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AB-953 Law enforcement: racial profiling. (2015-2016)

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Assembly Bill No. 953

CHAPTER 466

An act to add Section 12525.5 to the Government Code, and to amend Sections 13012 and 13519.4 of the Penal Code, relating to racial profiling.

[Approved by Governor October 03, 2015. Filed with Secretary of State October 03, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 953, Weber. Law enforcement: racial profiling.

Existing law creates the Commission on Peace Officer Standards and Training and requires it to develop and disseminate guidelines and training for all law enforcement officers, as described. Existing law prohibits a peace officer from engaging in racial profiling and requires the training to prescribe patterns, practices, and protocols that prevent racial profiling, as defined. Existing law requires the Legislative Analyst's Office to conduct a study of the data that is voluntarily collected by jurisdictions that have instituted a program of data collection with regard to racial profiling.

This bill would enact the Racial and Identity Profiling Act of 2015, which would, among other changes, revise the definition of racial profiling to instead refer to racial or identity profiling, and make a conforming change to the prohibition against peace officers engaging in that practice.

The bill would require, beginning July 1, 2016, the Attorney General to establish the Racial and Identity Profiling Advisory Board (RIPA) to eliminate racial and identity profiling and improve diversity and racial and identity sensitivity in law enforcement. The bill would specify the composition of the board. The bill would require the board, among other duties, to investigate and analyze state and local law enforcement agencies' racial and identity profiling policies and practices across geographic areas in California, to annually make publicly available its findings and policy recommendations, to hold public meetings annually, as specified, and to issue the board's first annual report no later than January 1, 2018.

The bill would require each state and local agency that employs peace officers to annually report to the Attorney General data on all stops, as defined, conducted by the agency's peace officers, and require that data to include specified information, including the time, date, and location of the stop, and the reason for the stop. The bill would require an agency that employs 1,000 or more peace officers to issue its first annual report by April 1, 2019. The bill would require an agency that employs 667 or more but less than 1,000 peace officers to issue its first annual report by April 1, 2020. The bill would require an agency that employs 334 or more but less than 667 peace officers to issue its first annual report by April 1, 2022. The bill would require an agency that employs one or more but less than 334 peace officers to issue its first annual report by April 1, 2023.

By imposing a higher level of service on local entities that employ peace officers, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known and may be cited as the Racial and Identity Profiling Act of 2015.

SEC. 2. Section 12525.5 is added to the Government Code, to read:

12525.5. (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.

(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.

SEC. 3. Section 13012 of the Penal Code is amended to read:

13012. (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.

(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.

SEC. 4. Section 13519.4 of the Penal Code is amended to read:

13519.4. (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.

(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.

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.