

NOTICE TO APPEAR

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SEPTEMBER 2020

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Cited for Being in Plain Sight:

How California Polices
Being Black, Brown, and
Unhoused in Public



BY LAWYERS' COMMITTEE FOR CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA

SEPTEMBER 2020

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EXECUTIVE SUMMARY

In the wake of the police killings of George Floyd and Breonna Taylor, as hundreds of thousands of protestors have joined demonstrations throughout the world, there is renewed attention on the day to day dysfunction of police. And, there is new energy and increased political will to eliminate harmful police functions. From inherently segregationist “Ugly Laws” to the Reconstruction era “Black Codes,” the development and enforcement of infraction laws has been and continues to be racist and classist.

Police in California issued over 250,000 non-traffic infraction citations in 2019. Non-traffic infractions are only the most low-level violations in both the state and local municipal codes, punishable by a fine. They do not include harms to people or property, but instead criminalize everyday behaviors such as standing, sleeping, owning a dog, and crossing the street.¹ Data from this report show deep racial disparities in enforcement: these are not citations police commonly give in white, wealthy neighborhoods. Though the citations are criminal, there is no right to an attorney, and therefore little recourse for people who are targeted for enforcement because of their race. The result is hundreds of dollars in fines and fees people cannot afford to pay, and, in some counties, warrants and arrests for people who do not either pay or appear in court. This ongoing form of police harassment of Black and Latinx communities, people experiencing homelessness, and people with disabilities can cause trauma, and enforcement of minor infractions has led to police violence.

These citations, in many instances, are counterproductive: criminally punishing a person for sleeping will not stop the human need to sleep. Californians need a safe place to sleep rather than an officer armed with weapons and a ticket book.

People ticketed are subject to hundreds of dollars in fines, and, in some counties, the court issues warrants for people who do not pay or appear, leading to arrests. Several categories of infraction violations already have been eliminated in recent years at the state level, including vending without a permit and possession of marijuana. Years of observations on the effects of infraction enforcement and the data from this report indicate that there are many more infraction laws that should be repealed.

FINDINGS

Despite the fact that criminal filings in California have been decreasing overall, non-traffic infractions are increasing as a percentage of total criminal filings, and data show current enforcement is rife with race disparities. Overall, data collected under the Racial Identity and Profiling Act showed that between July 2018 and December 2019, the 15 largest law enforcement agencies stopped 5,792,245 individuals for a number of reasons.^{2,3} Among people who were issued a citation under local codes as a result of non-traffic stops, Black adults were up to 9.7 times more likely to receive citations than white adults in the same jurisdiction, and Latinx adults were up to 5.8 times more likely to receive citations than white adults in the same jurisdiction.

1 Judicial Council, 2019 Court Statistics Report Statewide Caseload Trends 2008–09 Through 2017–18, <https://www.courts.ca.gov/documents/2019-Court-Statistics-Report.pdf>

2 This is from data collected under California’s Racial and Identity Profiling Act (RIPA). This data is used in disparity analyses for only those stops where the “Reason for Stop” was not listed as “Traffic violation” (hereafter “non-traffic stops”) and where the “Result of Stop” is listed as a “Citation for infraction (use for local ordinances only).” RIPA currently requires only the 15 largest departments—determined by number of officers—to report on race for all stops. The 15 departments are: California Highway Patrol, Fresno PD, Long Beach PD, Los Angeles County Sheriff, Los Angeles PD, Oakland PD, Orange County Sheriff, Riverside County Sheriff, Sacramento County Sheriff, Sacramento PD, San Bernardino County Sheriff, San Diego County Sheriff, San Diego PD, San Francisco PD, and San Jose PD.

3 See RIPA data files. “Result of Stop” count for “Citation for infraction (use for local ordinances only)” for non-traffic stops.

There is a massive web of different non-traffic infraction laws across California, including a few commonly cited state statutes and thousands of municipal infraction laws. The most frequently given citations across jurisdiction — 37% (10,642 of 28,682) of all citations in the data collected — were related to a person's mere existence in public space: for sleeping, sitting, or loitering (standing).

There is no unified data collection method for California infraction citations. Multiple police departments reported that they only keep carbon copies of citations in filing cabinets, and data production would take them many months. The data in this report was collected via three methods: first, each county court reports the total numbers of non-traffic infraction filings to the Judicial Council each year. Second, the reports' authors collected data from Public Records Act requests to City police departments for all 2017-2019 non-traffic infraction citations. Third, the California Department of Justice collects data on all stops, including the race of people stopped and the result of the stop, from the 15 largest law enforcement agencies to satisfy the Racial Identity and Profiling Act; additionally, the DOJ collects data on felony and misdemeanor arrests as part of the Monthly Arrest and Citation Register. The RIPA data in this report reflects stops that resulted in non-traffic citations for "local infractions," and thus does not include the non-traffic citations issued by local police under state codes. However, because some cities did not track or would not produce citation data that included race and type of citation, RIPA data is included as a reflective subset of non-traffic infraction enforcement by the largest police departments.

This data shows that non-traffic citations are primarily criminal enforcement against innocuous behavior, and, relatedly, are enforced disproportionately against Black and Latinx people:

- Although San Diego County adults comprise 8.6% of the California population, San Diego County had almost 35% of all non-traffic infraction court filings in California. Black adults in San Diego were 4 times more likely to be issued infractions than white adults.
- In the City of Los Angeles, 63% of all citations for "Loitering-Standing" were given to Black adults. The top three most common types of non-traffic infraction citations the Los Angeles Police Department issued were for standing, sitting or sleeping, and drinking in public, and if individuals cited could not pay or appear, they were subject to warrants and arrest.
- The most common non-traffic infraction citation given by the Long Beach Police Department was for "Walking on Roadway," i.e. jaywalking. Only 11% of adults in Long Beach are Black, but police gave Black adults 36% of all non-traffic infractions issued.
- In Hayward, the second-most cited non-traffic infraction between 2017 and 2019 was possession of a small amount of marijuana, and every single person cited for the offense was a person of color.
- One of the most common citations given in Bakersfield was for jaywalking downtown, and 28% of those citations were given to Black adults, though only 6% of adults in Bakersfield are Black.

Nonetheless, the collective PRA and RIPA data studied for this report shows a pattern of enforcement of petty laws against California's Black, Latinx and unhoused residents, enforcement that would not be politically tenable if it targeted wealthy white Californians.

The results are harmful. As other studies have documented, even brief encounters with the police can be traumatic, and officers are often more disrespectful to Black and Latinx people. In interviews of people ticketed, no one was fined less than \$100, and most people were charged between \$250 and \$500, which is consistent with California's fee schedule. A survey for this report of 10 counties found that half of the counties still issue warrants on non-traffic infractions for people who cannot or do not pay or appeal. California has over \$10 billion dollars in uncollectable infraction debts, and, in the meantime, thousands of people are at risk of arrest for the most minor of violations.

RECOMMENDATIONS

The authors of this report have a collective 20 years of experience observing the impacts of non-traffic infraction enforcement. They have collectively represented or observed court proceedings in over a thousand non-traffic infraction cases. They have learned that for many Black, Latinx, and unhoused people, it feels impossible to avoid being cited when in public. They have seen the uncertainty of warrants and the trauma of arrests impact the jobs, housing, medical care, and child care of clients. The authors have helped both design and evaluate ability-to-pay programs created to mitigate the harms of infraction fines. However, even in two counties with ability-to-pay programs, courts denied relief to approximately 50% of people who reported being homeless or on public benefits, even as those courts sustained hundreds of thousands in uncollected court debt.⁴ Back-end solutions do not prevent the traumatic experience of being policed, or the race discrimination inherent in the current policing system.

As a result, though some possible changes to limit harms or improve the administration of non-traffic infractions may be beneficial—such as ending warrants and arrests, requiring police to document the circumstances of citations, and improving statewide data collection—none of those solutions would change the fact that this type of enforcement causes significant harms for little benefit. As the maps accompanying this report display, there are already many neighborhoods in which laws like loitering and dog licensing are not commonly enforced.

As a result, the recommendation of this report is to eliminate, wherever possible, the enforcement of non-traffic infractions.

⁴ Data reported to LCCRSF as part of settlement monitoring in *Rubicon Programs v. Solano County*, Case No. FCS047212, 2018, and reported by Alameda County to East Bay Community Law Center, 2017.

I. Overview of Infraction Policing in California

An infraction is a criminal law—either a local ordinance or a state law—for which the prescribed punishment is a fine. Armed police enforce these laws by stopping, sometimes searching people, and issuing citations. Most non-traffic infractions criminalize ordinary human behavior. Standing and talking to another person in a public space is cited as loitering. Crossing the street in the middle of a block is deemed jaywalking, even on quiet streets. Sitting down, sleeping, or having belongings such as backpacks or strollers in a park or other public space is illegal in many California cities.⁵ And in many places, people can be criminally cited for having a dog without a license.⁶ Some of these laws originated from anti-Black, anti-immigrant, and/or anti-homeless sentiment. Others are enforced for the purpose of collecting revenue.

Most Californians will never receive a non-traffic infraction citation. As demonstrated in this report and the accompanying maps, enforcement of these laws does not target white, wealthy Californians. Instead, law enforcement often uses infraction laws to control the bodies and drain the wealth of Black, Latinx, and unhoused people.⁷

In California in the 2017-18 fiscal year, there were a total of 4,772,284 criminal court filings. Of those filings, approximately 5.4% (256,528) were for non-traffic infractions.⁸ There are more non-traffic citations than there are felonies in California courts each year.

While all criminal filings,⁹ including traffic and infraction cases, are on the decline,¹⁰ non-traffic infractions have increased in proportion of all criminal filings. Between the 2009-10 and 2018-19 California fiscal years, non-traffic infractions increased by 29% as a proportion of criminal filings.¹¹

The prescribed punishment for violating an infraction law is a fine. The base fines, usually set by cities when they pass the infraction ordinances, usually range from \$25-\$100.¹² However, the state has added substantial regressive taxes in the form of add-on fees to every single citation, meaning over the years, the legislature has raised revenue in the form of these flat, often mandatory fees, even though

5 See, e.g., S.F. Cal. Police Code § 168(b) (2017) (Section 168 of San Francisco's Police code makes it "unlawful to sit or lie down upon a public sidewalk" during most hours of the day); Coal. on Homelessness, San Francisco, Punishing the Poorest: How the Criminalization of Homelessness Perpetuates Poverty in San Francisco 5-6 (2015), <https://perma.cc/NJ58-8Y8R> (explaining that "anti-homeless" laws target life-sustaining conduct that homeless people perform in public like sleeping and resting).

6 Cal. Gov. Code § 38792.

7 See Alexandra Natapoff, *Misdemeanors*, 85 S. Cal. L. Rev. 1313, 1319 (2011-2012) ("In minority communities where order maintenance policing generates thousands of problematic convictions, the misdemeanor process has become the first formal step in the racialization of crime.").

8 Judicial Council, 2019 Court Statistics Report Statewide Caseload Trends 2008–09 Through 2017–18, <https://www.courts.ca.gov/documents/2019-Court-Statistics-Report.pdf> (in fiscal year 2017-18, there were a total of 4,772,284 criminal court filings (out of a total 6,124,113 court filings): 190,520 felony filings, 463,486 non-traffic misdemeanors filings, 292,669 traffic misdemeanors filings, 3,569,081 traffic infractions filings, and 256,528 non-traffic infractions filings).

9 *Id.* (Each filing in a criminal case is associated with a single defendant against whom criminal charges have been filed. Multiple criminal charges may occur in a case where different charges have been brought against the same defendant, but only the single most severe charge against a defendant in a given case is counted as a new criminal filing. When multiple defendants are charged with a crime, multiple filings are reported.).

10 In the Judicial Council data, bicycle violations and jaywalking are included in the traffic infractions category, because they are cited primarily under the Vehicle Code, where other state codes and municipal laws against pedestrian violations are counted as non-traffic infractions.

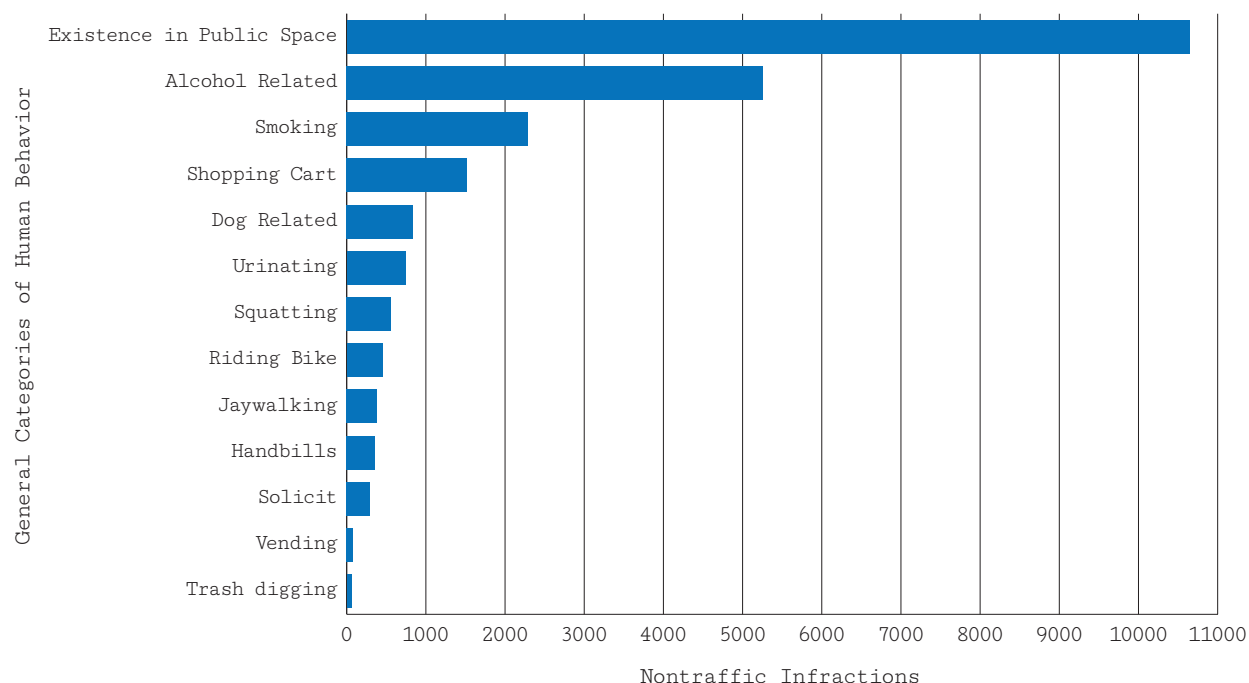
11 2019 Court Statistics Report, *supra* note 6, at 97.

12 Lawyers' Committee for Civil Rights of the San Francisco Bay Area et al., *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California*, at 10 (2015).

they disproportionately burden low-income Californians.¹³ Each fee is unrelated to the reason a person was cited, including fees for a DNA fund and a “state penalty surcharge.”¹⁴ For a \$100 base fine, the fees increase the total owed to \$490. The amount can rise to \$815 if the person misses a deadline to pay.¹⁵ This method of revenue raising has not been very successful: the state of California has over \$10 billion dollars in uncollected infraction debt.

PRA Data: Combined Citations for “Being in Plain Sight”

Data below comprise 82% (23,473 of 28,682) of PRA data retrieved.



These hundreds of dollars of fines and fees per citation are imposed as punishment for mostly banal behaviors. Though municipalities each have different local laws, and the data available is imperfect, there are clear trends in the most commonly cited acts. Most common are citations for everyday human behaviors such as sitting, sleeping, and standing, and the cause for citation amounts to existence in public space; included in this category are citations for loitering, curfew violations, and sleeping or camping.

Under the California Vehicle Code, a person given a non-traffic or traffic citation who does not appear in court, either in person or by paying all fines and fees in full, can be charged with a misdemeanor for failure to appear and the court can issue a warrant for their arrest.¹⁶ After public scrutiny, California’s courts have almost completely stopped issuing arrest warrants for traffic offenses, opting instead to dramatically escalate fines.¹⁷ However, the same courts in several California counties still issue warrants for people

13 *Id.* <https://lccrsf.org/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.20.15.pdf>.

14 See Lawyers’ Committee for Civil Rights of the San Francisco Bay Area et al., *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California*, at 23 (2016), http://www.lccr.com/wp-content/uploads/Stopped_Fined_Arrested_BOTRCA.pdf; *Not Just a Ferguson Problem*, *supra* note 11, at 10.

15 *Not Just a Ferguson Problem*, *supra* note 11, at 10.

16 Cal. Vehicle Code § 40508(a).

17 California Penal Code § 1214.1 prohibits courts from issuing both a \$300 civil assessment and a warrant for failure to pay or appear; courts must choose one or the other, and often do so as a matter of categorical policy rather than make the decision on a case by case basis. Cal. Penal Code § 1214.1.

who do not appear in court or pay a non-traffic citation, including Los Angeles, California’s most populous county. This is not an issue for people who can afford to pay hundreds of dollars in fines and fees. For low-income Californians who cannot afford to pay the fines, this means that what started as an act of ordinary human behavior—sitting, walking across the street, standing and talking to friends—can escalate quickly to arrest and jail.

There is no easy way to challenge a citation as discriminatory or invalid. Since there is no right to a public defender for infraction cases, people must navigate court on their own to dispute a citation.¹⁸ In many cases, this involves at least three trips to court: one to schedule a date, one to enter a plea, and one for the “trial” in front of a judge, where a cited individual has the opportunity to hear the citing officer’s testimony and give their own.¹⁹

Despite the already difficult court process to resolve infraction citations, the California Judicial Council recently proposed making it even harder to challenge a citation. The Judicial Council’s Futures Commission recommended switching to a civil citation system like parking tickets, arguing that because traffic and non-traffic infractions are 80% of all criminal court filings, existing procedural protections “impair efficient court operations.”²⁰ Moving to a civil system would deny people the right to a trial, the right to question the citing police officer, the right to an ability to pay process, the mechanisms to challenge a stop as baseless or discriminatory, and many other protections built into the criminal system to protect against police abuses. If modeled after other administrative citation processes, the shift to a civil system would create punishingly short deadlines to pay or challenge a ticket, and very little possibility for review if one misses those deadlines. However, the Futures Commission recommended that citations be moved to civil and that police retain control of their enforcement, meaning people would have even less recourse to challenge the bias and violence inherent in the current policing system.²¹

II. New Data Is Consistent with Structurally Racist Policing of Non-Traffic Infractions

The quantitative data analyzed for this report corroborate the stories of discrimination and harassment that California residents have recorded for many years. This data supports the growing understanding that: (1) policing²² in the state of California has been and continues to be structurally racist;²³ and (2) the enforcement of non-traffic infractions in California disproportionately harms Black and Latinx people.

18 Under California Penal Code § 19.6, a defendant charged with an infraction may be entitled to have the public defender or other counsel appointed at public expense to represent them if they are arrested and not released on their own written promise to appear, their own recognizance, or a deposit of bail. Cal. Penal Code § 19.6.

19 Interview with experienced traffic court attorney Sherry Gendelman, 2017.

20 Judicial Branch of California, Report to the Chief Justice: Commission on the Future of California’s Court System, at 86 (2017), <https://www.courts.ca.gov/documents/futures-commission-final-report.pdf>.

21 *Id.* at 87; see also Woods, Jordan Blair, Decriminalization, Police Authority, and Routine Traffic Stops, 62 UCLA L. Rev. 672, 746-48 (2015).

22 Based on felony and misdemeanor arrest data collected by the California Department of Justice since 1991. Data show that Black and Latino adults are more likely to be arrested for felonies and misdemeanors from 1991 to 2018, the last year that the data are available. See Monthly Arrest and Citation Register in the Appendix.

23 In this report, structural racism is defined as government choices that have a net positive effect for white people and generally harm people of color.

The California Department of Justice (CA DOJ) collects data, including the Monthly Arrest and Citation Register (MACR) and Racial Identity Profiling Act (RIPA), that clearly demonstrate that Black and Latinx adults are more likely to be arrested for felonies or misdemeanors, and are more likely to be stopped by the police throughout the state. However, there is no statewide collection or uniformity between municipalities when it comes to data on non-traffic infractions. For this report, 82 California Public Records Act (PRA) requests were sent to County Courts, Police Departments, and Sheriff's Departments.

The collection of data for this report unveiled an extreme lack of transparency around the enforcement of non-traffic infractions in California. Of the 82 PRA requests sent, only 8 jurisdictions, representing 44.7%²⁴ of Californians, responded with data that included racial and ethnic demographics and enough information to understand the data. In fact, because of the difficulty in obtaining data, demand letters threatening litigation were sent to some jurisdictions that failed to respond. Despite the difficulties in obtaining usable data, what we did receive showed racial disparities in every jurisdiction with usable data.

Policing in California at all levels, from felony offenses to non-traffic infractions, is structurally racist. In addition to perpetuating racism, non-traffic infraction enforcement statewide is adding to a giant pool of uncollectable debt that serves only to trap indigent Californians in poverty and punish them for ordinary human behaviors.

CALIFORNIA CRIMINAL COURT SYSTEM AND DEBT

California is increasing its criminal justice budget to almost \$20 billion for the 2020-21 FY despite overall decreases in arrests and criminal court filings.²⁵ Since the 2009-10 fiscal year, criminal court filings have decreased by approximately 43% overall and non-traffic infractions have decreased by 27%.²⁶

Available data shows that in the 2018-19 fiscal year there was \$10.6 billion in outstanding criminal justice debt in California.²⁷ The largest portion of that debt (\$3,581,745,253) is owed by people in Los Angeles County. Although Los Angeles County is the most populous county in California, with approximately 26% of California's adult population, it holds 34% of the state's debt.

The total amount of criminal debt in California is so large that if each of the 30 million adults in California owed an equal amount, **each Californian would owe approximately \$347**. An assessment by the Legislative Accountability Office stated that "a large portion of this [court-ordered debt] balance may not be collectable as the costs of collection could outweigh the amount that would actually be collected."²⁸ Given that the sentence for a non-traffic infraction is a fine, the continued enforcement of these infractions only adds to the growing, uncollectable debt of the California courts.

24 13,666,303 of 30,567,090 adults in California.

25 Legislative Analyst's Office, Summary and Overview of 2020-21 Budget: Criminal Justice Proposals, <https://lao.ca.gov/Publications/Report/4164> (by \$341 million, or 2 percent over the revised 2019-20 level of spending); Legislative Analyst's Office, 2020-21 Budget: Criminal Proposals, <https://lao.ca.gov/reports/2020/4164/CJ-Budget-Proposals-021820.pdf>.

26 2019 Court Statistics Report, *supra* note 6 (In 2017-18, there were a total of 4,772,284 criminal court filings (out of a total 6,124,113 court filings): 190,520 felony filings, 463,486 non-traffic misdemeanors filings, 292,669 traffic misdemeanors filings, 3,569,081 traffic infractions filings, and 256,528 non-traffic infractions filings.).

27 Report on the Statewide Collection of Court Ordered Debt, *supra* note 82.

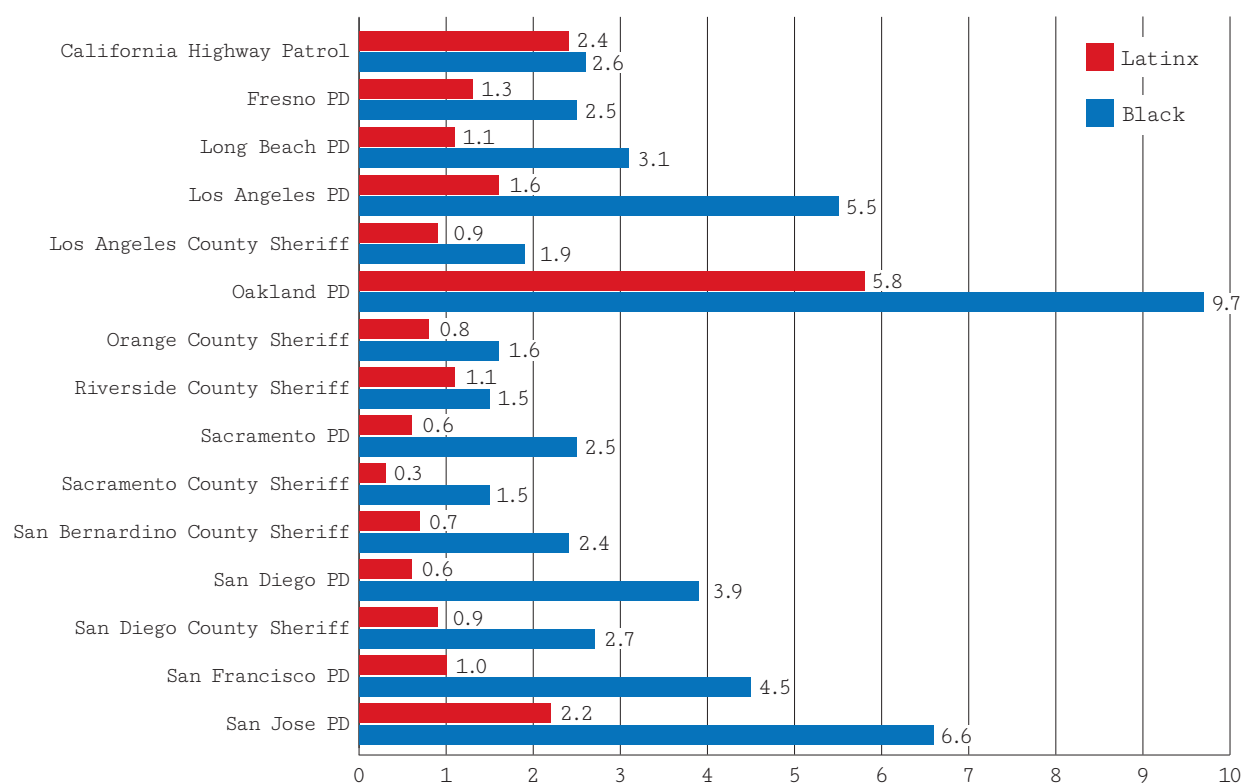
28 Governor's Criminal Fine and Fee Proposals, *supra* note 84.

CALIFORNIA RACIAL PROFILING DATA SHOW THAT BLACK ADULTS ARE UP TO 9.7 TIMES MORE LIKELY TO RECIEVE A CITATION FOR LOCAL INFRACTION THAN WHITE ADULTS²⁹

RIPA data retrieved from the Department of Justice shows that between July 2018 and December 2019, the 15 largest law enforcement agencies stopped 5,792,245 individuals³⁰ in a reported 5,497,559 stops. This data shows that there are significant disparities in rates of initial stop for Black and Latinx individuals as compared to white Californians. Most relevant to the focus of this report, there is a subset of stops whose “Result of Stop” is listed as a Citation for Local Infraction, and an analysis of that data shows that most jurisdictions have significant disparities in infraction policing.³¹

RIPA: Disparity Rate of Non-Traffic Citation for Local Infraction by Perceived Race/Ethnicity

When adjusted for population, Black adults and Latinx adults were, respectively, 9.7 and 5.8 times likelier than a white adult to receive a non-traffic citation in Oakland



Note: The disparity in the rate of Citation for Local Infraction by perceived race/ethnicity is calculated by first calculating the rate of Citation for Local Infraction by perceived race/ethnicity per 1,000 adults of that race/ethnic group and then dividing all rates by the white adult rate.

How to read this graph: Black adults are 2.6 times more likely to be stopped by the California Highway Patrol and given a Citation for Local Infraction than white adults, and Latinx adults are 2.4 times more likely.

29 Source: California Department of Justice (CA DOJ) - Racial Identity Profiling Act (RIPA) data collection.

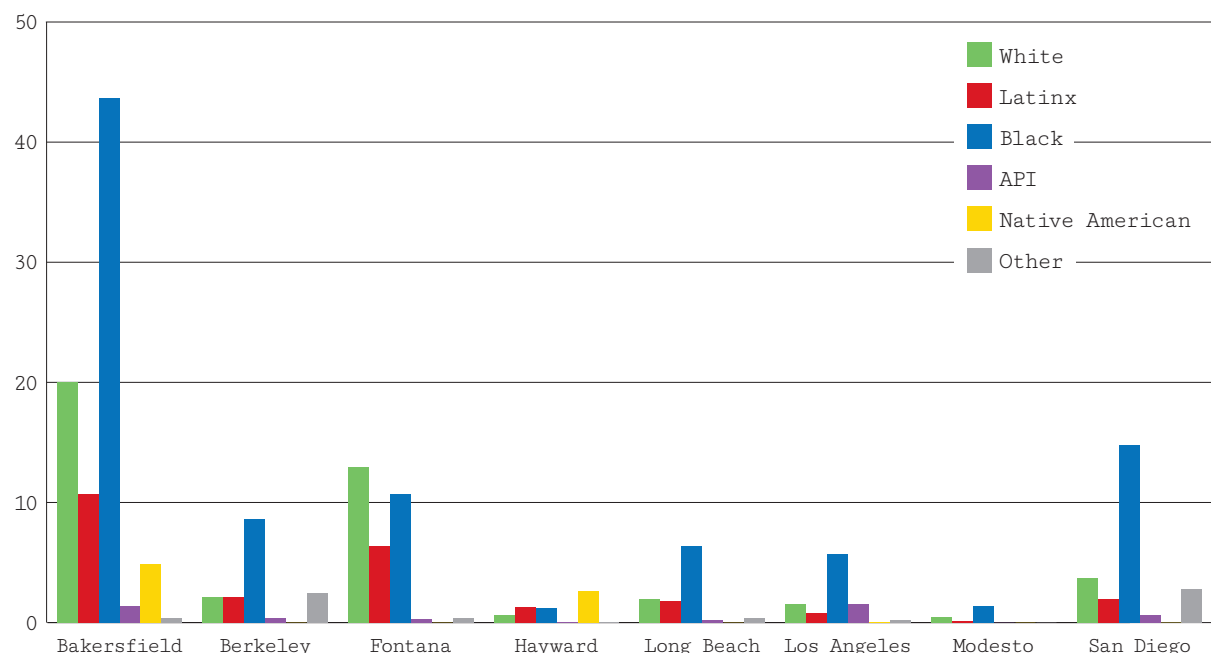
30 Note: For all RIPA analysis the count is individual.

31 See RIPA data files (“Result of Stop” count for “Citation for infraction (use for local ordinances only)”).

OVERVIEW OF RACIAL AND ETHNIC DISPARITIES IN PRA DATA³²

Non-traffic infraction data also show racial disparities in cities and counties throughout the state. In all the usable data received, there is clear evidence of disproportionate infraction enforcement, especially against Black individuals.

Citations per 1,000 Adults by Race (2017–2019).³³



Source: Bakersfield, Berkeley, Fontana, Hayward, Long Beach, Los Angeles, Modesto, San Diego Police Departments, Citation Register (2017–2019); U.S. Census Bureau, 2014–2018 American Community Survey 5-year estimates

Note: Citations per 1,000 adults are calculated by dividing the number of demographic-specific citations by the total number of demographic-specific residents in each municipality then multiplied by 1,000. See report appendix for further details and methodology.

RACIAL AND ETHNIC DISPARITIES IN SAN DIEGO

In the 2018-19 fiscal year in San Diego County, there were a total of 389,267 criminal court filings.³⁴ Of those filings, 88,751 were for non-traffic infractions, or approximately 22% of all criminal court filings. Additionally, although San Diego County adults comprise 8.6%³⁵ of the California population, San Diego County had almost 35% of all non-traffic criminal justice filings in California. San Diego has a disproportionate share of the state's non-traffic infractions.

³² Source: Public Records Act (PRA) requests to individual law enforcement agencies.

³³ Source: Bakersfield, Berkeley, Fontana, Hayward, Long Beach, Los Angeles, Modesto, San Diego Police Departments, Citation Register (2017–2019); U.S. Census Bureau, 2014–2018 American Community Survey 5-year estimates.

Note: Citations per 1,000 adults are calculated by dividing the number of demographic-specific citations by the total number of demographic-specific residents in each municipality expressed in terms of incidents per 1,000.

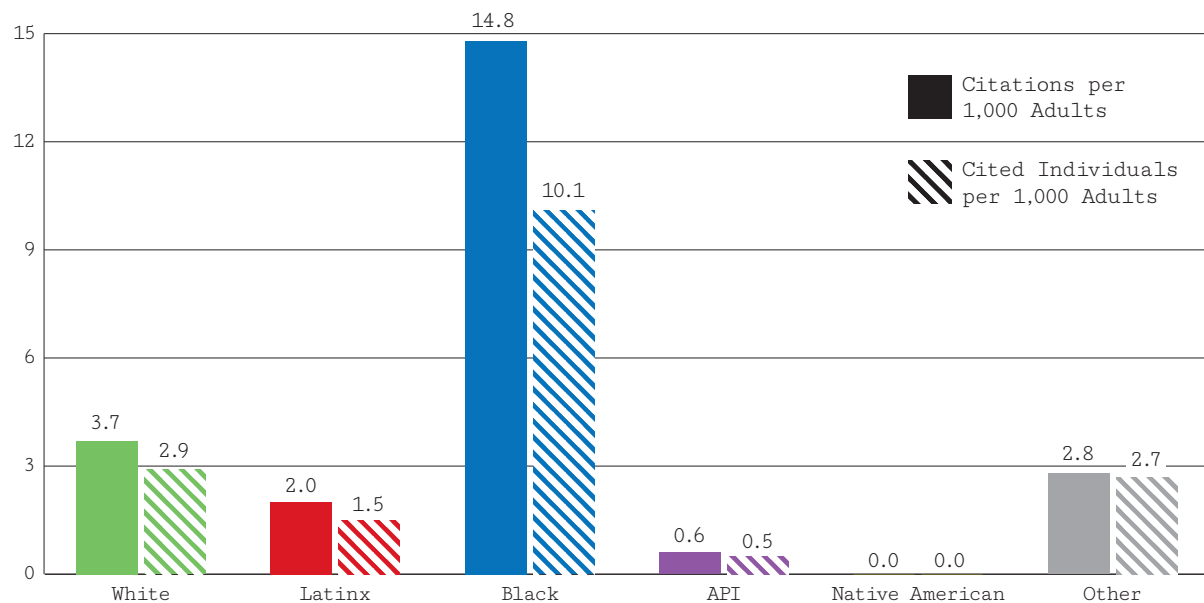
³⁴ 2019 Court Statistics Report, *supra* note 6, at 134.

³⁵ C. Puzanhera et al., Easy Access to Juvenile Populations: 1990-2018 (2019), <https://www.ojjdp.gov/ojstatbb/ezapop/> (In 2018 the San Diego County adult population was 2,620,956. The California adult population was 30,567,090.).

San Diego Police Department: Data Shows They Issue Non-traffic Infractions to Black Adults at Four (4) Times the Rate of White Adults³⁶

In the City of San Diego, the largest in the county, for every 1000 white adults, 3.7 received a non-traffic infraction from the San Diego Police Department, while for every 1000 Black adults, 14.8 received infractions. Over a two-year period, Black adults in San Diego were 4 times more likely to be issued infractions than white adults.

PRA2a San Diego Police Department Citations and Cited Individuals per 1,000 Adults (2017–2019)



Source: San Diego Police Department, Citation Register (2017–2019); U.S. Census Bureau, 2014–2018 American Community Survey 5-year estimates

Note: Citations per 1,000 adults are calculated by dividing the number of demographic-specific citations by the total number of demographic-specific residents in each municipality then multiplied by 1,000. Cited individuals per 1,000 adults are calculated by dividing the number of unique demographic-specific individuals who received a citation between 2017–2019, by the total number of demographic-specific residents in each municipality then multiplied by 1,000. See report appendix for further details and methodology.

Black adults are overrepresented in the total citations issued and in almost all of the top ten reasons infractions are given by SDPD. The top ten infractions account for almost 80% of all infractions given over a two-year period. In San Diego, Black adults are 5% of the population, but received 21% of the non-traffic infractions issued by SDPD.

“Unauthorized Encroachment” accounts for 44% of all infractions over the same time period. Black adults received 27% of infractions for this violation. Unauthorized Encroachment³⁷ is a vague code section that was originally enacted to stop people from leaving their trash bins on the street too long. After lawsuits³⁸

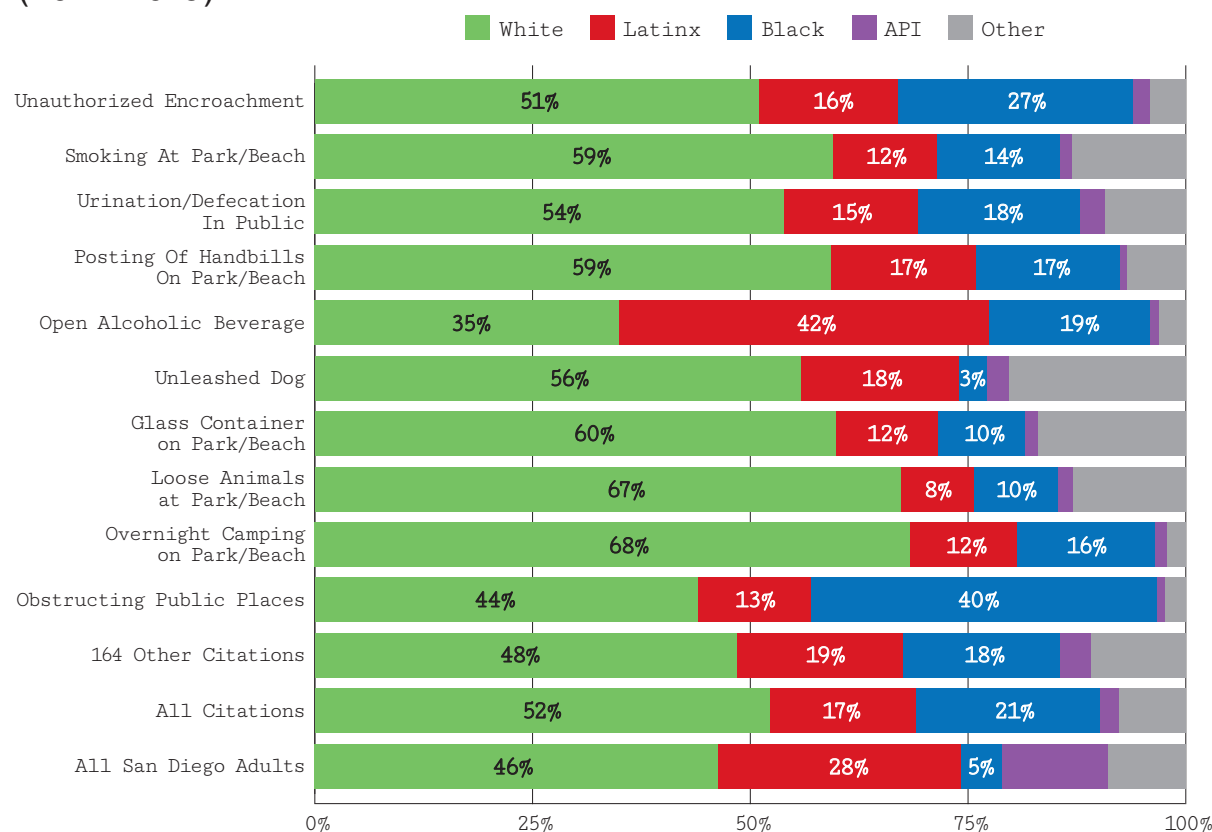
³⁶ Source: Public Records Act (PRA) requests to San Diego Police Department.

³⁷ 54.0110 Unauthorized Encroachments Prohibited It is unlawful for any person to erect, place, allow to remain, construct, establish, plant, or maintain any vegetation or object on any public street, alley, sidewalk, highway, or other public property or public right-of-way, except as otherwise provided by this Code.

³⁸ Complaint, *Arundel v. City of San Diego* (S.D. Cal. July 14, 2017) <https://www.voiceofsandiego.org/wp-content/uploads/2017/07/ARUNDEL-Compl.pdf>.

challenged the use of lodging citations against people sleeping in tents, SDPD began citing unhoused people for unauthorized encroachment because they have belongings in public spaces.

San Diego PD: Top 10 Citation Types by Race/Ethnicity % (2017–2019)



Infractions issued in downtown San Diego (92101) account for 38% of all infractions issued over the two-year period. 11% of all infraction citations the San Diego Police Department issued between 2017 and 2019 were to Black adults in one zip code area, 92101, which includes downtown areas such as the Gaslamp Quarter, Little Italy, and parts of Balboa Park. Infractions issued in 92101 account for 38% of all infractions issued over the two-year period. This downtown area is where social services for unhoused, disabled and low-income individuals are located, and where the majority of infraction policing occurs in San Diego.

RACIAL AND ETHNIC DISPARITIES IN LOS ANGELES

In the 2018-19 fiscal year in Los Angeles County, there were a total of 1,221,289 criminal court filings.³⁹ Of those filings, 42,152 were for non-traffic infractions, or approximately 3.5% of all criminal court filings.

³⁹ 2019 Court Statistics Report, *supra* note 6, at 134.

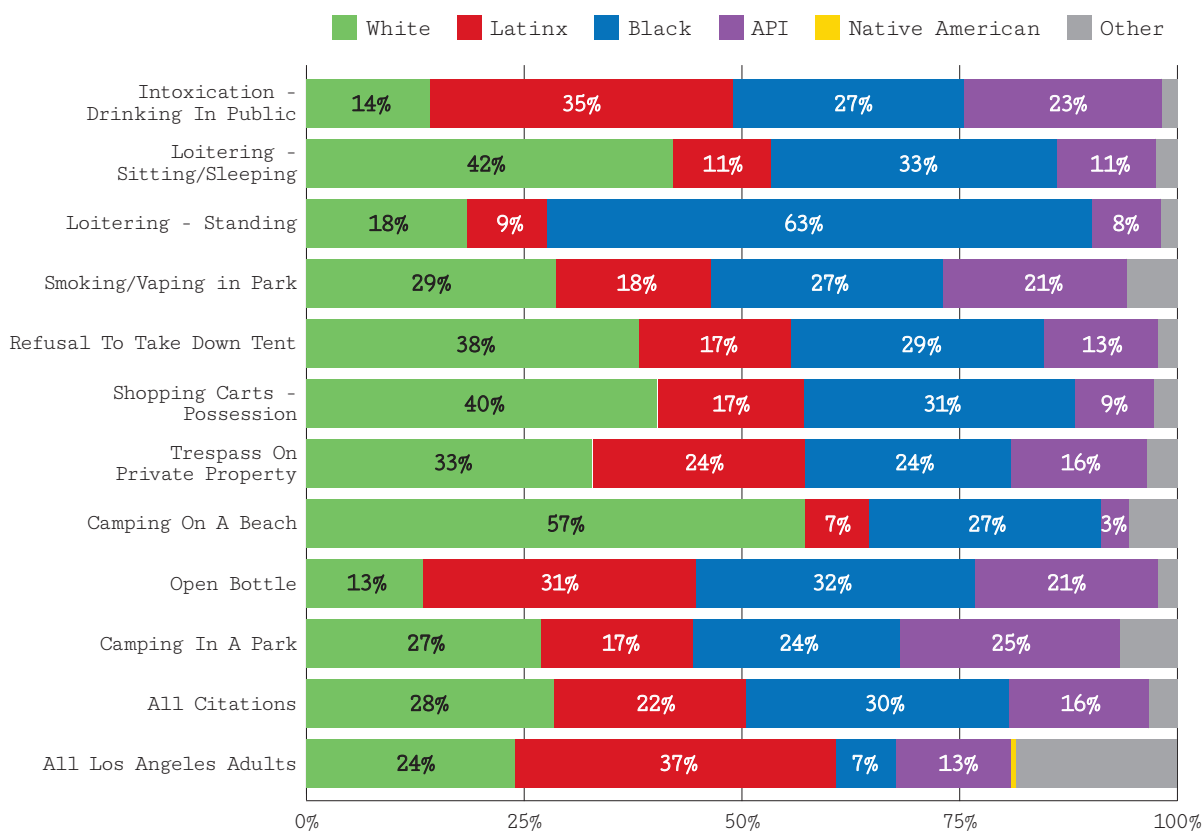
Los Angeles Police Department: Black adults in Los Angeles were 3.8 times more likely to be issued infractions than white adults⁴⁰

In the City of Los Angeles, the largest in the county, for every 1000 white adults, 1.5 received a non-traffic infraction, while for every 1000 Black adults, 5.7 received non-traffic infractions from the Los Angeles Police Department. Between 2017 and 2019, Black adults in Los Angeles were 3.8 times more likely to be issued non-traffic infractions than white adults. This Los Angeles data does not include administrative citations in the Administrative Citation Enforcement (ACE) program, which also targets unhoused, Black, and Latinx Angelenos for punishment for existence in public places.

Black adults comprise 7% of the population but were issued 30% of all non-traffic infractions by the LAPD. Black adults are overrepresented in the total citations issued and in each of the top ten reasons infractions are given by the LAPD. The top ten infractions account for almost 85% of all infractions given over a two-year period.

27% of the infractions by the LAPD over the two-year period were for “Drinking in Public;” Black adults account for 27% of infractions issued for this violation. “Loitering - Sitting/Sleeping” and “Loitering - Standing” each account for approximately 10% of the infractions issued by the LAPD; Black adults comprise 33% and 63% of those citations respectively.

Los Angeles Police Department: Top 10 Nontraffic Infractions (top 10 nontraffic infractions comprise 85% of all infractions)



⁴⁰ Source: Public Records Act (PRA) request to Los Angeles Police Department.

Long Beach Police Department: Black adults comprise 11% of the adult population, but comprise 36% of total infractions issued in Long Beach⁴¹

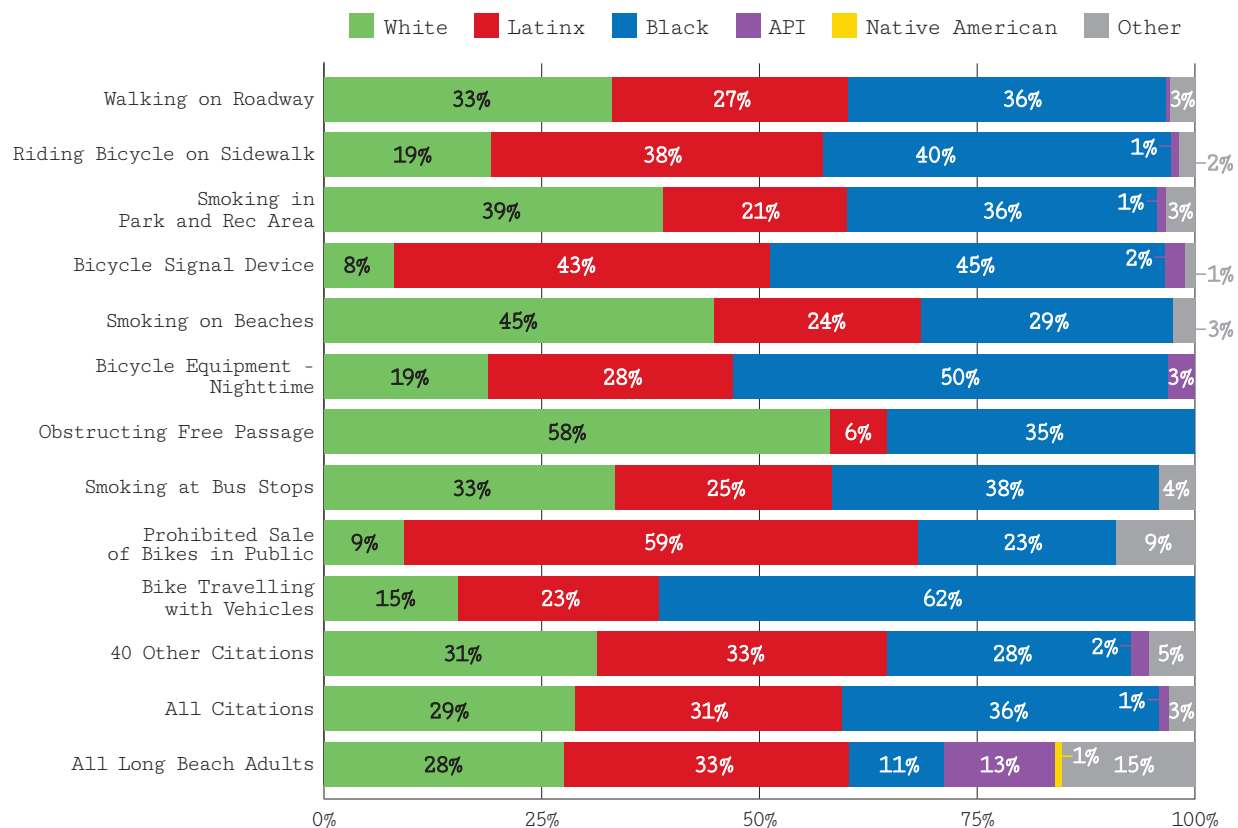
Infraction data retrieved from the Long Beach Police Department (LBPd) shows that for every 1000 white adults, two received an infraction, while for every 1000 Black adults, 6.3 received infractions. Over a two-year period Black adults in Long Beach were 3 times more likely to be issued infractions than white adults.

Black adults are overrepresented in the total citations issued and in all of the top ten reasons infractions are given by LBPd. Black adults comprise 11% of the adult population, but comprise 36% of total infractions issued.

Over a fourth of all non-traffic infraction citations given by the LBPd were for “Walking on Roadway” (also known as jaywalking); Black adults account for 36% of infractions issued for this violation.

Adults issued non-traffic infractions by the Long Beach PD in zip code areas 90802 and 90813 account for 50% of all infractions issued by Long Beach over a two-year period. These zip codes are the downtown area where social service providers are located, as well as a predominately Latinx neighborhood.

PRA6h Long Beach Police Department Top 10 Citation Types by Race (%) (2017–2019)



Source: Long Beach Police Department, Citation Register (2017–2019), U.S. Census Bureau, 2014–2018 American Community Survey 5-year estimates

41 Source: Public Records Act (PRA) request to Long Beach Police Department.

RACIAL AND ETHNIC DISPARITIES IN ALAMEDA COUNTY

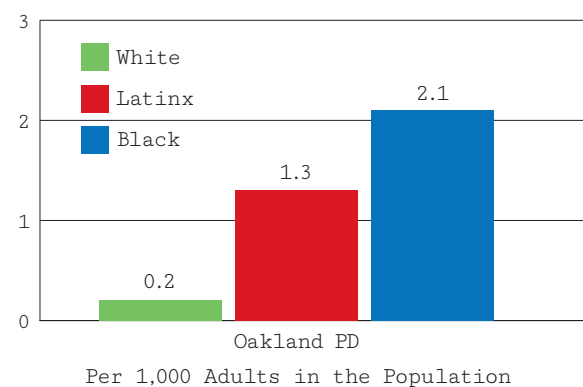
In the 2018-19 fiscal year in Alameda County there were a total of 205,349 criminal court filings.⁴² Of those filings 5,763 were for non-traffic infractions, or approximately 2.8% of all criminal court filings.

Oakland Police Department

RIPA data retrieved from the Department of Justice shows that between January 2019 and December 2019 the Oakland Police Department stopped 24,395 individuals in a reported 20,991 stops. The data shows that racial and ethnic disparities exist in the stops reported. A subset of those stops resulted in a Citation for Local Infraction.⁴³ The data show that for every 1,000 white adults in the population 0.2 received a Citation for Local Infraction as a result of a stop by Oakland PD. However, for every 1,000 Latinx adults, 1.3 received a Citation for Local Infraction as a result of a non-traffic stop by Oakland PD and for 1,000 Black adults, 2.1 received a Citation for Local Infraction as a result of a stop by Oakland PD.

RIPA: Rate of Citation for Local Infraction by Perceived Race/Ethnicity

For every 1,000 white adults in Oakland, 0.2 received a Citation for Local Infraction as a result of a non-traffic stop.



Berkeley Police Department: Black adults in Berkeley were 4 times more likely to be issued infractions than white adults

Infraction data from the Berkeley Police Department shows that over a two-year period for every 1000 white adults, 2.1 received infractions, while for every 1000 Black adults, 8.6 received infractions. Black adults in Berkeley were 4 times more likely to be issued infractions than white adults. This data does not include citations issued by the UC Berkeley Police Department—which did not respond to a Public Records Act request, though the UCBPD issued similar citations in Berkeley.

Black adults are overrepresented in the total citations issued and in six of the top eight reasons infractions are given by BPD. Black adults comprise 7% of Berkeley’s population, but received 28% of all infraction citations.

Data show that 62% of the infractions by the Berkeley Police Department were for “Alcohol in an Open Container;” Black adults received 34% of infractions issued for this violation. Black adults issued “Alcohol in an Open Container” citations account for 21% of all citations issued by Berkeley PD over the two-year period.

Hayward Police Department: Black and Latinx adults in Hayward were 2 times more likely to be issued infractions than white adults

Infraction data from the Hayward Police Department shows that over a two-year period, for every 1000 white adults, 0.6 received an infraction, while for every 1000 Black adults 1.2 received infractions and for

⁴² 2019 Court Statistics Report, *supra* note 6, at 134.

⁴³ See RIPA data files (“Result of Stop” count for “Citation for infraction (use for local ordinances only)”).

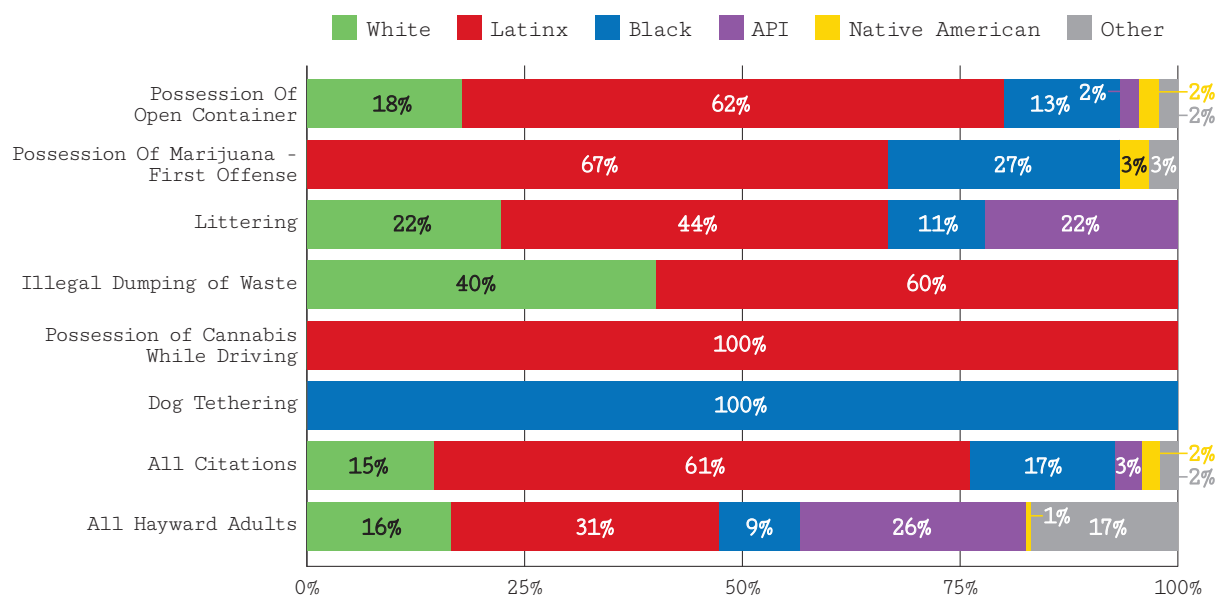
every 1000 Latinx adults 1.3 received an infraction. Black and Latinx adults in Hayward were 2 times more likely to be issued infractions than white adults.

Latinx adults comprise 31% of the adult population and 61% of all infraction citations issued.

Black and Latinx adults are overrepresented in total citations given by the Hayward Police Department, as well as in nearly all of the top reasons for infraction citations. Latinx people comprise 31% of the adult population and 61% of all infraction citations issued. Black adults comprise 9% of the adult population and 17% of all infraction citations issued.

Black adults comprise 27% of the infractions issued for “1st Offense – Possession of Marijuana.”⁴⁴ Every single person issued “1st Offense - Possession of Marijuana” in Hayward during this time period was a person of color. These infractions were issued between 2017 and 2019 despite the fact that recreational marijuana use was legalized for adults over 21 statewide after Proposition 64 in 2016. Thus, these citations must have been given to adults between the age of 18 and 21. Latinx adults issued “Possession of Open Container” citations account for 29% of all infraction citations issued by Hayward over the two-year period.

PRA6g Hayward Police Department Top 10 Citation Types by Race (%) (2017–2019)



Source: Hayward Police Department, Citation Register (2017–2019), U.S. Census Bureau, 2014–2018 American Community Survey 5-year estimates

82% of OHAPD Stops involved Black Individuals⁴⁵

Within any single county, there are multiple police departments with the ability to issue non-traffic infractions. One example in Oakland, California is the Oakland Housing Authority Police Department (OHAPD),

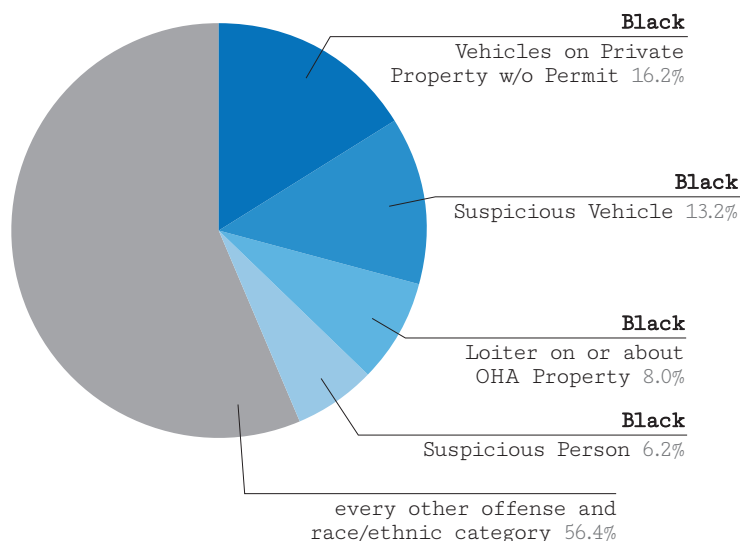
44 The PRA request sent to Hayward PD requested non-traffic infractions for adults over a 2-year period. The data received showed approximately 30 tickets for marijuana possession with most of those tickets marked “Juvenile” in the date of birth category. The dates of these tickets occurred after Prop 64, meaning that the only individuals who were not exempt from marijuana possession were 18 to 21 year olds. Regardless of who received the infractions, adults, youth, or young adults, it seems very unlikely that a California county would lack diversity in a pool of individuals allegedly in violation of this particular infraction.

45 Observations where race or offense type was missing were dropped. Observations where the call type was “Traffic Stop” were dropped. Multiple individuals could be involved in a single incident, each individual stopped is treated as a unique stop. Multiple offense titles could be cited for a single stop. There were a total of 6,667 non-traffic stops with race/ethnicity data for the individuals stopped. 5,463 (82%) of those individuals were Black.

a police agency with jurisdiction over Oakland Housing Authority property. To understand the various ways in which poor, Black, and Latinx adults are harmed by these practices, a PRA was sent to OHAPD as an example of the enforcement patterns of a specialized police department.

Data between January 2014 and March 2019 show that OHAPD filed 7,671 incident reports that involved 10,679 individuals⁴⁶ (10,420 with race data). The data show that the overwhelming amount of individuals that OHAPD policed were Black adults. In this analysis, all incident reports that listed “call type” as “traffic stop” were removed. The resulting data show that just the top four (4) reasons for stop listed for Black adults comprise almost half of all non-traffic offenses in the time period. Each one of those top 4 reasons for stop is related to the mere presence of a Black person on OHA property.⁴⁷

OHAPD Stops by Offense and Race/Ethnicity (March 2014 to September 2019)



RACIAL AND ETHNIC DISPARITIES IN KERN COUNTY

In the 2018-19 fiscal year in Kern County, there were a total of 150,569 criminal court filings.⁴⁸ Of those filings, 1,823 were for non-traffic infractions, or approximately 1.2% of all criminal court filings.

Bakersfield Police Department: Black adults make up 6% of the population in Bakersfield, but comprise 20% of all non-traffic infraction citations

Non-traffic infraction data from the Bakersfield Police Department show that for every 1000 white adults, 20 received non-traffic infractions, while for every 1000 Black adults, 43 received such infractions. Black adults in Bakersfield were more than twice as likely to be issued infractions than white adults.

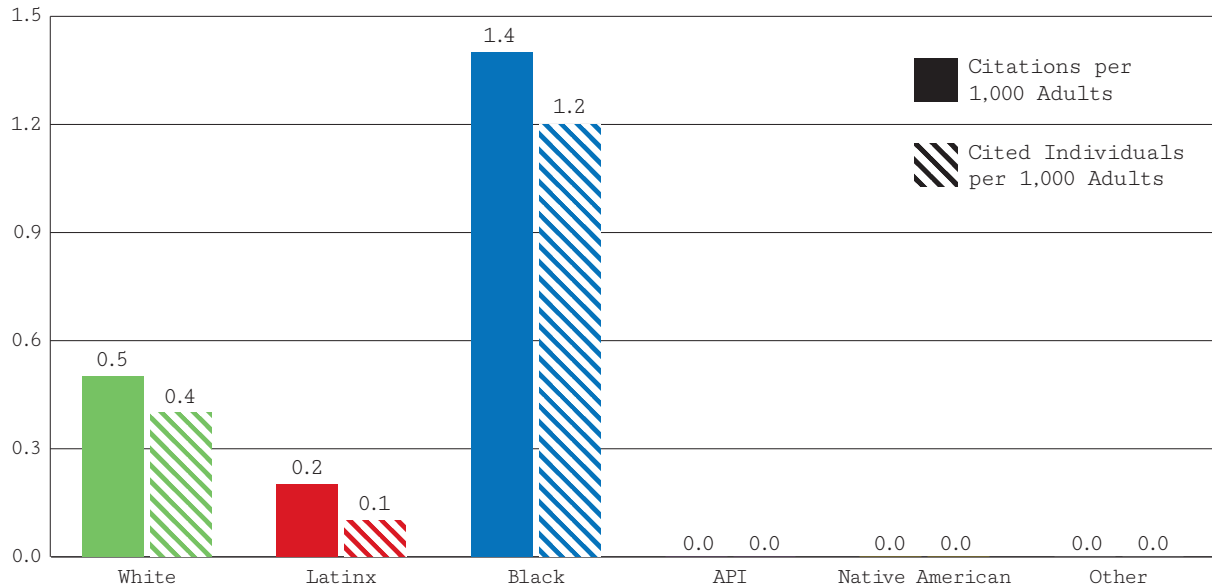
Black adults are overrepresented in the total citations issued by BPD, as well as in nearly all of the top ten reasons infractions were issued. Black adults make up 6% of the population, but comprise 20% of all non-traffic infraction citations. 19% of the infractions issued by BPD were for “Drinking Alcohol on City Street.” Black adults account for 18% of infractions issued for this violation.

⁴⁶ An individual was counted if an incident report contained one of race, sex, name, or date of birth information for an individual. Incident reports where none of this information was available were not counted.

⁴⁷ Multiple offense titles could be cited for a single stop. Each offense is treated as a unique observation for the figure below.

⁴⁸ 2019 Court Statistics Report, *supra* note 6, at 134.

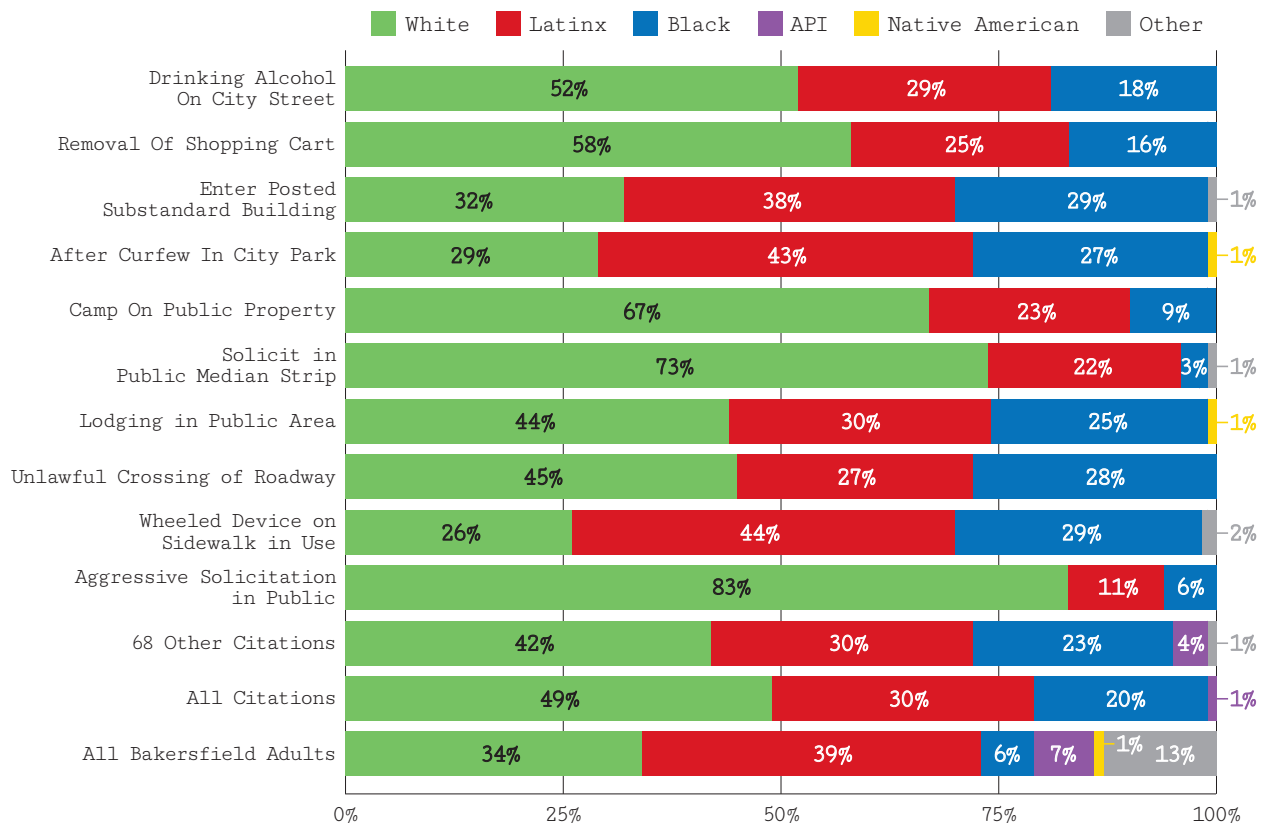
PRA2d Modesto Police Department Citations and Cited Individuals per 1,000 Adults (2017–2019)



Source: Modesto Police Department, Citation Register (2017–2019); U.S. Census Bureau, 2014–2018 American Community Survey 5-year estimates

Note: Citations per 1,000 adults are calculated by dividing the number of demographic-specific citations by the total number of demographic-specific residents in each municipality then multiplied by 1,000. Cited individuals per 1,000 adults are calculated by dividing the number of unique demographic-specific individuals who received a citation between 2017–2019, by the total number of demographic-specific residents in each municipality then multiplied by 1,000. See report appendix for further details and methodology.

PRA6b Bakersfield Police Department: Top 10 Citation Types by Race (%) (2017–2019)



Source: Bakersfield Police Department, Citation Register (2017–2019), U.S. Census Bureau, 2014–2018 American Community Survey 5-year estimates

RACIAL AND ETHNIC DISPARITIES IN SAN BERNARDINO COUNTY

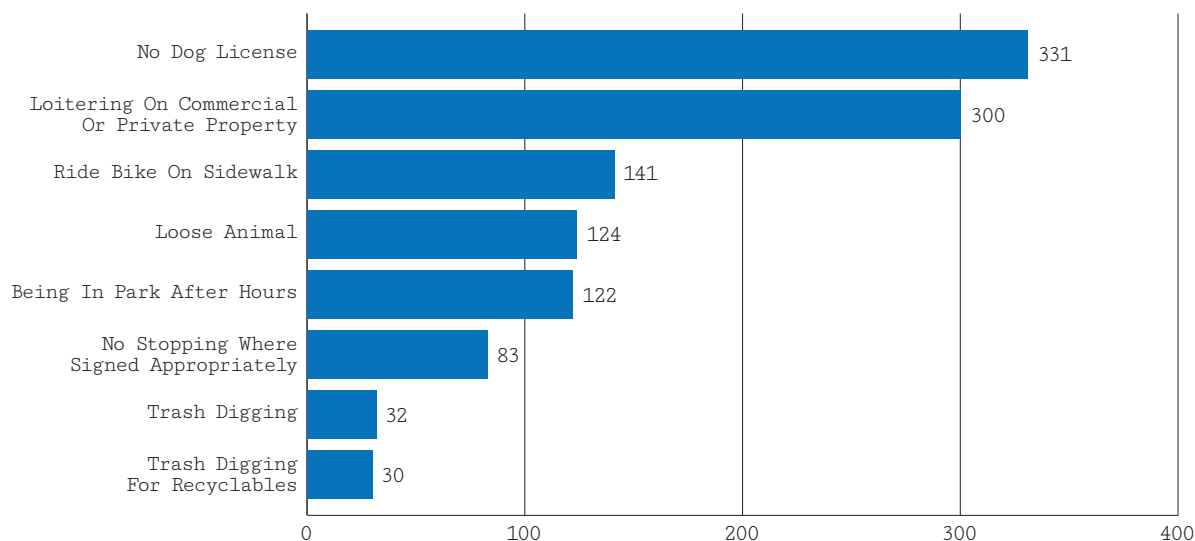
In the 2018-19 fiscal year in San Bernardino County there were a total of 244,549 criminal court filings.⁴⁹ Of those filings, 4,750 were for non-traffic infractions, or approximately 2% of all criminal court filings.

Fontana Police Department: 22% of the infractions with identifiable offense information issued by the Fontana Police Department were for “No Dog License”

42% of infraction data from the Fontana Police Department did not include race/ethnicity information. Additionally, 20% of the data did not include the description indicating the reason for the citation. However, the data with race/ethnicity information show that for every 1000 white adults 12.9 received non-traffic infractions, while for every 1000 Black adults, 10.7 received infractions. Given the lack of demographic information on a substantial portion of these citations, it is impossible to conclude whether or not a racial disparity exists for non-traffic infraction enforcement in Fontana.

Nonetheless, the infractions citations in Fontana clearly represent how these low-level offenses criminalize ordinary human behaviors. For example, 22% of the infractions with identifiable offense information⁵⁰ issued by FPD were for “No Dog License.” Latinx adults issued “No Dog License” account for 9% of all citations issued by FPD over two years. The other top reasons for infraction citations in Fontana - loitering, being in a park after hours, or trash digging - are simply not dangerous, ordinary human behaviors. Yet hundreds of people in Fontana were given citations with hefty fines and additional fees for these non-harmful acts.

Fontana Police Department: Top 8 Nontraffic Infractions (top 8 nontraffic infractions comprise 61% of all infractions)



⁴⁹ 2019 Court Statistics Report, *supra* note 6, at 134.

⁵⁰ Fontana sent 1891 rows of data with only 1510 including offense information.

RACIAL AND ETHNIC DISPARITIES IN STANISLAUS COUNTY

In the 2018-19 fiscal year in Stanislaus County, there were a total of 51,778 criminal court filings.⁵¹ Of those filings, 1,057 were for non-traffic infractions, or approximately 2% of all criminal court filings.

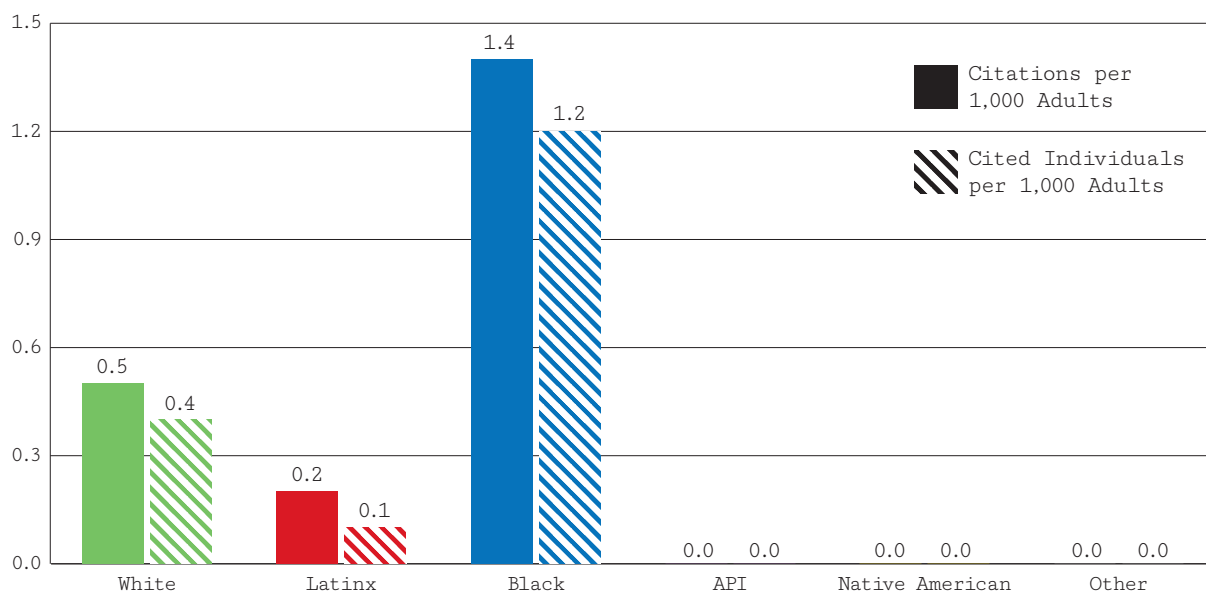
Modesto Police Department: Black adults in Modesto comprise 4% of the population and 8% of total infraction citations issued

52% of infraction data from the Modesto Police Department did not include race/ethnicity information. The limited data with race/ethnicity information shows that for every 1000 white adults 0.5 received infractions, while for every 1000 Black adults 1.4 received infractions. Black adults in Modesto were 2.8 times more likely to be issued non-traffic infractions than white adults. Given the lack of demographic information on a substantial portion of these citations, it is impossible to conclude whether or not a racial disparity exists for non-traffic infraction enforcement in Modesto.

Black adults are overrepresented in total citations issued by the Modesto Police Department. Black adults in Modesto comprise 4% of the population and 8% of total infraction citations issued.

The top reason MPD issued infraction citations between 2017 and 2019 was “Camping/Lodging in Park.” Black adults received 17% of the citations for “Camping/Lodging in Park.” Camping citations are used to police unhoused individuals who often have no place to sleep except in parks, where park plants and features can provide safety from the elements or attacks.

PRA2d Modesto Police Department Citations and Cited Individuals per 1,000 Adults (2017–2019)



Source: Modesto Police Department, Citation Register (2017–2019); U.S. Census Bureau, 2014–2018 American Community Survey 5-year estimates

Note: Citations per 1,000 adults are calculated by dividing the number of demographic-specific citations by the total number of demographic-specific residents in each municipality then multiplied by 1,000. Cited individuals per 1,000 adults are calculated by dividing the number of unique demographic-specific individuals who received a citation between 2017–2019, by the total number of demographic-specific residents in each municipality then multiplied by 1,000. See report appendix for further details and methodology.

⁵¹ 2019 Court Statistics Report, *supra* note 6, at 135.

There is nothing inherently dangerous or wrong about failing to register your dog with the city in which you live. Yet, failure to license a dog is a criminal non-traffic infraction in many cities throughout California. In 2013, Stanislaus County stopped giving courtesy warnings before citing dog owners for not having purchased licenses. County staff estimated giving administrative citations instead of courtesy warnings would generate \$50,000 a year in revenue. In Modesto, anecdotal reports suggest that the police went door to door in predominantly Latinx neighborhoods, knocking and stopping to issue a citation if they heard a dog barking inside. Our data confirms that 57% of dog-related infraction citations given in Modesto were in Latinx neighborhoods, and 70% of individuals given dog-related infraction citations have traditionally Latinx surnames. The fine, if not paid, can result in insurmountable debt, or in some places, a warrant for arrest. This discriminatory citation practice places unjustifiable financial stress on historically marginalized communities.

RACIAL AND ETHNIC DISPARITIES IN SAN FRANCISCO COUNTY

As discussed above, MACR data shows that disparities exist in San Francisco County for both felony and misdemeanor arrests. In 2018, for every 1,000 Black adults in the population, 66 were arrested for felonies and 64 were arrested for misdemeanors. In that same year, for every 1,000 Latinx adults in the population, 1 was arrested for felonies and 4 were arrested for misdemeanors.⁵² When compared to the white rate for that same year, for every 1 white adult arrested for a felony in San Francisco in 2018, 6.4 Black adults were arrested. For every 1 white adult arrested for a misdemeanor, 5.9 Black adults were arrested.⁵³

San Francisco County Criminal Court System

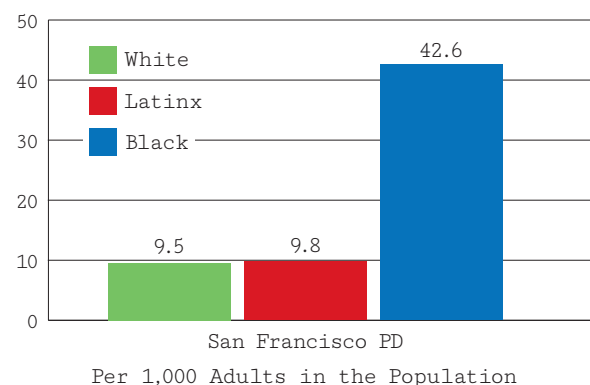
In the 2018-19 fiscal year in San Francisco County, there were a total of 91,294 criminal court filings.⁵⁴ Of those filings, 8,765 were for non-traffic infractions, or approximately 10% of all criminal court filings.

San Francisco Police Department

RIPA data retrieved from the Department of Justice shows that between July 2018 and December 2019, the San Francisco Police Department stopped 158,099 individuals in a reported 148,261 stops. The data shows that racial and ethnic disparities exist in the stops reported, using all stop data. And, a subset of the data shows which stops resulted in a Citation for Local Infraction⁵⁵. For every 1,000 white adults, 9.5 received a Citation for Local Infraction as a

RIPA: Rate of Citation for Local Infraction by Perceived Race/Ethnicity

For every 1,000 white adults in San Francisco, 9.5 received a Citation for Local Infraction as a result of a non-traffic stop.



⁵² See note on undercounting Latinxs.

⁵³ Report of The Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement, at 23 (July 2016), https://sfdistrictattorney.org/sites/default/files/Document/BRP_report.pdf (“SFPD has failed to accurately report the number of [Latinx] arrestees to the California Department of Justice, classifying them instead as ‘White’ arrestees.”).

⁵⁴ 2019 Court Statistics Report, *supra* note 6, at 134.

⁵⁵ See RIPA data files (“Result of Stop” count for “Citation for infraction (use for local ordinances only)”).

result of a non-traffic stop by SFPD. However, for every 1,000 Latinx adults, 9.8 received a Citation for Local Infraction as a result of a stop by SFPD and for every 1,000 Black adults, 42.6 received a Citation for Local Infraction as a result of a stop by SFPD.

RACIAL AND ETHNIC DISPARITIES IN SACRAMENTO COUNTY

MACR data show that disparities exist in Sacramento County for both felony and misdemeanor arrests. In 2018, for every 1,000 Black adults in the population, 36 were arrested for felonies and 50 were arrested for misdemeanors. In that same year, for every 1,000 Latinx adults in the population, 10 was arrested for felonies and 17 were arrested for misdemeanors.⁵⁶ When compared to the white rate for that same year, for every 1 white adult arrested for a felony in Sacramento in 2018, 4.1 Black adults were arrested and 1.2 Latinx adults were arrested. For every 1 white adult arrested for a misdemeanor, 2.8 Black adults were arrested.

Sacramento County Criminal Court System

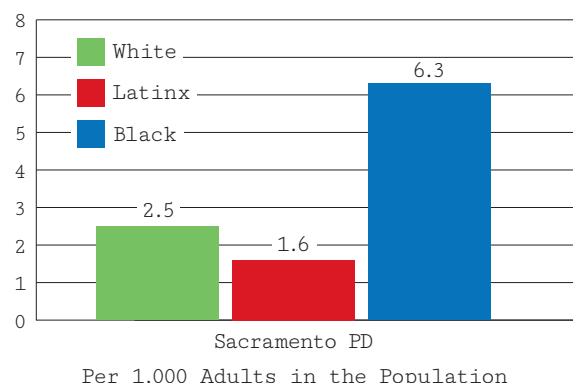
In the 2018-19 fiscal year in Sacramento County there were a total of 202,725 criminal court filings.⁵⁷ Of those filings, 40,135 were for non-traffic infractions, or approximately 20% of all criminal court filings.

Sacramento Police Department

RIPA data retrieved from the Department of Justice shows that between January 2019 and December 2019, the Sacramento Police Department stopped 68,012 individuals in a reported 57,413 stops. The data show overall disparities, as well as disparities in which individuals received a Citation for Local Infraction⁵⁸. The data show that for every 1,000 white adults, 2.5 received a Citation for Local Infraction as a result of a non-traffic stop by Sacramento PD. However, for every 1,000 Black adults, 6.3 received a Citation for Local Infraction as a result of a non-traffic stop by Sacramento PD.

RIPA: Rate of Citation for Local Infraction by Perceived Race/Ethnicity

For every 1,000 white adults in Sacramento, 2.5 received a Citation for Local Infraction as a result of a non-traffic stop.



For several years, Clifton lived on the streets of Sacramento. He received multiple infraction citations, including bus fare violations, but had no way to pay the fines. To get to court, Clifton would have to take the bus without having the funds to pay the fare. He would have to risk receiving a citation in order to resolve the others. It was impossible to navigate the systems and court bureaucracies while unhoused and struggling with addiction. So, Clifton ignored the citations and focused on surviving. Clifton is now housed and in recovery, and he is trying to tie up these loose ends from when he was homeless. It's still complicated, and he doesn't understand what steps he is supposed to take. He feels hopeless, like he'll never be able to overcome the challenges of his past without resolving these lingering citations.

⁵⁶ See note on undercounting Latinx people.

⁵⁷ 2019 Court Statistics Report, *supra* note 6, at 134.

⁵⁸ See RIPA data files ("Result of Stop" count for "Citation for infraction (use for local ordinances only)").

RACIAL AND ETHNIC DISPARITIES IN SANTA CLARA COUNTY

As discussed above, MACR data show that disparities exist in Santa Clara County for both felony and misdemeanor arrests. In 2018, for every 1,000 Black adults in the population, 31 were arrested for felonies and 74 were arrested for misdemeanors. In that same year, for every 1,000 Latinx adults, 14 were arrested for felonies and 36 were arrested for misdemeanors.⁵⁹ When compared to the white rate for that same year, for every 1 white adult arrested for a felony in Santa Clara in 2018, 7.2 Black adults were arrested and 3.3 Latinx adults were arrested. For every 1 white adult arrested for a misdemeanor, 5.1 Black adults were arrested and 2.5 Latinx adults are arrested.

Santa Clara County Criminal Court System

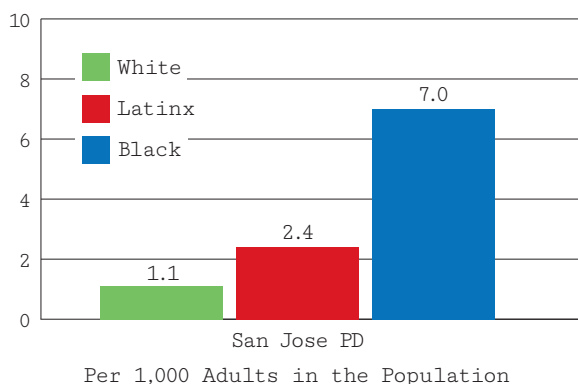
In the 2018-19 fiscal year in Santa Clara County, there were a total of 173,006 criminal court filings.⁶⁰ Of those filings, 5,834 were for non-traffic infractions, or approximately 3% of all criminal court filings.

San Jose Police Department

RIPA data retrieved from the Department of Justice shows that between January 2019 and December 2019, the San Jose Police Department stopped 44,347 individuals in a reported 38,626 stops.⁶¹ The data show that for every 1,000 white adults in the population, 1.1 received a Citation for Local Infraction as a result of a stop by San Jose PD. However, for every 1,000 Latinx adults, 2.4 received a Citation for Local Infraction as a result of a non-traffic stop by San Jose PD and for every 1,000 Black adults, 7.0 received a Citation for Local Infraction as a result of a non-traffic stop by San Jose PD.

RIPA: Rate of Citation for Local Infraction by Perceived Race/Ethnicity

For every 1,000 white adults in San Jose, 1.1 received a Citation for Local Infraction as a result of a non-traffic stop.



III. HISTORY: The Discriminatory Origins of Infraction Policing

The United States has a long history of passing laws that target Black, immigrant, disabled, and unhoused people. As Supreme Court Justice Ruth Bader Ginsberg stated:

Following the Civil War, Southern States enacted Black Codes to subjugate newly freed slaves and maintain the prewar racial hierarchy. Among these laws' provisions were draconian fines for violating broad proscriptions on "vagrancy" and other dubious offenses.⁶²

⁵⁹ See note on undercounting Latinxs.

⁶⁰ 2019 Court Statistics Report, *supra* note 6, at 134.

⁶¹ See RIPA data files ("Result of Stop" count for "Citation for infraction (use for local ordinances only)").

⁶² *Timbs v. Indiana*, 139 S. Ct. 682, 688 (2019).

These “dubious offenses” were early precursors to today’s non-traffic infractions, and were used in the Southern United States to continue the practice of slavery under the name “convict leasing”—a system of forced penal labor in which Southern States incarcerated people for being Black, then leased them to private railways, mines, and large plantations.

Similarly, in the late 19th century, “Ugly Laws” began criminalizing the mere presence of certain “unsightly” people in public spaces.⁶³ The language from this type of code is thought to have originated in San Francisco in 1867 when the San Francisco Board of Supervisors passed an ordinance that the *San Francisco Morning Call* described as an “order to prohibit street begging, and to prohibit *certain persons* from appearing in streets and public places” (emphasis added).⁶⁴

Once courts began ruling it was unconstitutional to prohibit only certain people in public spaces,⁶⁵ the laws began to shift away from explicitly targeting certain people, to targeting innocuous behaviors with an understanding that the laws would only be enforced against certain people.⁶⁶

One of the primary justifications for vigorous non-traffic infraction enforcement has been the Broken Windows theory, propounded in 1982 in an *Atlantic* article. In it, George Kelling and James Wilson argued that disorder in a neighborhood—like broken windows—causes increased crime rates.⁶⁷ Police departments across the country began using the theory as justification for practices like stop and frisk, and vigorous enforcement of infractions against Black and brown people. The theory has been debunked,⁶⁸ and its originator Mr. Kelling has decried its use for rampant discriminatory enforcement:

[O]ver the years, as [Mr. Kelling] began to hear about chiefs around the country adopting Broken Windows as a broad policy, he thought two words: “Oh s—t.”

“Any officer ... has to be able to answer satisfactorily the question, ‘Why do you decide to arrest one person who’s urinating in public and not arrest [another]?’ ... And if you can’t answer that question, if you just say ‘Well, it’s common sense,’ you get very, very worried.”

“So yeah,” he said. “There’s been a lot of things done in the name of Broken Windows that I regret.”⁶⁹

Unsurprisingly, this history has led to deep disparities in infraction enforcement.

63 Susan M. Schweik, *The Ugly Laws* 72 (N.Y. Univ. Press 2009)

64 *Id.*

65 See *Robinson v. California*, 370 U.S. 660 (1962) (interpreted the Eighth Amendment of the Constitution to prohibit criminalization of particular acts or conduct; ruled that drug addiction alone as a disease could not be criminalized); *Powell v. Texas*, 392 U.S. 514 (1968) (ruled that a Texas statute criminalizing public intoxication did not violate the Eighth Amendment of the Constitution; punished defendant for public behavior rather than criminalizing the condition of alcoholism alone); see also *Parr v. Mun. Ct.*, 3 Cal. 3d 861 (1971) (the court held that the municipal ordinance of the City of Carmel-by-the-Sea regulating use of public property is violative of equal protection clause in that it discriminates against persons known as “hippies,” not just persons engaged in illegal conduct).

66 See Nat’l Law Ctr. on Homelessness & Poverty, *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities* 9-10 (2016), <https://nlchp.org/wp-content/uploads/2018/10/Housing-Not-Handcuffs.pdf>; Berkeley Law, Policy Advocacy Clinic, *California’s New Vagrancy Laws: The Growing Enactment and Enforcement of Anti-Homeless Laws in the Golden State* 6 (June 2016), <https://www.law.berkeley.edu/wp-content/uploads/2015/12/Californias-New-Vagrancy-Laws.pdf>.

67 George L. Kelling & James Q. Wilson, *Broken Windows: The police and neighborhood safety*, *The Atlantic* (Mar. 1982), <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>.

68 See Sarah Childress, *The Problem with “Broken Windows” Policing*, *Frontline* (June 28, 2016), <https://www.pbs.org/wgbh/frontline/article/the-problem-with-broken-windows-policing/>; Andrea J. Ritchie, *Black Lives Over Broken Windows*, *The Public Eye* (Spring 2016), <https://www.politicalresearch.org/2016/07/06/black-lives-over-broken-windows-challenging-the-policing-paradigm-rooted-in-right-wing-folk-wisdom/>; Eric Klinenberg, *The Other Side of “Broken Windows”*, *The New Yorker* (Aug. 23, 2018), <https://www.newyorker.com/books/page-turner/the-other-side-of-broken-windows>.

69 Childress, *supra* note 29.

HISTORY OF HOMELESSNESS AND INFRACTION ENFORCEMENT

In the 1980s, the federal government began a continued, decades-long project of disinvesting from affordable housing structures and programs.⁷⁰ As a result, homelessness in the United States has skyrocketed.⁷¹ As encampments and homeless shelters became more visible, “Not-In-My-Backyard” anti-homeless residents called the police to respond to homelessness, which they found unsightly at the same time they challenged the development of shelters or affordable housing in their neighborhoods.⁷²

Cities throughout the country have responded by passing more laws that target and criminalize unhoused individuals. Between 2006 and 2019, there was a 92% increase in laws criminalizing camping in public.⁷³ Under the guise of addressing and responding to homelessness, the police have cited, harassed, and incarcerated hundreds of thousands of unhoused people throughout the country. Unsurprisingly, citations and arrests have not improved homelessness, and criminal consequences have often impaired people in obtaining affordable housing.

Though housing status is not currently tracked on citation forms in California, the Western Regional Advocacy Project (WRAP) conducted a survey of 721 unhoused individuals in California about their experience with law enforcement beginning in August 2011 and ending in December 2012.⁷⁴ Fifty-six percent of respondents reported being cited at least once, 31% were arrested at some point, and 54% went to court at least once. Even if not cited, 93% of survey respondents reported that they were harassed by law enforcement; approximately 80% believed they were arrested, cited, or harassed because of their economic status, and approximately 40% stated that they believed they were arrested, cited, or harassed because of their race.

The failure to pursue the logical and proven solution to homelessness—investment in affordable housing—is affected by race.⁷⁵ People experiencing homelessness are disproportionately Black. For example, in San Francisco 5% of the population is Black, yet nearly 40% of the unhoused population is Black.⁷⁶ The laws that criminalize homelessness further criminalize Black individuals.⁷⁷

70 Without Housing: Decades of Federal Housing Cutbacks, Massive Homelessness, and Policy Failures, WRAP (2010), <https://wraphome.org/what/without-housing/>.

71 *Id.*

72 *Id.*; Andrew Galvin, Anywhere But Here (Aug. 28, 2014), <https://web.archive.org/web/20160130210045/http://digitalissue.ocweekly.com/article/News/1800742/223650/article.html>; Coner Dougherty, Victims of NIMBYism, *Unite, The Atlantic* (Feb. 19, 2020), <https://www.theatlantic.com/ideas/archive/2020/02/building-enough-housing-requires-unlikely-coalition/606739/>; Emma Ockerman, Cities Are Realizing It's Time to Stop Calling the Police on Homeless People, *Vice News* (July 1, 2020), https://www.vice.com/en_us/article/akzk5j/cities-are-realizing-its-time-to-stop-calling-the-police-on-homeless-people; Chris Herring et al., Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness (2019) <https://pdfs.semanticscholar.org/c84a/d5d7c016b7167f653d33ee75ba5e345fceb6.pdf>; Katie Shepherd, Portlanders Call 911 to Report “Unwanted” People More Than Any Other Reason. We Listened In, *Willamette Week*, <https://www.wweek.com/news/2019/02/06/portlanders-call-911-to-report-unwanted-people-more-than-any-other-reason-we-listened-in/>; Dougherty, *supra* note 36.

73 Emma Ockerman, Here's How Cities are Making it Illegal to Be Homeless, *Vice News* (Dec. 10, 2019), https://www.vice.com/en_us/article/evjjw7/heres-how-cities-are-making-it-illegal-to-be-homeless.

74 The survey data referenced in this paragraph, which was conducted by the Western Regional Advocacy Project is unpublished, though it was cited in legislative analysis for SB 608 in the California legislature in 2015. Data is on file with LCCR SF. Please contact pboden@wrap.org for more information.

75 Without Housing, *supra* note 32.

76 United States Census Bureau, Quick Facts, San Francisco, California, <https://www.census.gov/quickfacts/fact/table/sanfranciscocitycalifornia,US/PST045219>; San Francisco Homeless Count & Survey Comprehensive Report 2019, ASR (2019), https://hsh.sfgov.org/wp-content/uploads/2020/01/2019HIRDReport_SanFrancisco_FinalDraft-1.pdf.

77 See National Law Center on Homelessness & Poverty, *Racial Discrimination in Housing and Homelessness in the United States*, at 1 (2014), https://nlchp.org/wp-content/uploads/2018/10/CERD_Housing_Report_2014.pdf; National Law Center on Homelessness & Poverty, *Cruel, Inhuman, and Degrading: Homelessness in the United States under the International Covenant on Civil & Political Rights* (Aug. 23, 2013), http://www.nlchp.org/Cruel_Inhuman_and_Degrading.

Robert awoke at six o'clock in the morning to three police officers knocking on the window of his vehicle. Robert was forced into homelessness because he was unable to pay the skyrocketing rent in Marin County; he had no other place to sleep except his car. An officer questioned if he had been arrested before, and gave him a \$190 ticket for camping in his vehicle.

PROTEST AND INFRACTION ENFORCEMENT

Curfews stem from a legacy of racist policies that have been used to criminalize, surveil, and control the movement of Black and other marginalized people in public space. Originating during slavery, curfews were put in place forbidding people, as with the state of Connecticut in 1690 “from being from the place where they do belong.”⁷⁸ From the late 1800’s up until the 1960s, sundown towns--towns that prohibited Black people from entering after the sunset, effectively barred Black people from hundreds of places across America. During World War II, the U.S. government imposed 8 p.m. curfews exclusively on Japanese-Americans on the West Coast.⁷⁹ Throughout the course of the Jim Crow era and the civil rights movement of the 1950’s and 1960’s, governments in the South imposed curfews on Black people. Curfews have also been historically used in attempts to curtail free speech, including during the Watts uprising in 1965 in Los Angeles, the Rodney King uprising in 1992 and protests in Cincinnati in 2001.⁸⁰

In June 2020, during protests calling for the end of police brutality against all Black people, over 200 cities placed more than 60 million people under curfew in attempts to curtail free speech.⁸¹ In Sacramento, protests were met with an emergency curfew order, which prohibited the mere presence of 513,000 Sacramento residents on any street, park, or in any public area, between 8p.m. and 5a.m. The curfew order granted law enforcement officers even greater power to interfere with protestors’ rights and was disparately applied to the Black community.⁸² Violations of such curfews have resulted in mass citations and arrests. Forty eight people were arrested in Sacramento the first night of the curfew order and faced penalties of up to six months in jail, a \$1,000 fine, or both.⁸³

In early June 2020, Kareem, a Black father who lives with his son and grandmother, was arrested for unknowingly violating Alameda County’s curfew order. Kareem had just left his house to get dinner for his family when he was approached by the police.

The arresting officer asked Kareem if he was in a gang. He asked Kareem if he had any warrants; or any weapons on him. The officer asked to see Kareem’s tattoos. The officer then asked Kareem’s nationality: “You look like you’re white, but you also don’t look like you’re white.”

78 Wendy Warren, *New England Bound: Slavery and Colonization in Early America* (2016).

79 San Francisco Museum, *Enemy Alien Curfew Friday*, S.F. News (Mar. 24, 1942), <http://www.sfmuseum.org/hist8/intern1.html#:~:text=Under%20the%20new%20edict%20Japanese,at%20wartime%20civilian%20control%20offices.>

80 Christopher Petrella, *How curfews have historically been used to restrict the physical and political movements of black people in the U.S.*, Wash. Post, June 3, 2020, <https://www.washingtonpost.com/nation/2020/06/03/how-curfews-have-historically-been-used-restrict-physical-political-movements-black-people-us/>.

81 Maria Sacchetti, *Curfews follow days of looting and demonstrations*, Wash. Post, June 1, 2020, https://www.washingtonpost.com/national/curfews-follow-days-of-looting-and-demonstrations/2020/06/01/6376e51e-a428-11ea-b473-04905b1af82b_story.html.

82 Letter to Sacramento City Manager Howard Chan Re: Sacramento Curfew Order Violation Citations, June 15, 2020, https://lccrsf-my.sharepoint.com/:b/g/personal/slew_lccrsf_org/EWmXDLCKwCtEuoZEFpX50IAB06olk7k0uJfPmFSZbMvPPQ?e=J7dja.

83 Chris Hagan & Sarah Mizes-Tan, *Sacramento Lifts Curfew Order Starting Saturday Night, Ends National Guard Deployment*, June 6, 2020, <https://www.capradio.org/articles/2020/06/06/what-to-know-about-sacramentos-curfew-order/>.

Kareem noticed that only one other person of the many others walking on the street had been stopped by police due to the curfew order. A Latinx person. Kareem felt nervous, realizing he may have been stopped because of his race.

Kareem repeatedly asked to go home. He pleaded with the officer not to arrest him. The officer responded, “We can’t do that, because we have to teach you a lesson.”

The officer arrested Kareem and placed him in a van where he would stay for a number of hours as police rounded up other people who were arrested for violating curfew. Every single person who was arrested was either Black or Latinx. Despite California having just declared a state of emergency due to the COVID-19 Pandemic, the police offered no one any protective equipment to prevent the spread of the deadly coronavirus. Kareem is asthmatic, as is his child, and he cares for his medically vulnerable grandmother—all factors of increased risk of contracting the virus with dangerous consequences. The police did nothing to mitigate that risk.

Once taken to Santa Rita Jail, jail staff placed Kareem in a crowded room. There was trash and rotting food on the floor. It had one toilet, but no toilet paper. It was impossible to stay six feet apart. He had only a shirt that he stretched over his legs to try to keep warm.

Kareem was held in jail overnight, unable to tell his family that he was arrested while attempting to get their dinner. He is still living with nightmares about his experience. And Kareem is very concerned about the health and well-being of his family due to the arrest record and potential financial consequences of the citation for violating curfew.

IV. COST: Spending Millions to Give Citations to People Who Cannot Afford to Pay Them

In January 2020, the California Governor proposed an increase to the state’s criminal justice budget despite a decrease in arrests and criminal filings.⁸⁴ Even as California suffered a substantial budget shortfall due to the COVID-19 pandemic, the 2020-2021 judicial and public safety budget likely will rise by over 52%.⁸⁵

PAYING FOR POLICE TO CITE AND HARASS PEOPLE IS EXPENSIVE

As previous reports have demonstrated, the costs of paying police officers and court personnel to enforce laws against minor infractions can be astronomical.⁸⁶ Between 2013 and 2017, San Francisco

84 See 2019-2020 Judicial Budget Summary, <http://www.ebudget.ca.gov/2019-20/pdf/Enacted/BudgetSummary/JudicialBranch.pdf>; 2019-2020 Public Safety Budget Summary, <http://www.ebudget.ca.gov/2019-20/pdf/Enacted/BudgetSummary/PublicSafety.pdf> (for a combined spending of approximately \$16.9 billion in 2019-2020); cf. 2020-2021 Judicial Budget Summary <http://www.ebudget.ca.gov/2020-21/pdf/Enacted/BudgetSummary/JudicialBranch.pdf>; 2020-2021 Budget Summary, <http://www.ebudget.ca.gov/2020-21/pdf/Enacted/BudgetSummary/PublicSafety.pdf> (for a combined spending of approximately \$17.8).

85 See 2019-2020 Judicial Budget Summary, *supra* note 64; 2019-2020 Public Safety Budget Summary, *supra* note 64 (for a combined spending of approximately \$16.9 billion in 2019-2020); cf. 2020-2021 Judicial Budget Summary, *supra* note 64; 2020-2021 Budget Summary, *supra* note 64 (for a combined spending of approximately \$17.8).

86 See, e.g., Nat’l Law Ctr. on Homelessness & Poverty, *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in US Cities*, S.F. Board of Supervisors, Policy Analysis Report (June 1, 2016), <https://sfbos.org/sites/default/files/FileCenter/Documents/56045-Budget%20and%20Legislative%20Analyst%20Report.Homelessness%20and%20Cost%20of%20Quality%20of%20Life%20Laws.Final.pdf>.

Police dispatches regarding “homeless concerns” increased by 72%, despite no corresponding increase in the unhoused population.⁸⁷ In 2015, San Francisco spent around \$20.6 million dollars on enforcing 30 types of non-traffic violations; \$18.5 million of that was paid to police.⁸⁸ In 2015, the Office of the City Administrative Officer for Los Angeles reported that it expected the cost of the city’s homelessness services across all agencies to be an estimated \$100 million per year.⁸⁹ The same report indicated that anywhere from 53% to 87% of the City’s expense comes from the Los Angeles Police Department’s interactions with unhoused people.⁹⁰

This is consistent with the overall expense of policing: the average police officer salary is \$105,220 in California,⁹¹ and in many cities, police officers spend a significant percentage of time on enforcing non-violent crime. In Sacramento, police spend only 4% of their time responding to violent crime, and 58% of their time responding to non-criminal, traffic, or non-violent property crime.⁹² Recognizing the disproportionate role of police in responding to these types of infractions, the city of Berkeley has proposed cutting its police budget and replacing traffic enforcement with unarmed civilians.⁹³

The Oakland Housing Authority is one of the only housing authorities left in the country that has its own police force, the Oakland Housing Authority Police Department (OHAPD). Because the City of Oakland’s police department is the “primary law enforcement agency” on housing authority property, OHAPD is duplicative.⁹⁴ OHAPD’s enforcement almost exclusively focuses on infraction or administrative laws, including stops for “suspicious person or vehicle”, issuing parking tickets and citing people for sleeping in the stairways.⁹⁵ Currently, OHAPD police officers earn within a salary range of \$90,840- \$113,532 a year.⁹⁶ Between 2009 and 2018, OHAPD issued an average of 4420 citations per year and increased the size of their police force by 45% from 31 to 45 officers⁹⁷ In Fiscal Year 2015-2016, OHAPD’s budget was \$9,135,356, which could have instead been spent on much-needed affordable housing.⁹⁸ Much of this enforcement is not only costly, it is constitutionally dubious.⁹⁹

87 See Nat’l Law Ctr. on Homelessness & Poverty, *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in US Cities*, at 56, <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>.

88 See S.F. Board of Supervisors, Policy Analysis Report (June 1, 2016), <https://sfbos.org/sites/default/files/FileCenter/Documents/56045-Budget%20and%20Legislative%20Analyst%20Report.Homelessness%20and%20Cost%20of%20Quality%20of%20Life%20Laws.Final.pdf>.

89 See Office of the City Admin. Officer, Homelessness and the City of Los Angeles, at 2, <https://www.documentcloud.org/documents/1906452-losangeleshomelessnessreport.html>.

90 *Id.* at 6.

91 See Andrew DePietro, *Here’s How Much Money Police Officers Earn In Every State*, Forbes, Apr. 23, 2020, <https://www.forbes.com/sites/andrewdepietro/2020/04/23/police-officer-salary-state/#72c564de2010>.

92 See J. Asher and B. Horwitz, *How Do the Police Actually Spend Their Time?*, J. Asher and B. Horwitz, New York Times, June 19, 2020, <https://www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html>.

93 See Brett Simpson, *Berkeley approves goals to cut police budget by 50%, reduce cops’ role in traffic enforcement*, S.F. Chronicle, July 17, 2020, <https://www.sfchronicle.com/crime/article/Berkeley-council-bans-police-from-traffic-15410326.php>.

94 Memorandum of Understanding Between the Oakland Housing Authority Police Department and the Oakland Police Department (Dec. 7, 2012). Received in a Public Records Act request by Lawyers’ Committee for Civil Rights of the SF Bay Area, available for review upon request.

95 The PRA request sent to Oakland Housing Authority requested documents regarding investigatory stop, arrests, parking tickets and case referrals from 2016-2019.

96 See Oakland Housing Authority Police Department, Public Job Listing, https://workforcenow.adp.com/mascsr/default/mdf/recruitment/recruitment.html?cid=9b512bf6-9d6d-4c40-a1f0-ce24a9206bab&cclid=19000101_000001&type=MP&lang=en_US.

97 See Comprehensive Annual Financial Report, Housing Authority of the City of Oakland, California, at 97-98 (June 30, 2018). Received in a Public Records Act request by Lawyers’ Committee for Civil Rights of the SF Bay Area, available for review upon request.

98 See Budget Comparison for the Period July 2015 to June 2016, at 4, https://lccrsf-my.sharepoint.com/:b/r/personal/slew_lccrsf_org/Documents/Budget%20Jul%202015%20thru%20Jun%202016.pdf?csf=1&web=1&e=9NRuXX. Received in a Public Records Act request by Lawyers’ Committee for Civil Rights of the SF Bay Area, available for review upon request.

99 See Complaint at 3, *Jackson v. City of Oakland*, No. 4:18-CV-05742 (N.D. Cal.).

A MAJORITY OF THE DEBT FROM NON-TRAFFIC INFRACTION CITATIONS IS UNCOLLECTABLE

In 2017-18, criminal justice filings had an average clearance rate of 77%.¹⁰⁰ However, non-traffic infractions had the lowest clearance rate, at only 46%.¹⁰¹ This implies an inability to pay among people who were cited for non-traffic infractions.

The Judicial Council reported that in 2018-19, outstanding delinquent court debt totaled \$10.6 billion.¹⁰² That same year, collections programs statewide collected \$1.4 billion in total revenue, including \$542.9 million from delinquent accounts. This represented a 6.9% reduction from the previous year.¹⁰³ An assessment by the Legislative Accountability Office stated that “a large portion of this [court-ordered debt] balance may not be collectable as the costs of collection could outweigh the amount that would actually be collected.”¹⁰⁴

The Judicial Council started a pilot to ameliorate traffic debt, involving 50%- 80% reductions in traffic citations for people whose incomes are below the poverty level.¹⁰⁵ On average, people who applied for relief owed \$657, which is just above the average amount of one traffic citation.¹⁰⁶ Of the 1,083 people who applied in the first months of the program, 54% received public benefits and 74% had an income below the federal poverty line. The requests submitted totaled \$963,977 in fines and fees. After the reductions were made, the average person still owed \$362 per request—an amount which is similar to the total monthly income of many people on public benefits. This means that even for the people who knew about the program, could fill out the forms, qualified, and had proof of income, reduced amount caused a significant financial strain or was unpayable.

A recent report recommended that all private debt collection of criminal justice debt end. The report reviewed 17 California counties and found that the court-ordered debt collected by private companies made up 0.001% to 0.46% of total county revenue.¹⁰⁷ The report stated that “none of the studied counties derive even half of a single percent of their revenue from the collection of court-ordered debt by debt collectors.”¹⁰⁸

After being sued for imposing high fines and suspending driver’s licenses of people who could not afford to pay traffic citations, the Solano County court agreed in a settlement to set up an ability to pay program for traffic and infractions. While the ability to pay program is intended to lessen the financial burden of fines and fees on indigent and low-income individuals, a review of 18 months of applications showed that of those individuals on means-tested public benefits (another government agency has determined they cannot pay for basic life necessities), only 64% received a reduction in fines and fees, and only 9% received a dismissal of fines and fees. In fact, people with higher incomes were more likely to get a reduction or dismissal.

¹⁰⁰ 2019 Court Statistics Report, *supra* note 6.

¹⁰¹ *Id.*

¹⁰² See Judicial Council, Report on the Statewide Collection of Court Ordered Debt for 2018–19, Nov. 15, 2019, https://www.courts.ca.gov/documents/lr-2019-JC-statewide-court-ordered-debt-2018-19-pc1463_010.pdf.

¹⁰³ *Id.*

¹⁰⁴ See Governor’s Criminal Fine and Fee Proposals, Mar. 3, 2017, <https://lao.ca.gov/Publications/Report/3600>.

¹⁰⁵ Judicial Council Online Traffic Adjudication and Ability-to-Pay: Annual Report, Jan. 17, 2020, <https://www.courts.ca.gov/documents/lr-2020-online-traffic-adjudication-ability-to-pay-budgetact2018.pdf>.

¹⁰⁶ 2019 Court Statistics Report, *supra* note 6; *Not Just a Ferguson Problem*, *supra* note 11.

¹⁰⁷ Unholy Alliance: California Courts’ Use of Private Debt Collectors, CRC (May 2018), <http://calreinwest.org/wp-content/uploads/2018/07/Unholy20Alliance20-20California20Courts20Use20of20Private20Debt20Collectors.pdf>.

¹⁰⁸ *Id.*

Doug has been homeless in the Bay Area for years. He has received numerous citations for sleeping outside; not a single one provided a solution to the problem, which is that he needs a place to sleep. He was recently diagnosed with a mental illness, and states that “the road to recovery is much harder when you are cited over and over and forced to pay fines when you don’t have money. [Getting citations] made me feel like a criminal for sleeping – a common thing that everyone needs to do! It’s painful.”

V. Consequences: Unpayable Debt, Unresolvable Warrants, Ongoing Trauma

The consequences of infraction enforcement start from the moment of the first police encounter and ripple through to trauma, debt burden, and arrest.

One rainy day in 2018, Lorenzo was sitting inside his tent in Venice Beach, trying to stay warm and dry. A police officer came by and gave him a \$185 infraction citation for having his tent assembled during the day. The officer did not care that it was raining and Lorenzo had no other place to go. Lorenzo went to court to challenge the ticket. The court refused to dismiss the citation, and it is now in collections and the price is increasing. Lorenzo does not have the ability to pay the ticket, and fears that he will be arrested now, all because he was protecting himself from the rain.

WARRANTS AND ARRESTS

Though the initial sentence for non-traffic infractions is a fine—plus unreasonably high add-on fees—the consequence of not being able to pay or appear can be warrant and arrest. State law requires that for both traffic and non-traffic infraction violations, courts must choose between imposing a \$300 civil assessment fee for nonpayment, or issuing a warrant; they cannot do both.¹⁰⁹ After public pressure and as a matter of public policy, nearly all California counties have opted to impose the \$300 civil assessment fee rather than issue a warrant for outstanding traffic infractions. However, for the more minor non-traffic infractions, some California counties have retained a warrant system, issuing misdemeanor warrants for someone’s arrest if they could not, or did not pay or appear.

In an August 2020 survey of the most 20 populous county superior courts, 9 courts responded, and more than half of those still issue warrants for unresolved non-traffic infractions.

¹⁰⁹ Cal. Penal Code § 1214.1(c).

County ¹¹⁰	Warrant for Failure to Appear or Failure to Pay
Alameda	No
Fresno	Yes
Los Angeles	Yes
Marin	No, unless on probation
Sacramento	Yes
San Diego	Yes
San Francisco	No
San Joaquin	Yes
Stanislaus	Yes

Warrants often cause considerable stress: one arrest can disrupt someone's life significantly, causing job loss, making parents or caretakers miss child care duties and, particularly in the COVID-19 era, risking their health in a congregate jail setting that is unsanitary even in non-pandemic times.

FINES AND FEES

It has been well documented that fines and fees for infraction offenses can generate crippling debts in California.^{111 112}

The United States Supreme Court has repeatedly recognized that punishing a person for poverty – and punishing nonpayment when a person is unable to pay – violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment.¹¹³ A California court of appeal recently concluded that before assessing fines and fees, courts must ascertain whether someone can pay them, or else forego the punishment.^{114 115} This issue—whether courts must assess ability to pay before imposing fines and fees in criminal cases—is currently before the California Supreme Court.¹¹⁶

In the meantime, there are very few options for people who cannot afford to pay the fines and fees for non-traffic infractions. Studies show that 40% of Americans cannot afford a \$400 emergency or unexpected expense.¹¹⁷ This means that with the exorbitant add-on fees in California, just one citation can be ruinous for an average family's finances.

Kevin is a Black man who has been living in Sacramento for years. Police have cited him for numerous non-traffic infractions, including several for loitering. The base fare for most of his citations is \$154, which he cannot afford. When he cannot pay or make it in person to court

110 These 9 counties constitute 51% (15,673,183 of 30,567,090) of the 2018 adult population of California.

111 Not Just a Ferguson Problem, Paying More for Being Poor, Stopped, Fined, Arrested. U.S. Dept. of Justice, Civil Rights Div., Investigation of Ferguson Police Dept., at 4, Mar. 4, 2015, https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

112 Towed Into Debt: How Towing Practices in California Punish Poor People, at 5, Mar. 18, 2019, https://lccr.com/wp-content/uploads/WES459_TowReport_A9_Endnotes-1.pdf.

113 *Bearden v. Georgia*, 461 U.S. 660, 668 (1983); see also *People v. Dueñas*, 30 Cal. App. 5th 1157, 1168 (2019) (“[I]mposing these assessments upon indigent defendants without a determination that they have the present ability to pay violates due process under both the United States Constitution and the California Constitution.”); *In re Humphrey*, 19 Cal. App. 5th 1006, 1026 (2018); *Doe v. Angelina Cty., Tex.*, 733 F. Supp. 245, 252-54 (E.D. Tex. 1990).

114 *Id.* (This is currently being decided by the California Supreme Court.).

115 *Dueñas*, 30 Cal. App. 5th at 1168.

116 *People v. Kopp*, S257844. (D072464; 38 Cal.App.5th 47; San Diego County Superior Court; SCN327213).

117 Bd. of Governors of the Fed. Reserve Sys., Report on the Economic Well-Being of U.S. Households in 2018 (May 2019), <https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf>

for the tickets, the cost for each citation increases to \$425. Sacramento has a program that allows him to pay down the debt with community service if he goes in person to sign up. But that option is only available for tickets for a few weeks; after that the only option is to pay the full fines and fees to a collections company. Kevin has been out of work, and the time he spends doing community service to pay down the tickets is time he could spend looking for a job, or working. Kevin is unhoused and has been sober for a few months. Kevin wants a job but because he has to do frequent community service to pay his debt it is difficult, and the citation debts ruined his credit, so even if he was able to work and save money, he could not get an apartment.

BUREAUCRACY AND PROCESS AS PUNISHMENT

For people who were unjustly cited or cannot afford to just pay the fines, it is difficult to navigate the court process, particularly for people who are unhoused, disabled, medically vulnerable, or employed full-time during court hours. In the experience of the authors and advocates interviewed across the state, each county has a slightly different process for challenging an infraction citation, and navigating the multiple bureaucracies is confusing. In some counties, the infraction citation lists a set time and date for arraignment, while in others a deadline to appear is provided. Some counties require a cited individual to schedule an arraignment in person with the clerk. At an arraignment, a cited individual can challenge the citation by pleading not guilty, but must return to court at a later date for trial. There is no right to a public defender at these trials; cited individuals can hire their own counsel if they can afford it, but most represent themselves and are tasked with cross-examining the citing officer after that officer delivers his testimony to the judge.

At arraignment or trial, the cited individual can request an ability to pay determination, which requires proof of income and the ability to successfully complete confusing court paperwork. Resolving a citation requires multiple trips to court, resulting in time away from work or family responsibilities. And after all of this, more often than not, people still owe significant fines and fees.

In places that have ended warrants, the due process bureaucracy is even more challenging. Los Angeles County created an administrative citation enforcement system (“ACE”) that makes it incredibly difficult to challenge a citation; so difficult that the county has already been sued. A Complaint filed by Larry Dunn against the City of Los Angeles explains the due process violations caused by the obstacles to challenging ACE citations. The Complaint alleges that: (i) the City’s 20-day deadline to challenge a citation is without exception or extension and does not consider the long processing times, mail errors or non-receipt; (ii) the “pay upfront” requirement mandates that hearing costs be paid prior to obtain an administrative hearing, thereby excluding those who cannot afford unexpected expense; and (iii) the City’s ticketing adjudication and review website is not accessible to persons with disabilities.^{118 119}

In the end, the cost in time and effort of challenging a non-traffic citation is punishment in itself. For the rare wealthy person who is targeted for enforcement of loitering or drinking in public, the consequence is quite small: submit payment. For people without money, just the hours of time and frustration spent in court bureaucracy outweigh the original penalties set for these most minor violations.

118 City of L.A., Report Re: Administrative Citation Enforcement (ACE) Program Status Report, Dec. 2, 2019, https://clkrep.lacity.org/onlinedocs/2014/14-0818-s6_rpt_ATT_12-02-2019.pdf.

119 Commission on the Future of California’s Court System, *supra* note 19.

TRAUMA AND NEGATIVE HEALTH OUTCOMES

The type of low-leveling policing inherent in issuing non-traffic infractions is a threat to public health. People who report frequent police contact report more trauma and anxiety than the general population.¹²⁰ People experience adverse physiological responses to police interactions, such as accelerated heart and respiratory rates. When a human body responds in this manner on a recurrent and persistent basis, it causes rapid wear and tear on organs and can lead to conditions such as diabetes, stroke, ulcers, cognitive impairment, autoimmune disorders, and accelerated aging.¹²¹

The financial consequences of criminalization accelerate these dangerous health outcomes for people “by limiting access to healthy food, exposing families to environmental hazards and poor housing conditions, and making it harder to access health services.”¹²² The known health impacts of policing are dangerous.

Death is also a consequence of low-level policing. Routine encounters with police, most officer-initiated,¹²³ too often result in the death of the person stopped, with disproportionate killings of Black people.¹²⁴ Sandra Bland, Eric Garner, Philando Castile, Maurice Gordon, Walter Scott and thousands of others were killed following “routine” non-traffic and traffic stops.

For many, riding a bicycle is a fun recreational activity or a healthy commute option. But that was not the case for Ronell Foster, a 33-year old Black father of two young children. On the night of February 13, 2018, the City of Vallejo police shot and killed him. Ronell had been riding his bicycle without a headlight. While on his bicycle, a patrol vehicle pursued him, chased him down a dark alley, tased him, beat him with a flashlight, and shot him multiple times in the back and head. All for an infraction—riding a bike without a headlight.

DISABILITY AND INFRACTION ENFORCEMENT

As evidenced in the history of policing, our criminal legal system has in many ways, as one legal scholar put it, “manifest[ed] an exertion of state control over disabled bodies, stemming from a combination of indifference, fear, and contempt.”¹²⁵ This state control has resulted, over the course of many decades, in an over-representation of disabled people who encounter law enforcement.¹²⁶

Risk of injury during a police stop is even more pronounced for people with disabilities. People with disabilities not only face a higher probability of being approached by police, but are at greater risk of arrest, incarceration, serious injury, or death during a stop or citation process. One recent study found that disabled people have a “higher cumulative probability of arrest” than people without disabilities.¹²⁷ The

120 Amanda Geller, et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 104 Am. J. Pub. Health 12 (2014).

121 Sirry Alang, et al., *Police Brutality and Black Health: Setting the Agenda for Public Health Scholars*, 107 Am. J. Pub. Health 5 (2017).

122 *Id.*

123 Racial & Identity Profiling Advisory (RIPA) Bd., Annual Report 2020, at 7, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2020.pdf> (“[Ninety-five] percent of stops were officer-initiated, while 4.7 percent of stops were in response to a call for service, radio call, or dispatch.”).

124 Wesley Lowery, A disproportionate number of black victims in fatal traffic stops, Wash. Post (Dec. 24, 2015), https://www.washingtonpost.com/national/a-disproportionate-number-of-black-victims-in-fatal-traffic-stops/2015/12/24/c29717e2-a344-11e5-9c4e-be37f66848bb_story.html; David A. Harris, Driving While Black: Racial Profiling on our Nation’s Highways, ACLU Special Report (June 1999), <https://www.aclu.org/report/driving-while-black-racial-profiling-our-nations-highways>.

125 Alice Abrokwa, “When They Enter, We All Enter”: Opening the Door to Intersectional Discrimination Claims Based on Race and Disability, 24 Mich. J. Race & L. 15, 32 (2018).

126 Kelley B. Harrington, *Policing Reasonable Accommodations for Individuals with Disabilities*, 50 UC Davis L. Rev. 1361, 1364-65 (2017).

127 Erin J. McCauley, *The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability Status, Race/Ethnicity, and Gender*, 107 Am. J. Pub. Health 1977 (2017).



[Image: Deaf Beaten by Nancy Rourke. Oil on Canvas. "This painting is about Deaf people getting beaten and killed by officers. A Deaf person is on the ground, being beaten by three officers. His eyes are bruised. His hands are bound behind his back. The sign says, 'HELP!' The Deaf get beaten for not obeying orders because they cannot hear." Shared with permission.]

risk of arrest is compounded when the disabled person is negatively racialized or gendered. For example, by age 28 a Black woman who has a disability is twice as likely to be arrested as a Black woman who does not.¹²⁸ While half of Black men without a disability will be arrested by age 28, two in three of disabled Black men will be arrested.¹²⁹ Worse still, the risk of death during an encounter or in pursuit of an arrest is exponentially greater for people with untreated mental illness.¹³⁰

Other disabilities also place people at grave risk of harm during law enforcement encounters. Deaf people are beaten and killed, because they cannot hear or understand an officer's directives.¹³¹ Police criminalize behaviors associated with autism, like stimming (or self-stimulatory behavior), which leads to arrests, incarceration, or even death.¹³² In *Graham v. Connor*, the seminal U.S. Supreme Court case on the Fourth Amendment right to be free from excessive police force, the plaintiff was beaten by law enforcement because he was experiencing symptoms of hypoglycemia, an easily treatable but dangerous effect of diabetes.¹³³

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Doris A. Fuller, et al., Treatment Advocacy Center, Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters 1 (2015) ("By all accounts – official and unofficial – a minimum of 1 in 4 fatal police encounters ends the life of an individual with severe mental illness. At this rate, the risk of being killed during a police incident is 16 times greater for individuals with untreated mental illness than for other civilians approached or stopped by officers.")

¹³¹ Helping Educate to Advance the Rights of Deaf communities (HEARD) tracks police violence and discrimination against Deaf people at <https://docs.google.com/spreadsheets/d/1HZ6YLtXzRNiEsu2RCfEUB1WmsCwM4Pn89ikpAwE4b-Q/edit#gid=1519942027>.

¹³² Rachel Shonebarger, *Police Training and Autism Spectrum Disorder: Providing a Reasonable Accommodation Under the ADA*, 80 Ohio State L. J. 351, 354-59 (2019).

¹³³ 490 U.S. 386 (1989).

These risks are all the more reason to minimize police contacts whenever possible, starting with low-level enforcement of non-traffic infractions.

EXACERBATING THE RACIAL WEALTH GAP

The fines and fees of non-traffic infractions disproportionately impact Black and Latinx families, not just because they are targets of infraction enforcement, but because Black and Latinx families have much less wealth on average than white families.

For every dollar (\$1) in wealth held by the median Black household, “the median white household possess[es] \$13 in net wealth.”¹³⁴ For every dollar in wealth held by the median Latinx household, “median white households possess[] \$10.”¹³⁵ In 2011, the median white household had \$111,146 in wealth, the median Black household had \$7,113 in wealth, and the median Latinx household had \$8,348 in wealth.^{136 137 138 139}

These disparities, and the lack of policies to address them, are even more apparent during the COVID-19 pandemic, which has disproportionately affected Black and Latinx households. While millions of Americans live just one paycheck away from financial disaster, Black and Latinx communities are particularly economically vulnerable due to the systemic barriers that keep them from accumulating the wealth of their non-Hispanic white counterparts. While 37 percent of Asian Americans and 30 percent of white people can work remotely only 20 percent of [Black individuals] and 16 percent of Latin[x] people have that ability.¹⁴⁰ Even in a good economy, \$200-\$500 citations, disproportionately given, exacerbate the racial wealth gap.

In San Francisco, if you are experiencing homelessness and receive a non-traffic infraction, it can be dismissed through the District Attorney’s CONNECT program. This program allows citations to be dismissed if the cited individual receives 20 hours of social services assistance from a partner community organization that works with San Francisco’s unhoused communities. This program is in some ways revolutionary: it recognizes that unaffordable fines and irrelevant fees do not resolve homelessness, and gives credit for things that do.

However, even this wise back-end measure does not resolve the underlying disparity or negative health effects of enforcement. San Francisco police continue to issue non-traffic infractions for ordinary life-sustaining activities such as sitting or sleeping. Additionally, to get a non-traffic infraction dismissed through the CONNECT program, the cited individual must complete paperwork and navigate confusing bureaucracy. Creating new bureaucracies does not solve the root problem that many Black and Latinx people have to have police and bureaucratic court interactions where most white people do not, even if getting the infraction dismissed is a significant help to the cited individual.

134 Amy Traub et al., The Asset Value of Whiteness: Understanding the Racial Wealth Gap, at 1, https://www.demos.org/sites/default/files/publications/Asset%20Value%20of%20Whiteness_0.pdf

135 Traub et al., *supra* note 104, at 1.

136 Amy Traub et al., The Racial Wealth Gap: Why Policy Matters, <https://www.demos.org/research/racial-wealth-gap-why-policy-matters>; Laura Sullivan et al., The Racial Wealth Gap: Why Policy Matters, at 1, 7, https://www.demos.org/sites/default/files/publications/RacialWealthGap_2.pdf

137 Amy Traub et al., the Asset Value of Whiteness: Understanding the Racial Wealth Gap (Feb. 6, 2017), <https://www.demos.org/research/asset-value-whiteness-understanding-racial-wealth-gap>.

138 Traub et al., *supra* note 104.

139 *Id.*

140 Elise Gould & Heidi Shierholz, Not everybody can work from home, Economic Policy Institute, fig.a Mar. 19, 2020, <https://www.epi.org/blog/Black-and-hispanic-workers-are-much-less-likely-to-be-able-to-work-from-home/>.

Solutions and Conclusion

California does not need non-traffic infraction enforcement. Though many Californians were attached to the policing and punishment of marijuana possession, it was abolished given the racism embedded in enforcement and the relative innocuousness of having marijuana. Many of the non-traffic infractions that remain on the books, like loitering and sit/lie laws, also have a racist history. The current enforcement of these infractions has similarly deep racial disparities, as demonstrated in this report. And the behaviors our current system punishes are even more innocuous.

People who favor the status quo may be worried: what will we do instead of enforcing non-traffic infractions? For the most part, doing nothing will work just fine. That is what happens for most people who have dogs without going through a City bureaucracy to get a license, to most people who stand or sit for a long while in public, to most people who walk across the street. Most of the time, the proper amount of state action is none.

In other instances, non-traffic infraction enforcement may be obscuring the real need, or pretending to address it. For example, when unhoused people are sitting or sleeping in public, the problem is not the sitting or sleeping; it is the fact that they have nowhere else to sit or sleep. Giving someone a \$200-\$500 fine does not solve that, nor does issuing a warrant; in fact, enforcement is using money that could be spent on housing, and those punishments often make it harder to get housing.

There may be instances where a solution is needed, and the practical ones are more effective than the current punitive ones. For example, cities controlling litter with additional trash cans and workers who clean downtown areas.

And finally, it may be tempting to advocate solely for back-end solutions to the harms outlined in this report, such as reducing fines and fees if people prove they cannot pay. The authors of this report used to advocate for ability to pay as a solution to fines and fees in California, and after years of experience in design and implementation, have concluded that: (1) they don't work--in two counties, approximately 50% of low-income and unhoused people were denied relief and even those who got a reduction still had to pay significant amounts, often equal to their monthly income; (2) the process is part of the punishment; often involving repeated court trips and dense forms and court bureaucracies with little to no flexibility or understanding; and (3) nothing on the back end erases the discrimination and trauma of a police encounter in the first place.

As a result, this report's recommendation is to reduce and eventually eliminate non-traffic enforcement.

There are multiple concurrent ways to end non-traffic infraction enforcement in California:

- A state bill could prohibit enforcement of non-traffic infractions. If total abolishment cannot gain full support, it could focus on the most commonly enforced types of laws, prohibiting ordinary human behaviors like standing, sleeping, and sitting. Organizers across the state have been advocating to end police enforcement of sit/lie/sleep laws for years, and advocates have been successful at prohibiting enforcement of some infractions at the state level, including vending without a permit.¹⁴¹
- Cities could take money out of police budgets for infraction enforcement. Money from police budgets could be tailored to local needs and accordingly redirected to housing, or education around dog ownership, or preventing whatever harms the laws were originally intended to redress.

¹⁴¹ Credit to the Western Regional Advocacy Project and all of its member organizations, the Western Center on Law and Poverty, and many others. See SB 608, The Right to Rest Act https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB608; Cal. Gov't Code § 51038 (prohibiting most enforcement of vending without a permit laws).

- City councils could repeal non-traffic infraction laws.
- In cities where municipal infraction laws were passed on the ballot, cities could issue moratoriums on enforcement.

As it stands, non-traffic infraction enforcement punishes acts that do not call for punishment, expends money on policing that causes harm but achieves no important purpose, and is rife with racial disparity. At a time when it is not only crucial but possible to reimagine policing, California should end enforcement of these laws.

APPENDIX

DATA SOURCES USED IN THIS REPORT

Data were collected from a several sources for original analysis and inclusion in this report:

Population Data by Race, Ethnicity, and Age

The American Community Survey (ACS) and Easy Access to Juvenile Populations (EZAPOP) were utilized to collect data on adults in California by race, ethnicity, age, and county.

American Community Survey (ACS), 2014–2018, 5-Year Estimates

The American Community Survey (ACS) is a voluntary survey conducted every month that informs population changes in between Census years. The ACS provides nationwide demographic information at low geographic levels (e.g., ZIP code tabulation areas).

The following variables were imported using the ACS 5-year estimates data: population, geographic identifier (county or city), gender, age group, race (white non-Hispanic, white, Hispanic, black, Asian, native Hawaiian/Pacific Islander, Native American, other, two or more races).

For members of the CA population aged 18 and over, race-specific population sizes were calculated at the county and city level for white non-Hispanic, black, Latinx (Hispanic), Asian and Pacific Islander (API), Native American, and all other populations.

The ACS reports 1-year, 3-year and 5-year estimates. Shorter time horizons (e.g. 1yr) give more current estimates at lower accuracy. Longer time horizons (e.g. 5yr) give less current estimates at greater accuracy. The 5-year estimates were selected to give the best available accuracy at more narrow geographic levels (such as cities and counties).

The ACS 5-year estimates were chosen for two primary reasons:

(1) Accuracy

The analyses presented in the report depend on the accurate measurement of non-white population sizes. In less populated counties and cities, there are likely to be fewer numbers of non-white populations, which can be difficult to accurately measure. For example, a relatively small difference in an already small population segment (e.g. 200 people of Race-A vs. 250 people of Race-A) can produce noticeable swings in “per-1,000” population metrics. The 5-year ACS estimates provide the most accurate data possible to produce these population measurements of all races within various geographic levels (e.g. counties, cities).

(2) Need for Population Estimates for Small Cities and Counties

Due to the need to accurately measure population sizes in counties and cities of all sizes, the 5-Year ACS Estimate was the clear choice. Only multi-year estimates are available for geographic areas with populations of less than 65,000, while single-year snapshots (e.g. for 2019) are not available.

The ACS 5-year data was validated against the National Center for Health Statistics accessed via Easy Access to Juvenile Populations (EZAPOP). ACS shares of population by race (population %) and levels by race (population #) were compared against the EZAPOP 2014–2018 population estimates. The comparison results for ACS and EZAPOP are available upon request.

In the PRA analyses, ACS black and API population counts may include Latinx populations that fall into black and API racial groups.

Easy Access to Juvenile Population (EZAPOP), 1980–2018

EZAPOP provides demographic-year-specific population counts at the county level.

From the EZAPOP data, the following variables were downloaded to construct per 1,000 and per 100,000 adult variables in municipality and county-level analyses: population, county, year, race, ethnicity (Hispanic, non-Hispanic).

California Department of Justice (CA DOJ)

The Monthly Arrest and Citation Register (MACR) data were retrieved from CA DOJ's OpenJustice website to illustrate the extent of racial and ethnic disparities in California for felony and misdemeanor arrests. "California [law enforcement agencies] report monthly information on felony, misdemeanor, and status offense arrests occurring within the state as part of the [MACR]." The "dataset includes aggregated counts of arrests by county, gender, race/ethnic group, age group, and offense level."¹⁴²

The Racial Identity Profiling Act (RIPA) data were retrieved from CA DOJ via the OpenJustice website for the 2018 data and via California Public Records Request Act (PRA) for the 2019 data.¹⁴³ These data were retrieved to explore the perceptions of police officers when they make contact with citizens. The Racial and Identity Profiling Act (RIPA) was formed as part of AB953 (Weber, 2016). The Racial and Identity Profiling Advisory Board (RIPA Board) is charged to eliminate racial and identity profiling, and improve diversity and racial and identity sensitivity in law enforcement. The California Department of Justice, Office of the Attorney General, has the primary oversight of the RIPA Board.¹⁴⁴

Judicial Council of California

The 2019 Court Statistics Report Statewide Caseload Trends 2008–09 Through 2017–18¹⁴⁵ was used to get county-level criminal court filing data by type to better understand the amount of non-traffic infractions filed in each county.

The Report on the Statewide Collection of Court Ordered Debt for 2018–19¹⁴⁶ and the Report of Revenue Collected for Fiscal Year 2018–19¹⁴⁷ are used to illustrate the amount of court ordered debt that remains outstanding at the county level and how much each county spends on collecting revenue.

142 Open Justice, Criminal Justice Data, <https://openjustice.doj.ca.gov/data>.

143 Copies of the PRA requests and a summary of any data received will be shared publicly on LCCR's website. Anyone can request the original response to the CPRA for any of the following jurisdictions by emailing LCCR.

144 State of California, Comm'n on Peace Officer Standards and Training, <https://post.ca.gov/Racial-and-Identity-Profiling-Act>.

145 Judicial Council, 2019 Court Statistics Report Statewide Caseload Trends 2008–09 Through 2017–18, <https://www.courts.ca.gov/documents/2019-Court-Statistics-Report.pdf>.

146 Judicial Council, Report on the Statewide Collection of Court Ordered Debt for 2018–19, Nov. 15, 2019, https://www.courts.ca.gov/documents/lr-2019-JC-statewide-court-ordered-debt-2018-19-pc1463_010.pdf.

147 Judicial Council, Report of Revenue Collected for Fiscal Year 2018–19, Sept. 20, 2019, <https://www.courts.ca.gov/documents/lr-2019-JC-revenue-collected-fy-2018-19-gov-68514.pdf>.

California Public Records Act (PRA) Requests¹⁴⁸ to Individuals County Courts, Sheriff's Departments, and Police Departments

The PRA process undertaken for this report illustrated that non-traffic infraction data are difficult to obtain in California and poorly recorded where it is available. A total of 82 PRA requests for infractions level data were made to various County Court, Police Department, or Sheriff's Departments.

Citations data analyzed was received from the following municipalities: San Diego, Long Beach, Fontana, Los Angeles, Modesto, Berkeley, Bakersfield, and Hayward. Citations data is organized at the individual citation level and includes several fields in each dataset, including, but not limited to, citation description, citation location, and the race/ethnicity of the individual. For certain municipalities, citations data also includes the name and/or the date of birth of the individual.

To prepare the citations data for analysis, the following steps were performed:

- Citations associated with driving a vehicle were excluded from analysis to limit the scope of analysis to purely non-traffic citations.
- Citations given to juveniles were excluded from analysis to accurately target only the adult population in each jurisdiction.
- Race descriptions were standardized to five categories: White, Black, Latinx, API (Asian Pacific Islander), and Native American.

Latinxs continue to be under counted in the criminal justice system

When ethnicity is not accurately recorded, adults who identify as Latinx/Hispanic can be miscounted as another race, typically white.¹⁴⁹ This is a problem when comparing populations (like those who got infractions and those in the general population), as it will reduce the apparent rate of Latinx involvement in the criminal justice system while also potentially increasing the apparent white involvement.

148 See Appendix X for breakdown of the agencies contacted. Copies of the PRA requests and a summary of any data received will be shared publicly on LCCR's website. Anyone can request the original response to the CPRA for any of the following jurisdictions by emailing LCCR. An additional PRA request was made to the CA DOJ for 2019 RIPA data not yet available online.

149 NALEO Educational Fund, The Census Bureau's Proposed "Combined Question" Approach Offers Promise for Collecting More Accurate Data on Hispanic Origin and Race, but Some Questions Remain, https://d3n8a8pro7vnm.cloudfront.net/naleo/pages/190/attachments/original/1497288838/Hispanic_Origin_and_Race_Brief_fin_05-17.pdf?1497288838 ("The Bureau has consistently found that Latinxs account for majorities of people who do not report themselves as belonging to any of the specific race categories. For example, more than 43% of Latinxs chose "Some other race" or did not answer the race question on the 2010 decennial Census."); Juvenile Offenders and Victims: 2014 National Report, Nat'l Ctr. for Juvenile Justice (Melissa Sickmund & Charles Puzzanchera eds., Dec. 2014), <http://www.ojjdp.gov/ojstatbb/nr2014/downloads/NR2014.pdf> (Nationally, when population data disregard ethnicity, and only focus on race, the vast majority of these "Hispanics" (89%) would be identified as "White.").

Combined Data Source Table

The following table shows the various data sources and limitations of those sources. PRA boxes in green are those that we received data from that included race, ethnicity, and enough technical information to use the data (for example a data dictionary explaining what internal codes stand for).

Population Data	Criminal Justice Data								
US Census (city and county)	Court Debt (county)	Court Filings (county)	MACR (county)	RIPA (city and county)		PRA			
				Sheriffs	Police Depts.	County Courts (27)	Sheriffs (25)	Police Department (29)	
(data are available by county online; data for city populations was derived using 5-year ASC estimates – see methodology appendix)	(data are available for every county in California by fiscal year)	(data are available for every county in California by fiscal year)	(data are available for every county in California by year)		Oakland PD	Alameda	Alameda	Oakland; Fremont	Berkeley; Hayward; Oakland Housing Authority
						Colusa			
						Contra Costa		Richmond; Martinez	
					Fresno PD	Fresno	Fresno	Fresno	
						Glenn			
						Humboldt			
						Imperial			
						Kern	Kern	Bakersfield	
				Los Angeles	Los Angeles PD; Long Beach PD	Los Angeles	Los Angeles	Los Angeles (x2)	Long Beach
						Madera			
						Marin			
						Mono			
				Orange		Orange	Orange	Anaheim; Irvine; Santa Ana	
						Placer			
				Riverside		Riverside	Riverside	Riverside	
				Sacramento	Sacramento PD	Sacramento	Sacramento	Sacramento	
				San Bernardino		San Bernardino	San Bernardino	San Bernardino	Fontana
				San Diego	San Diego PD	San Diego	San Diego	San Diego	Chula Vista
					San Francisco PD	San Francisco	San Francisco	San Francisco	
						San Joaquin	San Joaquin	Stockton	
						San Mateo		East Palo Alto	
						Santa Barbara			
					San Jose PD	Santa Clara	Santa Clara	San Jose; Palo Alto	
						Shasta		Redding	
						Stanislaus	Stanislaus	Modesto	Turlock
						Tulare			
						Ventura			
						Yolo			
						Yuba			

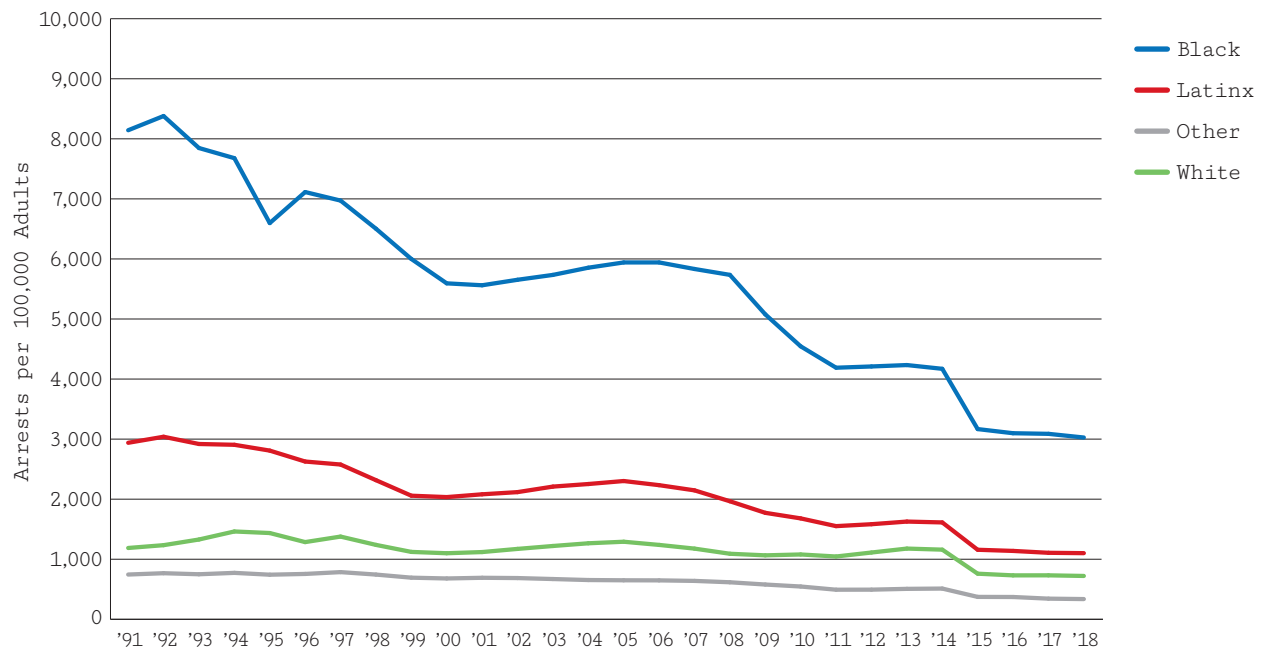
Descriptions of Analysis Conducted by Project Partners Cornerstone Research and Compass Lexecon

- MACR Analyses:
 - County-level, race, and age group MACR data was combined with county-level, race, age group population data from EZAPOPOP which starts in 1990.
 - For population over age 18, the total number of felony and the total number of misdemeanor arrests were calculated over time and across counties in 2018 by race (white, black, Latinx, other).
 - The total number of felony and the total number of misdemeanor arrests were divided by their respective population counts from EZAPOPOP to create felonies and misdemeanors per 1,000 and 100,000 adults of their respective population.
 - In MACR 1 and MACR 2, felony and misdemeanor arrests were calculated per 100,000 adults of each demographic group for the entire state. These numbers were then plotted over time.
 - In MACR 3, 4, 5, and 6, felony and misdemeanor arrests were calculated per 1,000 adults of each demographic group for each county in 2018. For both felony and misdemeanor arrests, the gaps between white and black populations and between Latinx and white population were plotted for every county in 2018.
 - PRA 1 Infractions per 1000 adults: Citations per 1,000 adults were calculated by dividing the number of demographic-specific citations between 2017 and 2019 by the total number of demographic-specific residents in each municipality then multiplied by 1,000.
 - PRA 2 Cited individuals per 1000 adults: Cited individuals per 1000 adults were calculated by dividing the number of demographic-specific individuals who received a citation between 2017 and 2019 by the total number of demographic-specific residents in each municipality then multiplied by 1,000. Individuals were identified using name and date of birth for San Diego, Modesto, and Bakersfield. Individuals were identified using name for Fontana.
 - PRA 3 Racial breakdown for top 10 ZCTAs: ZIP Code Tabulation Areas (ZCTAs) were generalized areal representations of United States Postal Service (USPS) ZIP Code service areas, created by the U.S. Census Bureau. ZCTAs were identified using citation location.
 - PRA 4 Racial breakdown for top 10 citations: Citations were identified using citation description.
- Descriptions of Analysis Conducted by Project Partner Compass Lexecon
- RIPA Stop Data
 - The Racial Identity Profiling Act (RIPA) data were retrieved from CA DOJ via the OpenJustice website for the 2018 data and via California Public Records Request Act (PRA) for the 2019 data. These data were retrieved to explore the perceptions of police officers when they make contact with citizens. The Racial and Identity Profiling Act (RIPA) was formed as part of AB953 (Weber, 2016). The Racial and Identity Profiling Advisory Board (RIPA Board) is charged to eliminate racial and identity profiling, and improve diversity and racial and identity sensitivity in law enforcement. The California Department of Justice, Office of the Attorney General, has the primary oversight of the RIPA Board.

- Under RIPA, California law enforcement agencies are required to file annual data reports to the Attorney General. The data collected include “any detention by a peace officer of a person or any peace officer interaction with a person in which the officer conducts a search.” This requirement to collect data on police stops began to be phased in on July 1, 2018 starting with the largest agencies. Data were received from 15 large law enforcement agencies.
- RIPA Analyses:
 - The RIPA stop data recorded stops made of 5,792,245 individuals by the 15 largest law enforcement agencies in California between July 2018 and December 2019.
 - In the RIPA data obtained from the DOJ, an observation was an incident, with each observation containing multiple fields including but not limited to, DOJ record ID, agency number, date of stop, person number, “perceived race” of the individual stopped, reason for stop, and result of stop.
 - A single incident (represented by a unique DOJ record ID) can involve multiple individuals (indicated by the person number variable which is unique to each individual within in a single incident). To prepare the data for analysis, we reorganized the data such that each individual stopped in a particular incident was a separate observation. For example, if a single incident involves the stopping of five individuals, this incident represents five observations in the final analysis.
 - The data contains seven categories for the “perceived race” of an individual: Asian, Black/African American, Hispanic/Latino(a), Middle Eastern or South Asian, Native American, Pacific Islander, and White. As multiple categories can be used to describe the “perceived race” of an individual, we created an eighth category to encompass individuals who are indicated in the data as falling under two or more of the above categories.
 - We limited the data to stops that resulted in citations for infractions using the results of stop variable. As multiple results of a stop can be recorded for a single individual, we limited the data to those observations where at least one of the results of the stop was recorded as a “citation for infraction (use for local ordinances only).” To eliminate traffic stops, we also limited the data to those observations where the reason for stop variable was not recorded as a “traffic violation.”
 - We combined the stop data from RIPA with demographic data describing the racial/ethnic makeup of the population in the relevant area to calculate the number of stops per 1,000 adults of a given race/ethnicity for a given agency. For county-level law enforcement agencies and state-level law enforcement agencies (i.e., the California Highway Patrol), we relied on county-level population data from EZAPOPOP. For city-level law enforcement agencies we relied on city-level population data from ACS. Specifically, stops per 1,000 adults were calculated by dividing the number of demographic-specific stops made by a given agency that resulted in citations by the number of demographic-specific adult residents in that agency’s jurisdiction and then multiplying by 1,000.

Selected Graphs and Tables from the Monthly Arrest and Citation Register

MACR1 Felonies per 100,000 Adults in California (1991–2018)

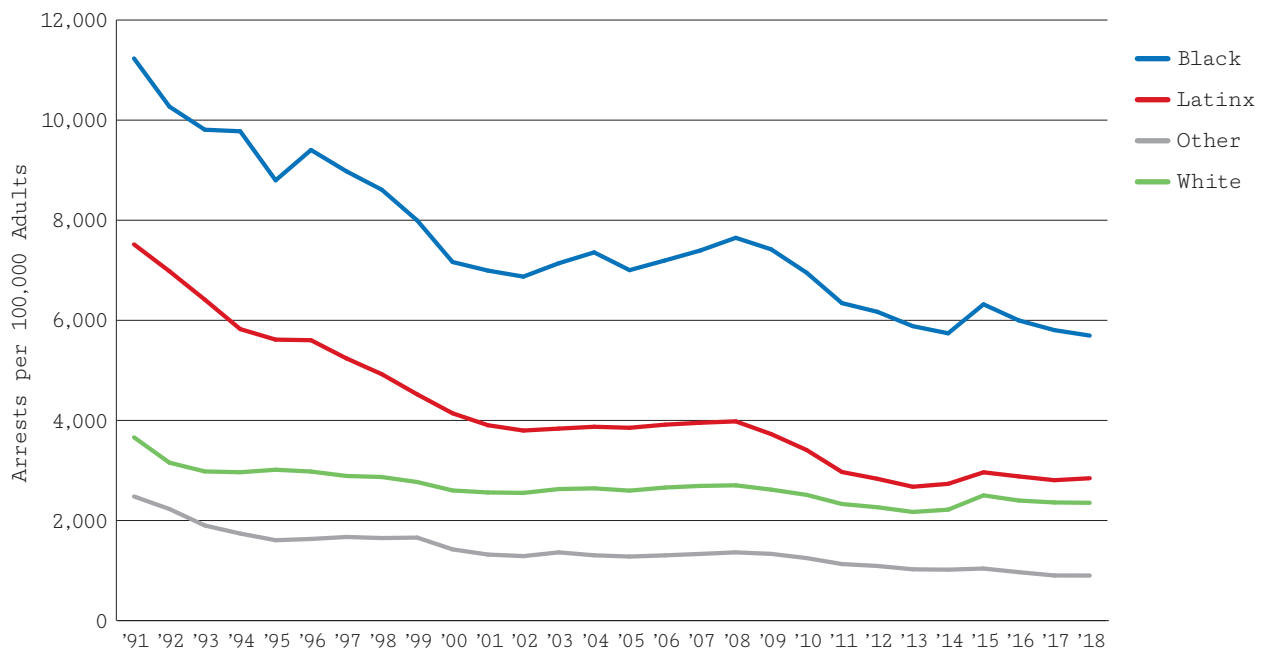


Source: California Monthly Arrest and Citation Register, 1980–2018; National Center for Health Statistics (2019), Vintage 2018 postcensal estimates of the resident population of the United States

Notes: Felony arrests per 100,000 adults is calculated by dividing the number of demographic-specific felony arrests by the total number of demographic-specific residents in California then multiplied by 100,000.

RACE	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Black	8143	8379	7847	7678	6597	7114	6972	6504	5999	5594	5562	5653	5734	5854
Latinx	2939	3039	2919	2906	2809	2627	2577	2317	2058	2035	2081	2117	2209	2252
Other	745	767	750	773	742	755	786	745	693	680	691	687	670	654
White	1187	1234	1328	1462	1436	1285	1377	1239	1122	1100	1119	1172	1220	1266
RACE	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Black	5942	5942	5833	5735	5077	4545	4189	4210	4233	4171	3167	3098	3088	3026
Latinx	2302	2233	2147	1965	1773	1680	1551	1583	1627	1613	1158	1138	1107	1101
Other	649	648	639	616	579	546	493	493	507	512	373	371	344	337
White	1291	1238	1177	1091	1065	1079	1045	1112	1177	1160	759	731	732	722

MACR2 Misdemeanors per 100,000 Adults in California (1991–2018)



Source: California Monthly Arrest and Citation Register, 1980–2018; National Center for Health Statistics (2019), Vintage 2018 postcensal estimates of the resident population of the United States

Notes: Misdemeanor arrests per 100,000 adults is calculated by dividing the number of demographic-specific misdemeanor arrests by the total number of demographic-specific residents in California then multiplied by 100,000.

RACE	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Black	11232	10270	9808	9777	8798	9404	8978	8609	7996	7165	6993	6873	7141	7358
Latinx	7517	6981	6413	5825	5614	5603	5240	4924	4521	4142	3904	3798	3836	3873
Other	2480	2230	1900	1740	1606	1632	1671	1650	1658	1424	1320	1289	1364	1305
White	3662	3156	2981	2965	3015	2979	2890	2869	2769	2601	2560	2552	2629	2643
RACE	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Black	7003	7196	7396	7649	7419	6952	6344	6170	5884	5741	6320	5997	5804	5695
Latinx	3853	3915	3954	3981	3727	3409	2969	2834	2675	2733	2963	2881	2806	2844
Other	1280	1304	1333	1364	1334	1250	1130	1092	1025	1018	1041	968	902	901
White	2597	2659	2691	2703	2617	2513	2330	2266	2171	2217	2503	2399	2361	2354

MACR Analyses 3–6, Felonies per 1,000 people					
	Felonies per 1,000 people				
County	Black	Hispanic	Other	White	Population Group
California	30.3	11.0	3.4	7.2	statewide
Alameda County	30.4	9.6	2.2	4.7	>1,000,000
Los Angeles County	26.2	10.3	2.6	4.9	>1,000,000
Orange County	26.7	10.6	2.5	5.6	>1,000,000
Riverside County	16.4	8.1	3.2	5.6	>1,000,000
Sacramento County	35.6	10.4	5.1	8.7	>1,000,000
San Bernardino County	34.9	13.5	5.5	11.7	>1,000,000
San Diego County	29.0	9.1	3.3	6.2	>1,000,000
Santa Clara County	30.8	14.2	1.9	4.3	>1,000,000
Contra Costa County	36.1	10.0	3.7	6.4	500,000 – 1,000,000
Fresno County	39.6	15.4	6.2	8.3	500,000 – 1,000,000
Kern County	38.8	13.8	6.4	13.2	500,000 – 1,000,000
San Francisco County	66.4	0.6	2.9	10.3	500,000 – 1,000,000
San Joaquin County	35.0	11.7	4.5	10.7	500,000 – 1,000,000
San Mateo County	40.9	8.8	2.7	3.0	500,000 – 1,000,000
Ventura County	28.6	13.8	3.3	6.8	500,000 – 1,000,000
Butte County	39.3	10.3	9.0	11.3	100,000 – 500,000
El Dorado County	26.9	8.0	5.7	8.4	100,000 – 500,000
Humboldt County	47.3	9.4	19.1	12.9	100,000 – 500,000
Imperial County	11.8	7.9	9.9	12.0	100,000 – 500,000
Kings County	23.1	17.5	14.6	10.0	100,000 – 500,000
Madera County	20.5	13.5	8.5	9.1	100,000 – 500,000
Marin County	34.0	11.2	5.0	3.2	100,000 – 500,000
Merced County	32.1	12.7	6.7	11.8	100,000 – 500,000
Monterey County	19.4	12.0	3.2	5.8	100,000 – 500,000
Napa County	76.2	10.8	5.0	8.7	100,000 – 500,000
Placer County	52.5	8.8	4.8	7.3	100,000 – 500,000
San Luis Obispo County	17.4	8.5	6.3	5.5	100,000 – 500,000
Santa Barbara County	28.0	11.7	4.1	7.0	100,000 – 500,000
Santa Cruz County	37.5	12.5	4.5	8.4	100,000 – 500,000
Shasta County	49.1	9.0	13.3	14.8	100,000 – 500,000
Solano County	29.0	9.7	4.5	9.4	100,000 – 500,000
Sonoma County	35.4	10.2	7.2	7.0	100,000 – 500,000
Stanislaus County	50.4	14.1	8.1	14.8	100,000 – 500,000
Tulare County	68.4	20.2	15.3	16.6	100,000 – 500,000
Yolo County	48.9	10.0	3.2	7.3	100,000 – 500,000
Alpine County	111.1	0.0	11.3	11.0	< 100,000
Amador County	5.7	5.2	27.7	8.4	< 100,000
Calaveras County	28.6	6.9	27.0	7.3	< 100,000
Colusa County	65.1	10.5	22.5	18.5	< 100,000
Del Norte County	6.4	5.1	26.5	17.8	< 100,000
Glenn County	28.5	9.3	24.5	15.8	< 100,000
Inyo County	44.9	14.4	49.7	11.2	< 100,000
Lake County	45.5	20.7	37.5	17.4	< 100,000

MACR Analyses 3–6, Felonies per 1,000 people					
	Felonies per 1,000 people				
County	Black	Hispanic	Other	White	Population Group
Lassen County	4.1	5.8	23.3	12.9	< 100,000
Mariposa County	20.2	14.2	6.9	5.6	< 100,000
Mendocino County	38.1	12.9	32.9	12.5	< 100,000
Modoc County	24.0	21.6	78.3	22.2	< 100,000
Mono County	12.9	8.3	14.4	5.7	< 100,000
Nevada County	33.3	5.8	6.2	7.0	< 100,000
Plumas County	41.3	4.0	34.7	12.1	< 100,000
San Benito County	16.2	10.7	4.3	5.6	< 100,000
Sierra County	0.0	0.0	161.3	15.8	< 100,000
Siskiyou County	42.6	12.3	35.4	15.1	< 100,000
Sutter County	43.6	15.3	6.1	15.8	< 100,000
Tehama County	43.7	7.0	12.5	11.9	< 100,000
Trinity County	116.3	35.6	36.4	22.2	< 100,000
Tuolumne County	14.3	17.9	19.8	15.3	< 100,000
Yuba County	43.0	13.8	10.0	17.6	< 100,000

MACR Analyses 3–6, Misdemeanors per 1,000 people					
	Misdemeanors per 1,000 people				
County	Black	Hispanic	Other	White	Population Group
California	57.0	28.4	9.0	23.5	statewide
Alameda County	58.9	29.6	6.9	17.5	>1,000,000
Los Angeles County	48.4	24.7	6.7	16.5	>1,000,000
Orange County	74.5	34.9	9.1	27.2	>1,000,000
Riverside County	29.1	17.6	7.3	15.5	>1,000,000
Sacramento County	50.2	17.1	8.3	17.9	>1,000,000
San Bernardino County	59.3	29.1	12.3	26.9	>1,000,000
San Diego County	68.1	22.8	9.5	22.4	>1,000,000
Santa Clara County	74.1	36.1	5.0	14.5	>1,000,000
Contra Costa County	50.5	19.5	6.6	14.9	500,000 – 1,000,000
Fresno County	90.2	44.8	18.7	28.5	500,000 – 1,000,000
Kern County	83.5	33.6	41.2	38.4	500,000 – 1,000,000
San Francisco County	63.6	3.7	3.6	10.7	500,000 – 1,000,000
San Joaquin County	55.9	23.0	9.1	26.2	500,000 – 1,000,000
San Mateo County	118.1	35.5	9.1	17.5	500,000 – 1,000,000
Ventura County	80.3	52.0	11.9	31.9	500,000 – 1,000,000
Butte County	96.6	40.4	34.0	47.2	100,000 – 500,000
El Dorado County	48.1	20.0	14.4	22.1	100,000 – 500,000
Humboldt County	111.8	35.4	54.8	49.7	100,000 – 500,000
Imperial County	44.0	32.1	26.6	40.1	100,000 – 500,000
Kings County	63.0	55.8	38.9	33.5	100,000 – 500,000
Madera County	48.2	44.2	30.2	25.2	100,000 – 500,000
Marin County	88.2	42.9	18.4	18.2	100,000 – 500,000

MACR Analyses 3–6, Misdemeanors per 1,000 people					
	Misdemeanors per 1,000 people				
County	Black	Hispanic	Other	White	Population Group
Merced County	95.5	35.9	15.4	34.6	100,000 – 500,000
Monterey County	54.9	32.5	12.2	22.9	100,000 – 500,000
Napa County	122.0	33.7	14.7	23.1	100,000 – 500,000
Placer County	62.4	21.7	11.8	20.5	100,000 – 500,000
San Luis Obispo County	75.7	47.7	37.7	36.2	100,000 – 500,000
Santa Barbara County	96.2	41.4	23.1	38.9	100,000 – 500,000
Santa Cruz County	113.7	39.5	20.5	36.9	100,000 – 500,000
Shasta County	139.2	31.8	43.3	53.6	100,000 – 500,000
Solano County	56.6	25.0	12.2	28.1	100,000 – 500,000
Sonoma County	120.7	33.8	21.4	29.1	100,000 – 500,000
Stanislaus County	90.7	28.4	18.1	37.8	100,000 – 500,000
Tulare County	147.6	45.4	36.2	39.8	100,000 – 500,000
Yolo County	99.8	29.0	11.3	25.1	100,000 – 500,000
Alpine County	111.1	23.0	56.5	37.8	< 100,000
Amador County	16.2	17.5	47.8	20.1	< 100,000
Calaveras County	47.6	21.4	28.5	20.8	< 100,000
Colusa County	209.3	35.2	97.4	52.3	< 100,000
Del Norte County	27.6	16.5	90.5	80.8	< 100,000
Glenn County	89.4	31.0	69.5	56.5	< 100,000
Inyo County	56.2	36.3	121.4	30.5	< 100,000
Lake County	151.8	48.2	105.4	60.3	< 100,000
Lassen County	8.1	11.6	38.3	25.4	< 100,000
Mariposa County	16.2	29.0	37.0	25.8	< 100,000
Mendocino County	92.8	36.9	58.3	45.6	< 100,000
Modoc County	72.0	29.5	129.5	37.2	< 100,000
Mono County	45.2	19.7	39.6	20.9	< 100,000
Nevada County	90.5	20.5	15.4	26.2	< 100,000
Plumas County	110.1	19.4	85.1	41.1	< 100,000
San Benito County	27.0	32.2	19.6	20.0	< 100,000
Sierra County	35.7	14.9	241.9	21.9	< 100,000
Siskiyou County	89.8	26.4	107.7	43.1	< 100,000
Sutter County	103.8	44.1	17.8	52.7	< 100,000
Tehama County	79.4	32.6	44.3	38.7	< 100,000
Trinity County	54.3	19.9	21.2	34.6	< 100,000
Tuolumne County	29.5	35.4	32.6	45.7	< 100,000
Yuba County	53.1	24.4	24.5	36.5	< 100,000



**LAWYERS' COMMITTEE FOR CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA**

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