

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 459 (Kalra)  
Version: June 10, 2024  
Hearing Date: July 2, 2024  
Fiscal: Yes  
Urgency: No  
AM

**SUBJECT**

Peace officers: Attorney General: reports

**DIGEST**

This bill modifies the timeline that law enforcement agencies must comply with when reporting stop data to the California Department of Justice (DOJ), and specifies that data reported in an open text or narrative field is only available under a request made pursuant to the California Public Records Act (CPRA) from the reporting agency and not from DOJ. The bill requires the Attorney General to share the data with entities conducting specified research, and provides that the DOJ is not 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.

**EXECUTIVE SUMMARY**

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. This bill seeks to address two issues that the DOJ has encountered in trying to enforce RIPA. First, the bill establishes a new reporting timeline that requires 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. Second, the bill provides that open text fields are still publicly available under the CPRA, but only from the reporting agency, who would be responsible for redacting any personal identifying information that the agency included in any RIPA dataset. The bill is sponsored by the Attorney General, Rob Bonta. The bill is opposed by the California State Sheriffs' Association. The bill passed the Senate Public Safety Committee on a vote of 4 to 1. This analysis will focus on the issues in the jurisdiction of this Committee, mainly the provision related to public records, privacy concerns surrounding sharing data, and the limitation on liability.

## PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that all people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy. (Cal. const. art I. § 1.)
- 2) Provides, pursuant to the California Constitution, 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 are required to be open to public scrutiny. (Cal. const. art. I, § 3(b)(1).)
  - a) Requires a statute to be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. (Cal. const. art. I, § 3(b)(1).)
  - b) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)
- 3) Governs the disclosure of information collected and maintained by public agencies pursuant to the CPRA. (Gov. Code §§ 7920.000 et seq.)
  - a) States that, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code § 7921.000.)
  - b) Defines "public records" as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code § 7920.530.)
  - c) Defines "public agency" as any state or local agency. (Gov. Code § 7920.525(a).)
- 4) Provides that all public records are open to inspection at all times during the office hours of a state or local agency and every person has a right to inspect any public record, unless the record is exempt from public disclosure. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law. (Gov. Code § 7922.525.)
  - a) Some records are prohibited from being disclosed and other records are permissively exempted from being disclosed. (See e.g. Gov. Code §§ 7920.505 & 7922.200.)
  - b) There are several general categories of documents or information that are permissively exempt from disclosure under the CPRA essentially due to

the character of the information. The exempt information can be withheld by the public agency with custody of the information, but it also may be disclosed if it is shown that the public's interest in disclosure outweighs the public's interest in non-disclosure of the information. (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, at 652.).

- 5) 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 (Pen. Code § 13519.4(d)(4).)
- 6) Establishes 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. (Pen. Code § 13519.4(j)(3)(D).)
- 7) Prohibits a peace officer from engaging in racial or identity profiling, as defined. (Pen. Code § 13519.4(e),(f).)
- 8) 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. (Gov. Code § 12525.5(a)(1).)
- 9) Establishes 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. (Gov. Code § 12525.5(a)(2).)
- 10) Requires reports on stops submitted to the Attorney General to include, at a minimum, the following information:
  - a) The time, date, and location of the stop.
  - b) The reason for the stop.
  - c) The reason given to the person at the time of the stop.
  - d) The result of the stop, such as: no action, warning, citation, arrest, etc.
  - e) If a warning or citation was issued, the warning provided or the violation cited.
  - f) If an arrest was made, the offense charged.
  - g) 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.
  - h) Actions taken by the peace officer, as specified. (Gov. Code § 12525.5(b)(1)-(8).)

- 11) 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. (Gov. Code § 12525.5(c).)
- 12) Prohibits law enforcement agencies from reporting personal identifying information (PII) 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, is available to the public. (Gov. Code § 12525.5(d).)
- 13) Provides that law enforcement agencies are solely responsible for ensuring that PII of the individual stopped or any other information that is exempt from disclosure is not transmitted to the Attorney General in an open text field. (Gov. Code § 12525.5(d).)
- 14) Specifies that all data and reports made pursuant to the above provisions are public records and are open to public inspection pursuant to the CPRA (Gov. Code § 12525.5(e).)
- 15) 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. (Gov. Code § 12525.5(g)(2).)
- 16) 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(b).)

This bill:

- 1) Requires law enforcement agencies, in addition to reporting stop data under existing law, to preserve the data, and requires submittal of their final stop reports to the Attorney General by March 1 for the preceding calendar year.

- 2) Provides that, if reporting issues or unresolved errors are identified in an agency's submission to the Attorney General, the agency must submit semiannually for the following calendar year.
  - a) The Attorney General is required to provide notice to the agency by October 1, with the semiannual requirement taking effect as of January 1.
- 3) Specifies that law enforcement agencies are solely responsible for ensuring that personally identifiable information (PII) of the individual stopped or any other info exempt from disclosure is not transmitted to the Attorney General in a narrative field.
- 4) Requires that any data reported in an open text or narrative field only be made available to the public by the reporting agency and not from the Attorney General. However, the Attorney General is required 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, and is required to issue regulations governing how the data is provided pursuant to this provision.
- 5) Provides that that the Department of Justice is not 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.

### COMMENTS

#### 1. Stated need for the bill

The author writes:

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.

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.

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. Background on RIPA and the need to address public records requests for open text data fields

The Senate Public Safety Committee analysis of this bill provides a useful explanation about RIPA and the issues this bill seeks to remedy:

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 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. 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.”[...]

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. [...] 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 sponsor of the bill, Attorney General Rob Bonta:

[...][F]ollowing 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. [...]

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.

The California State Sheriffs' Association writes in opposition to the bill noting:

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.

### 3. Access to public records is a fundamental right

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Cod § 7921.000.) In 2004, the right of public access was enshrined in the California Constitution with the passage of Proposition 59 (Nov. 3, 2004, statewide general election),<sup>1</sup> which amended the California Constitution to specifically protect the right of the public to access and obtain government records: "The people have the right of access to information concerning the conduct of the people's business, and therefore . . . the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const., art. I, sec. 3 (b)(1).) In 2014, voters approved Proposition 42 (Jun. 3, 2014, statewide direct primary election)<sup>2</sup> to further increase public access to government records by requiring local agencies to

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<sup>1</sup> Prop. 59 was placed on the ballot by a unanimous vote of both houses of the Legislature. (SCA 1 (Burton, Ch. 1, Stats. 2004))

<sup>2</sup> Prop. 42 was placed on the ballot by a unanimous vote of both houses of the Legislature. (SCA 3 (Leno, Ch. 123, Stats. 2013))

comply with the CPRA and the Ralph M. Brown Act<sup>3</sup>, and with any subsequent statutory enactment amending either act, as provided. (Cal. Const., art. I, sec. 3 (b)(7).)

Under the CPRA, public records are open to inspection by the public at all times during the office hours of the agency, unless they are exempt from disclosure. (Gov. Cod § 7922.252.) A public record is defined as any writing containing information relating to the conduct of the public's business that is prepared, owned, used, or retained by any public agency regardless of physical form or characteristics. (Gov. Code § 7920.530.) There are several general categories of documents or information that are permissively exempt from disclosure under the CPRA essentially due to the character of the information. The exempt information can be withheld by the public agency with custody of the information, but it also may be disclosed if it is shown that the public's interest in disclosure outweighs the public's interest in non-disclosure of the information. (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, at 652.). Additionally, some records are prohibited from disclosure or are specifically stated to not be public records. (*see* Gov. Code § 7924.110(a).)

California generally recognizes that public access to information concerning the conduct of the people's business is a fundamental and necessary right.<sup>4</sup> At the same time, the state recognizes that this right must be balanced against the right to privacy.<sup>5</sup> The general right of access to public records may, therefore, be limited when records include personal information. This bill affects access to public records by not allowing a member of the public to access data reported in an open text or narrative field in the possession of the DOJ from the DOJ. The bill instead requires a record request for that data to be made to the law enforcement agency that provided that data to the DOJ. This provision is antithetical to the basic principle of the CPRA that a state agency that is in possession of public records is required to allow the public access to them. The DOJ argues that they cannot provide this data to a requester due to the fact that local law enforcement agencies are including PII in the data sets, and because of the enormous volume of data that the DOJ would have to review for potential redaction of PII before disclosing under the CPRA. They claim that a single year's worth of open text or narrative field data could involve over 4 million individual stops, and that they simply do not have the resources or man power to review every piece of data individually to redact it for potential PII that was left in by the reporting law enforcement agency. It should be noted, that there were over 500 law enforcement agencies that reported data to the DOJ under RIPA. This means that if someone wanted to get all the data reported to the DOJ, they would have to make 500 plus individual records requests. However, since the DOJ is not releasing this information currently a member of the public who wants this information has to seek it from the reporting law enforcement agency anyways.

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<sup>3</sup> The Ralph M. Brown Act is the open meetings laws that applies to local agencies. (Gov. Code §§ 59450 et. seq.)

<sup>4</sup> Cal. Const., art. I, § 3; Gov. Code, § 7921.000.

<sup>5</sup> Cal. Const., art. I, § 1.

#### 4. Limitation on liability and privacy concerns on sharing data

The bill requires the Attorney General 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. Under the bill, the Attorney General must issue regulations governing how the data is provided to the public and private entities. This requirement to share data does not include any guardrails for protecting the information once it is shared with other entities. There is no requirement that the other entities agree to keep the data confidential, only use the data for the purpose for which it was shared, or that the public entities ensure that when the data is reproduced or published it is not done in way that could lead to PII being disclosed. (*see* Health & Saf. Code § 121022.) There is also no penalty provided for an entity that discloses any PII it receives. (*see* Health & Saf. Code § 121025.)

As the Attorney General notes in his sponsor letter, there are high incidences of PII being included in the open text or narrative fields and that this is the reason the DOJ is seeking the ability to not have to release this information pursuant to a public record request. Further to this point, the Attorney General is seeking a limitation on liability 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. If the issue surrounding PII in open text or narrative fields is so severe to warrant changing the fundamental premise of the CPRA, it seems only prudent that strong confidentiality protections be included with the requirement to share RIPA data with public and private entities conducting research.

#### 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.<sup>6</sup> 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 AB 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

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<sup>6</sup> California Penal Code §14230 et. seq.

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, the Fourth Appellate Circuit of the California Court of Appeal ruled in an unpublished case 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.<sup>7</sup> While the Second Amendment issue in the case does not apply to this bill, the privacy concerns raised may be similarly implicated by this bill. Though the Attorney General was victorious in the case described above, it is no guarantee that this bill will be immune to a similar constitutional challenge.

## 6. Amendments

The specific amendments to address the concerns about the lack of confidentiality protections surrounding the requirement to share RIPA data with public and private entities conducting research:

### Amendment<sup>8</sup>

Section 12525.5 of the Government Code is amended to read:

[...]

(d) (1) 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. 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 or narrative field.

(2) 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. 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. ~~However,~~

(3) *Notwithstanding paragraph (2)*, the Attorney General shall provide all data reported, including open text or narrative fields, to public or private entities for educational,

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<sup>7</sup> *Barba v. Bonta* (2023) WL 7980426 (Super. Ct. No. 37-2022- 00003676-CU-CR-CTL) p. 3, available at <https://www.courts.ca.gov/opinions/nonpub/D081194.PDF>.

<sup>8</sup> The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

advocacy, or research purposes relating to studying racial and identity profiling by law enforcement.

(A) *The Attorney General shall not provide data to a public or private entity under this paragraph unless the entity agrees to all of the following:*

- (i) *The entity shall not disclose any personally identifying information of individuals stopped or unique identifying information of the peace officer involved and shall keep that information confidential.*
- (ii) *The entity shall only be authorized to use the data for the purposes for which it was shared.*
- (iii) *The entity shall ensure that any publication of the data is done in a manner to prevent the release of personally identifying information and unique identifying information.*

(B) The Attorney General shall issue regulations governing how the data is provided to the public and private entities.

~~(3)~~ (4) Notwithstanding any other law, 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 pursuant to this section.

#### **SUPPORT**

Attorney General Rob Bonta

#### **OPPOSITION**

California State Sheriff's Association

#### **RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: AB 953 (Weber, Ch. 466, Stats. of 2015) *see* Comment 2), above.

#### **PRIOR VOTES**

Senate Public Safety (Ayes 4, Noes 1)  
Assembly Floor (Ayes 79, Noes 0)  
Assembly Appropriations Committee (Ayes 15, Noes 0)  
Assembly Health Committee (Ayes 15, Noes 0)

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