SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No:	AB 459	**Hearing Date:**	June 25, 2024
Author:	Kalra		
Version:	June 10, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	AB		

Subject: ***Peace officers: Attorney General: reports***

HISTORY

Source: Department of Justice

Prior Legislation: SB 50 (Bradford, 2023), currently on Assembly Inactive File
SB 1389 (Bradford, 2022), died on Senate Inactive File
AB 2773 (Holden, 2022), Ch. 805, Stats. of 2022
AB 953 (Weber, 2015) Ch. 466, Stats. of 2015
AB 2133 (Torrico, 2006), not heard in Assembly Public Safety
SB 1389 (Murray, 2000), held in Senate Appropriations

Support: Unknown

Opposition: California State Sheriffs' Association

Assembly Floor Vote: N/A

PURPOSE

The purpose of this bill is to modify the timeline that law enforcement agencies must adhere to when reporting stop data to the DOJ and to specify that data reported in an open text or narrative field is only available from the reporting agency and not from DOJ, except as specified.

Existing law provides that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized. (U.S. Const., amend. IV.; Cal. Const., art I, § 13.)

Existing law provides that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. (Cal. Const., art I, § 3, subd. (b)(1).)

Existing law provides that a statute, court rule, or other authority adopted after the effective date of the above provision that limits the right of access shall be adopted with findings

demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. Const., art I, § 3, subd. (b)(2).)

Existing law finds and declares that 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 (Penal Code §13519.4(d)(4).)

Existing law creates the Racial and Identity Profiling Advisory Board (RIPA), which, among other duties, is required to conduct and consult available, evidence-based research on intentional and implicit biases, and law enforcement stop, search, and seizure tactics. (Penal Code §13519.4(j)(3)(D).)

Existing law prohibits a peace officer from engaging in racial or identity profiling, as defined. (Penal Code §13519.4(e),(f).)

Existing law defines "personal identifying information" as any name, address, telephone number, health insurance number, taxpayer identification number, school identification number, state or federal driver's license, or identification number, social security number, place of employment, employee identification number, professional or occupational number, mother's maiden name, demand deposit account number, savings account number, checking account number, PIN (personal identification number) or password, United States Citizenship and Immigration Services-assigned number, government passport number, date of birth, unique biometric data including fingerprint, facial scan identifiers, voiceprint, retina or iris image, or other unique physical representation, unique electronic data including information identification number assigned to the person, address or routing code, telecommunication identifying information or access device, information contained in a birth or death certificate, or credit card number of an individual person, or an equivalent form of identification. (Pen. Code, §530.55, subd. (b).)

Existing law requires each state and local agency that employs peace officers to annually report to the Attorney General data on all stops conducted by that agency's peace officers for the preceding calendar year. (Govt. Code §12525.5, subd. (a)(1).)

Existing law sets forth a timeline for the reporting of stop data by law enforcement agencies to the Attorney General, with larger agencies required to begin reporting by 2018, and progressively smaller agencies required to begin reporting on an annual basis until the smallest agencies are required to report by 2022. (Govt. Code §12525.5, subd. (a)(2).)

Existing law requires reports on stops submitted to the Attorney General to include, at a minimum, the following information:

- The time, date, and location of the stop.
- The reason for the stop.
- The reason given to the person at the time of the stop.
- The result of the stop, such as: no action, warning, citation, arrest, etc.

- If a warning or citation was issued, the warning provided or the violation cited.
- If an arrest was made, the offense charged.
- The perceived race or ethnicity, gender, and approximate age of the person stopped. For motor vehicle stops, this paragraph only applies to the driver unless the officer took actions with regard to the passenger.
- Actions taken by the peace officer, as specified. (Govt. Code §12525.5(b)(1)-(8).)

Existing law provides that if more than one peace officer performs a stop, only one officer is required to collect and report to the officer's agency the information specified above. (Govt. Code §12525.5, subd. (c).)

Existing law provides that law enforcement agencies shall not report personal identifying information of the individuals stopped, searched, or subjected to a property seizure, and that all other information in the reports, except for unique identifying information of the officer involved, shall be available to the public. (Govt. Code §12525.5, subd. (d).)

Existing law provides that law enforcement agencies are solely responsible for ensuring 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 Attorney General in an open text field. (Govt. Code §12525.5, subd. (d).)

Existing law specifies that all data and reports made pursuant to the above provisions are public records and are open to public inspection pursuant to the California Public Records Act. (Govt. Code §§12525.5(e), 7920.000 et. seq.)

Existing law defines "stop," for the purposes of reports sent by law enforcement agencies to the Attorney General, as '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.' (Government Code §12525.5(g)(2).)

This bill provides that in addition to reporting stop data under existing law, law enforcement agencies must preserve said data, and shall submit their final stop reports to the Attorney General by March 1 for the preceding calendar year.

This bill strikes the provision of existing law enacting the staggered reporting timeline.

This bill provides that if reporting issues or unresolved errors are identified in an agency's submission to the Attorney General, the agency shall submit semiannually for the following calendar year. The Attorney General shall provide notice to the agency by October 1, with the semiannual requirement taking effect as of January 1.

This bill provides that semiannual agency reports required per the above shall be submitted by September 1 and March 1 of each year. The final reports on all stops conducted from January 1

to June 30 shall be submitted by September 1, and the final reports on all stops conducted from July 1 to December 31 shall be submitted by March 1.

This bill specifies that law enforcement agencies are solely responsible for ensuring that personally identifiable information of the individual stopped or any other info exempt from disclosure is not transmitted to the Attorney General in a narrative field.

This bill specifies that any data reported in an open text or narrative field shall only be made available by the reporting agency and not from the Attorney General.

This bill provides that despite the provision immediately above, the Attorney General shall provide all data reported, including open text or narrative fields, to public or private entities for educational, advocacy, or research purposes relating to studying racial and identity profiling by law enforcement., and shall issue regulations governing how the data is provided pursuant to this provision.

This bill states that the Department of Justice shall not be liable for the disclosure by another entity of personally identifiable information of the individual stopped, unique identifying information of the peace officer, or any other information exempt from disclosure.

This bill sets forth several legislative findings and declarations, including a finding demonstrating the interest protected by the limitations on public access to the writings of public agencies in the bill and the need for protecting that interest.

COMMENTS

1. Need for This Bill

According to the Author:

> In 2015, the Legislature passed AB 953 (Weber, Chapter 466), which established the Racial and Identity Profiling Advisory (RIPA) Board to eliminate racial and identity profiling by law enforcement. Under existing law, reporting agencies such as local law enforcement and the CHP, are required to annually report data on stops conducted to the DOJ.
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> Unfortunately, these data sets frequently contain errors, incomplete submissions, or personally identifiable information of individuals stopped or the law enforcement officers making the stops. This often leads to the DOJ being unable to remedy those errors in time for transmittal to the RIPA Board for their annual report or rejecting data access requests due to privacy and liability concerns.
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> AB 459 would ensure more timely and comprehensive data verification through a performance-based mechanism and improve the availability of RIPA data. Specifically, this bill updates reporting deadlines and makes clarifying changes regarding access to RIPA data open text fields reported by law enforcement.

2. The Public's Right to Law Enforcement Records Generally

In 1968, the Legislature passed the California Public Records Act (CPRA), declaring that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in the state."[1] The purpose of the CPRA is to prevent secrecy in government and to contribute significantly to the public understanding of government activities.[2] Under the law, virtually all public records are open to public inspection unless express exempted in statute. However, even if a record is not expressly exempted, an agency may refuse to disclose records if on balance, the interest of nondisclosure outweighs disclosure. Generally, "records should be withheld from disclosure only where the public interest served by not making a record public outweighs the public interest served by the general policy of disclosure."[3]

In the context of law enforcement agencies, the CPRA expressly and generally "does not require the disclosure of records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of" the DOJ, any state or local law enforcement agency, and other specified agencies.[4] Notwithstanding that general rule, the CPRA requires the disclosure of specified personal identifying information and investigatory records related to 1) any misdemeanor or felony incident, 2) any arrest made by the agency, and 3) any request for service made to the agency and the response to that request.[5]

Records related to peace officers enjoy greater protection under CPRA and in many cases are altogether exempt from disclosure; specific exemptions to the general policy requiring disclosure in the context of peace officer records include 1) records of complaints to, or investigations conducted by any state or local police agency, 2) personnel records, if disclosure would constitute an unwarranted invasion of personal privacy, and 3) records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including records deemed confidential under state law.[6] Recent legislation has vastly expanded the public's access to previously confidential peace officer personal records, particularly those that fall into specified categories.[7] However, this legislation also required agencies to redact specified personal information, the release of which ""would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct," and information that, if unredacted, would pose a significant danger to the physical safety of the peace officer or another person.[8]

3. Racial and Identity Profiling Act (RIPA) Data and Reporting

In 2015, the Legislature passed AB 953 (Weber, Ch. 466, Stats. of 2015), also known as the Racial and Identity Profiling Act (RIPA) of 2015, which expressly prohibited racial and identity profiling by law enforcement and required law enforcement agencies to annually report vehicle and pedestrian stop data to the DOJ. Under AB 953, agencies were required to begin reporting on

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[1] California Government Code §7921.000
[2] *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1016-1017.
[3] Gov. Code, § 7922.000
[4] Gov. Code § 7923.600
[5] Gov. Code §§7923.605, 7923.610; 7923.615
[6] Gov. Code, §§ 7923.600; 7927.700, 7927.705
[7] SB 1421 (Skinner, Ch. 988, Stats. of 2018) and SB 16 (Skinner, Ch. 402, Stats of 2021); the specific categories are less relevant to this bill and therefore not described here, but can be found at Penal Code § 832.7, subd. (b).
[8] Penal Code §832.7(b)(6).

a staggered timeline, with the largest agencies required to submit their first reports to DOJ by April 1, 2019, and the smallest agencies submitting by April 1, 2023. For the latest RIPA report, published January 1, 2024 and marking the fifth year of RIPA stop data reporting, all 560 law enforcement agencies in California were required to report data. A total of 535 law enforcement agencies in California collected data on 4,575,725 pedestrian and vehicle stops conducted from January 1 to December 31, 2022, and the remaining 25 law enforcement agencies reported zero stops for the 2022 reporting year.[9] Existing law defines "stop" as "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."[10]

Under existing law, agencies are required to report, at a minimum, the following information for each pedestrian, traffic, or any other type of stop:

- The time, date, and location of the stop.
- The reason for the stop.
- The reason given to the person stopped at the time of 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 during the stop, as specified.

Generally, all of the data collected and reported by law enforcement agencies to DOJ per the above are deemed to be public records for the purpose of the CPRA and must be made available to the public. However, as explained further below, existing law proscribes the reporting of personal identifying information pertaining to both the individuals stopped and the officers involved.[11]

4. Effect of This Bill

This bill contains two major operative components. The first relates to the timeline that law enforcement agencies must adhere to when reporting data to the DOJ. Existing law, which has not been amended since the first reports began, requires each state and local agency that employs peace officers to "annually report to the Attorney General data on all stops conducted by that

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[9] "Racial and Identity Profiling Advisory Board Annual Report 2024." *Department of Justice*. 1 January 2024, at p. 29. 2024 - RIPA Board - Annual Report - AB 953 - Racial and Identity and Profiling Advisory Board (ca.gov)
[10] Govt. Code §12525.5, subd. (g)(2)
[11] Govt. Code §12525.5, subds. (d), (f).

agency's peace officers for the preceding calendar year." According to the Author, that timeline has proved problematic:

> Following the completion of the 2023 Racial and Identity Profiling Advisory (RIPA) date reporting period on April 1, 2024, 14% of RIPA reporting agencies submitted data with errors or incomplete submissions that could not be remedied in time before transmittal to the RIPA Board for their analysis and annual report. Furthermore, in the prior reporting year, an additional 19,186 new stops were submitted after the reporting deadline had passed. […] Currently, approximately 89 percent of reporting agencies (480 of 560) voluntarily submit to DOJ more frequently than annually, but without a consistent statewide standard, a number of the largest reporting agencies only submit annually, and close to the April 1st due date.

Accordingly, this bill establishes a new reporting timeline, requiring each agency's final stop reports to be submitted by March 1. However, if reporting issues or unresolved errors are identified in an agency's submission, that agency must submit semiannually for the following calendar year, with reports due by September 1 (covering data from Jan 1 to June 30) and March 1 (covering data from July 1 to December 31) of each year.

The second component of this bill relates to personal identifying information that is often improperly reported to DOJ despite existing requirements that law enforcement agencies ensure that that information is not transmitted to DOJ. Specifically, existing law provides that agencies shall not report any personal identifying information (PII) of persons stopped, and specifies that the badge number and other identifying information of peace officers involved in stops is not disclosable. Moreover, existing law expressly states that law enforcement agencies are solely responsible for ensuring that PII is not transmitted to the Attorney General in an "open text" field. According to the Author, despite these mandates, PII-related reporting problems persist:

> Reporting agencies continue to include PII in the open text data fields of the RIPA data set despite training, technical assistance, and partnership with the DOJ. This has led to data being unavailable to the public due to privacy and liability concerns, as well as limited resources for the DOJ to review and redact millions of reports that may contain PII.

This bill clarifies that the reporting agency's responsibility to prevent the transmittal of PII also extends to "narrative" fields filled out by agency personnel, which allow for more text input than "open text" fields. Additionally, the bill provides that any data reported in an open text or narrative field shall only be made available by the reporting agency and not from the Attorney General. By shifting this responsibility to agencies, the bill will likely redirect public records requests for this specific data from DOJ to the reporting agencies. Given this shift in reporting responsibility, the bill also disclaims DOJ liability for the disclosure of PII and non-disclosable info by another entity (i.e. a reporting agency).

Finally, the bill contains a provision requiring the DOJ to provide all data reported, including open text or narrative fields, to public or private entities for educational advocacy, or research purposes relating to studying racial and identity profiling by law enforcement. As discussed below, this provision resembles a prior bill that permitted the DOJ to share personal information and which was ultimately challenged on constitutional grounds.

5. Constitutional Considerations

In 2016, the Legislature created and funded the California Firearm Violence Research Center (hereinafter, "the Center") at the University of California, Davis with the goal of developing research to prevent gun violence and inform public policymaking regarding firearms.[12] In creating the Center, the Legislature also mandated that several state agencies, including the DOJ, provide the Center with data necessary for it to conduct its research. Shortly thereafter, the DOJ began restricting the Center's access to certain data citing privacy concerns, and in response, the Legislature passed Assembly Bill 173 (Committee on Budget, Ch. 253, Stats. of 2021), which reiterated the duty of the DOJ to provide the Center with requested data.

In 2022, a group of gun owners filed lawsuits in both state and federal court challenging AB 173 on several grounds, including that the law violates, or at least chills, their Second Amendment right to keep and bear arms and that it violates privacy and due process protections guaranteed to them by the Fourteenth Amendment. The San Diego Superior Court ruled in October 2022 that the state was prohibited from sharing the plaintiffs' personal information and granted the plaintiffs' request for a preliminary injunction. However, in November 2023, Fourth Appellate Circuit of the California Court of Appeal ruled that even if the plaintiffs met the threshold inquiries to establish a privacy claim, the trial court did not adequately balance the privacy concerns of the plaintiffs against the legitimate countervailing interest asserted by the Attorney General.[13] While the Second Amendment issue is inapposite, the privacy concerns at play in the case regarding AB 173 may be implicated by this bill as well, and despite the Attorney General's victory in the case described above, the Committee should be aware that such victory is no guarantee that this bill is entirely safe from constitutional challenge.

6. Argument in Support

According to the bill's sponsor, the Department of Justice:

> Following the recent completion of the 2023 RIPA data reporting period on April 1, 2024, 14% of reporting agencies submitted data with higher rates of errors or incomplete submissions that could not be remedied in time before transmittal to the RIPA Board for their analysis and annual report. In addition, reporting agencies continue to include PII in open text data fields of the RIPA data set, despite years of training, technical assistance, and partnership from DOJ, which has meant that DOJ cannot release that subset of data to the public without the risk of Californians' PII being disclosed.
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> AB 459 would update Government Code section 12525.5 to increase the statutory reporting frequency for RIPA reporting agencies from annually to twice a year, if a reporting agency fails to report on time or reports with unresolved errors. This bill would also move the annual submission deadline up a month, to March 1st, for all reporting agencies. Combined, both provisions would allow DOJ an opportunity to work with reporting agencies to rectify errors, and help with the preparations necessary for DOJ to support the RIPA Board's annual work. Additionally, there is precedent for increasing reporting frequencies after years of implementation, with AB 48 (Gonzalez, Statutes of 2021) shifting law enforcement agencies' duty to report use

[12] California Penal Code §14230 et. seq.
[13] *Barba v. Bonta* (2023), Super. Ct. No. 37-2022- 00003676-CU-CR-CTL, D081194.PDF (ca.gov)

of force data from annually to monthly, pursuant to AB 71 (Rodriguez, Statutes of 2015).

Last but not least, AB 459 would also address DOJ's liability concerns regarding PII disclosure in RIPA's open text data fields by clarifying that open text fields are still publicly available, but only from the reporting agency via a PRA request, who would then be responsible for redacting PII that they have included in any RIPA dataset. The bill would also establish a process similar to other existing disclosure processes (e.g., criminal history, CURES), where researchers can receive access to these open text data fields, as well as all RIPA data from DOJ, when data security can be assured. In the RIPA Board's 2024 report alone, more than 4.5 million stops by 535 California law enforcement agencies conducted in 2022 were analyzed. This bill will help ensure that the letter and intent of RIPA is fully realized, to strengthen the trust between communities and law enforcement that is necessary for public safety.

7. Argument in Opposition

According to the California State Sheriffs Association:

The bill fails to define the terms "reporting issues" and "unresolved errors" meaning that the criteria that would be used by the AG to determine that an agency must increase the frequency of its reporting is unclear. Further, it is possible that whatever issues the AG decides trigger AB 459's provisions would not necessarily be resolved by more frequent reporting in the subsequent year. Additionally, the bill removes responsibility to disclose information made public by statute from the AG's office and places it solely with the reporting agency. This provision, along with the bill's other requirements, will likely result in increased costs for, and demand more resources from, local law enforcement agencies.

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