptions to specific unlawful or suspicious activity.

Members seeking one or more specific persons who have been identified or described in part by any of the above listed characteristics may rely on these characteristics in part and only in combination with other appropriate factors.

IV. CONSENT SEARCHES

- A. A consent search refers to searches conducted not based on probable cause, incident to arrest or pursuant to a search warrant, but based on permission granted from the person being searched.
- B. Consent searches are permissible law enforcement tools; however, their use shall not be:

1. Arbitrary. In other words, the request to conduct a consent search must be reasonable and members should be able to articulate the suspicion that formed the basis for the request.
 2. Based on actual or perceived race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability.
- C. Members shall complete a Field Contact Report (836-314) for each consent search conducted articulating the reason for the search.
- D. Pursuant to Report Writing Manual Insert R-2, members shall complete a Stop-Data Collection Form (Scantron) for each consent search conducted.
- E. Members shall advise individuals of their right to refuse a consent search.

V. CONDUCTING STOPS

In conducting pedestrian, bicycle, or vehicle stops, members shall:

- A. be courteous, respectful, polite and professional.
- B. explain the reason for the stop while asking for identification, unless impractical.
- C. identify yourself.
- D. ensure the length of the detention is no longer than necessary to take appropriate action for the known or suspected offense, and explain the reason for any delays.
- E. answer questions the person may have regarding the stop and explain the disposition of the stop.
- F. apologize for the inconvenience when appropriate.
- G. if asked, provide the procedures for filing a complaint about police services or conduct outlined in DGO M-3 COMPLAINTS AGAINST DEPARTMENTAL PERSONNEL OR PROCEDURES.

VI. EXAMPLES OF RACIAL PROFILING

A. Examples of racial profiling include but are not limited to the following:

1. Example #1

While on patrol an officer observes a black male driving a new, expensive Mercedes Benz in a low-income neighborhood. The vehicle is not listed on the "hot sheet" nor is it entered in the Stolen Vehicle System (SVS). The officer decides to stop the vehicle to further investigate because he feels the car may be stolen because it appears too expensive for the driver and the neighborhood.

Detaining the driver of a vehicle based on the determination that a person of that race, ethnicity or national origin is unlikely to own or possess a specific model of vehicle is prohibited.

In this particular example, the officer had neither reasonable suspicion nor probable cause to detain the vehicle. Absent additional information or observations that would lead a "reasonable" officer to believe the vehicle was stolen, such as a smashed window or signs that the vehicle was hot-wired, the officer's stop constitutes racial profiling.

2. Example #2

An officer is assigned to a predominately "white" residential neighborhood. While on patrol, the officer observes a Hispanic male driving a truck late at night. The officer knows most of the residents in the area and does not recognize the Hispanic driver. Recently there have been burglaries in that area. Based on the fact that there have been burglaries in the area, and the driver is Hispanic and the residents in the area are white, the officer stops the vehicle to further investigate.

Detaining the driver of a vehicle based on the determination a person of that race, ethnicity or national origin does not belong in a particular part of town constitutes racial profiling and is prohibited.

In this particular example, the officer's knowledge of the residents and the driver's race, even though the race differs from most of the residents in that area, does not provide reasonable suspicion. The

fact that there have been burglaries in the area may raise an officer's suspicion to vehicles driving late at night; however, even when this information is considered with the other factors discussed, it is an insufficient basis for a detention.

VII. STOP-DATA COLLECTION

Pursuant to Department Report Writing Manual Insert R-2, members shall:

- A. complete a Stop-Data Collection Form for every vehicle, walking, and bicycle stop conducted during their shift. Members shall also complete a Stop-Data Collection Form for every consent search conducted.
- B. print his/her name and serial number at the bottom of every Stop-Data Collection Form completed.
- C. submit completed Stop-Data Collection forms to their assigned supervisor or, in the absence of the assigned supervisor, an available field sergeant or Watch Commander for review and approval.
- D. deposit all completed (and approved) forms in the report writing receptacle at the end of their shift.

VIII. MEMBER RESPONSIBILITIES

Members shall:

- A. not engage in, ignore, or condone racial profiling or other bias-based policing.
- B. be responsible for knowing and complying with this policy.
- C. report incidents of racial profiling as defined in this policy.
- D. be subject to disciplinary action if deemed not in compliance with this order.

IX. COMPLAINTS

Complaints of racial profiling and other bias-based policing against members shall be:

- A. considered complaints of discrimination (Class 1 violation as defined in DGO M-3) and, as such, immediately forwarded to the Internal Affairs Department.
- B. immediately referred to the member's supervisor, or if the officer's supervisor is not available, to the Watch Commander.

X. TRAINING

- A. Pursuant to California Penal Code Section 13519.4, each member shall:
 - 1. attend POST racial profiling training; and
 - 2. complete an approved refresher course every five (5) years, or sooner if deemed necessary, in order to keep current with changing racial and cultural trends.
- B. The Racial Profiling Program Manager shall ensure line-up training on racial profiling and this policy is provided to sworn personnel at least once annually. This training may also be provided to non-sworn personnel.

XI. SUPERVISORY RESPONSIBILITIES

Supervisors shall:

- A. not engage in, ignore, or condone racial profiling or other bias-based policing.
- B. be responsible for knowing and complying with this policy.
- C. ensure that subordinates under their command know and understand the content and application of this policy.
- D. periodically monitor subordinates under their supervision to ensure compliance with this policy.
- E. review all forms submitted by members to ensure the forms are completed in accordance with this order and Report Writing Manual Insert R-2.

- F. print his/her name and serial number in the appropriate boxes signifying the form has been reviewed and approved, and return the form to the appropriate member.
- G. conduct periodic audits to ensure compliance with this order.

Supervisors and commanders who fail to comply with this order shall be subject to disciplinary action.

If it is determined that members assigned to a supervisor and/or commander failed to comply with this order and the supervisor and/or commander knew of said violation, or should have reasonably known, the supervisors and/or commander shall be subject to disciplinary action.

XII. BUREAU OF FIELD OPERATIONS

The Bureau of Field Operations (BFO) is responsible for data collection processing. Accordingly, BFO shall:

- A. ensure Stop-Data Collection Forms are available in the Patrol Line-up Room.
- B. enter the Stop-Data Collection Forms into the SCANTRON system within five working days of receipt.
- C. retain completed and scanned forms for period of not less than three years unless otherwise instructed by the Chief of Police.
- D. conduct periodic audits to ensure members comply with the provisions of this order and RWM Insert R-2.

XIII. OFFICE OF INSPECTOR GENERAL (OIG)

Pursuant to the provisions of DGO N-12, Departmental Audits and Inspections, the OIG shall conduct annual reviews and audits of the Department's data collection efforts to ensure compliance with the Settlement Agreement. The OIG shall report all findings to the Chief of Police and the Program Manager.

XIV. RACIAL PROFILING PROGRAM MANAGER

- A. The Racial Profiling Program Manager is responsible for the following:
1. Racial profiling grant management;
 2. Coordination of stop-data collection and analysis;
 3. Completion of all reports pertaining to racial profiling; and
 4. Coordination with the OIG to ensure compliance with the Settlement Agreement.
- B. The Racial Profiling Program Manager shall:
1. produce a written report to the Chief of Police at least twice per year that includes an analysis of the data collected, and appropriate policy recommendations.
 2. periodically meet with the Oakland Racial Profiling Task Force, which is comprised of representatives of the following organizations:
 - a. Oakland Police Officers' Association (OPOA);
 - b. Citizens' Police Review Board (CPRB);
 - c. American Civil Liberties Union (ACLU);
 - d. National Association for the Advancement of Colored People (NAACP); and
 - e. People United for a Better Oakland (PUEBLO).

By order of

Richard L. Word
Chief of Police

Date Signed: 26 Oct 04