
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1953 **Hearing Date:** June 14, 2016
Author: Weber
Version: February 12, 2016
Urgency: No **Fiscal:** No
Consultant: JRD

Subject: *Peace Officers: Civilian Complaints*

HISTORY

Source: American Civil Liberties Union of California

Prior Legislation: AB 953 (Weber) – Chapter 466, Statutes of 2015

Support: Unknown

Opposition: None known

Assembly Floor Vote: 75 - 0

PURPOSE

This bill makes technical changes throughout sections of the Penal, Vehicle and Government Codes replacing the term "citizen" with "civilian" to accurately reflect the term currently used by law enforcement agencies to track complaints on a local, state and federal level.

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

Existing law states 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 more than 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. (Government Code § 12525.5(a)(2).)

Existing law requires the report to include 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. The identification of these characteristics shall be based on the observation and perception of the peace officer making the stop. For auto stops, this requirement applies only to the driver unless actions taken by the officer apply in relation to a passenger, in which case his or her characteristics shall also be reported.
- Actions taken by the peace officer during the stop, including, but not limited to, the following:
 - Whether the peace officer asked for consent to search the person, and if so, whether consent was provided;
 - 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; and
 - Whether the peace officer seized any property and, if so, the type of property that was seized, and the basis for seizing the property.

(Government Code § 12525.5(b)(1)-(7).)

Existing law provides that if more than one peace officer performs a stop, only one officer is required to collect and report the necessary information. (Government Code § 12525.5(c).)

Existing law prohibits state and local law enforcement agencies from reporting the name, address, social security number, or other unique personal identifying information of persons stopped, searched, or subjected to a property seizure. States that, notwithstanding any other law, the data reported shall be made available to the public to the extent which release is permissible under state law, with the exception of badge number, or other unique identifying information of the officer involved. (Government Code § 12525.5(d).)

Existing law requires the AG, in consultation with specified stake holders, to issue regulations for the collection and reporting of the required data by January 1, 2017. Mandates that the regulations specify all data to be reported, and provide standards, definitions, and technical specifications to ensure uniform reporting practices. To the extent possible, the regulations should also be compatible with any similar federal data collection or reporting program. (Government Code § 12525.5(e).)

Existing law specifies that all data and reports made under these provisions are public records, as specified, and are open to public inspection. (Government Code § 12525.5(f).)

Existing law limits the definition of a “peace officer” for purposes of this section to “members of the California Highway Patrol, a city or county law enforcement agency, except probation officers and officers in a custodial setting, and California state or university educational institutions.” (Government Code § 12525.5(g)(1).)

Existing law defines “stop” for purposes of this section, 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)(1).)

Existing law revises the content of the Department of Justice (DOJ) annual report on criminal statistics to report the total number of each of the following citizen complaints:

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

(Penal Code § 13012(a)(5)(A).)

Existing law specifies that the statistics on citizen complaints must identify their dispositions as being sustained, exonerated, not sustained, unfounded, as specified. (Penal Code § 13012(a)(5)(B).)

Existing law defines “racial or identity profiling” as “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 and substance of law enforcement activities following a stop. 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.” (Penal Code § 13012(e).)

Existing law prohibits a peace officer from engaging in racial or identity profiling. (Penal Code § 13012(f).)

Existing law mandates the Attorney General establish the Racial and Identity Profiling Board (RIPA) beginning July 1, 2016, for the purpose of eliminating racial and identity profiling, and improving diversity and racial sensitivity in law enforcement. (Penal Code §13519.4(j)(1).)

Existing law provides that RIPA shall include the following members:

- The Attorney General, or a designee;
- The President of the California Public Defenders Association, or a designee;
- The President of the California Police Chiefs Association, or a designee;
- The President of the California State Sheriffs' Association, or a designee;
- The President of the Peace Officers Research Association of California, or a designee;
- The commissioner of the California Highway Patrol, or a designee;
- A university professor who specializes in policing, and racial and identity equity;
- Two representatives of civil or human rights tax-exempt organizations who specialize in civil and human rights and criminal justice;
- Two representatives of community organizations specializing in civil or human rights and criminal justice and who work with victims of racial and identity profiling. At least one representative shall be between 16 and 24 years of age;
- Two clergy members who specialize in addressing and reducing racial and identity bias toward individuals and groups or practices; and,
- Up to two other members that the Governor may prescribe;
- Up to two other members that the President Pro Tempore may prescribe; and,
- Up to two other members that the Speaker of the Assembly may prescribe.

(Penal Code §13519.4(j)(2)(A)-(M).)

Existing law tasks RIPA with the following:

- Analyzing data reported, as specified;
- Analyzing law enforcement training on racial and identity profiling;
- Work in partnership with state and local law enforcement agencies to review and analyze racial and identity profiling policies and practices;
- Conduct, and consult available, evidence based research on intentional and implicit biases, and law enforcement stop, search, and seizure tactics
- Issuing a report that that provides RIPA's analysis of the above, detailed findings on the past and current status of racial and identity profiling and make policy recommendations for eliminating racial and identity profiling; and,
- Holding at least three annual public meetings to discuss racial and identity profiling and potential reforms, as specified.

(Penal Code §13519.4(j)(3)(A)-(F).)

This bill would delete references to citizens' complaints and instead refer to them as civilians' complaints.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the

“durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for this Legislation

According to the author:

The Government, Penal, and Vehicle Codes currently encompass the term “citizen” rather than “civilian.” However, the current operation term being utilized by law enforcement is now “civilian.” For example, last session, 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 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.”

This proposal seeks to standardize the accurate term “civilian” in the various code sections and clarify that all civilians are eligible to file complaints against local law enforcement agencies or officers regardless of citizenship.

2. Effect of Legislation

This legislation simply changes the term “citizen” to “civilian” in various places in the Government, Penal and Vehicle codes that relate to citizen complaints against law enforcement. According to the author and sponsor of this legislation, the term “civilian” is currently used by law enforcement agencies to track complaints on a local, state and federal level.

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