

CIVILIAN COMPLAINTS

I. CIVILIAN COMPLAINT DATA *(2025 data analysis forthcoming July 2024)*

II. RENEWED RECOMMENDATIONS AND FOLLOW-UP ON IMPLEMENTATION

A. Adopt Uniform Definition of “Civilian Complaints”

(1) *The Board identified the need to define “civilian complaint” in 2020 and has recommended Legislative action since 2022.*

There is no standard definition of “civilian complaint.”¹ The term is not defined by California law, nor is there a professional consensus on what constitutes a “civilian complaint.”² Law enforcement agencies are left to decide, on an agency-by-agency basis, what counts as a “civilian complaint,” meaning that what may count as a reportable complaint at one agency may not count at another. For example, one agency could decide that a verbal allegation of unprofessional behavior does not rise to the level of a “civilian complaint” and is merely an “informal complaint” or “inquiry” that does not need to be reported for purposes of RIPA. However, the same complaint could be reportable at another agency that defines “civilian complaint” more broadly to include any allegation against a peace officer by a member of the public.

Differences in the definition of “civilian complaint” can lead not only to inconsistencies in the public’s ability to access the complaint process, wherein a person’s ability to file a complaint depends on their local police agency’s definition of “complaint,” but to disparities in the RIPA complaint data. For example, an agency may report a lower number of complaints than it actually received, if the agency chooses to define “civilian complaint” narrowly to include only written, and not verbal, complaints.

This concerns the Board greatly. As such, the Board has recommended, in three prior reports, that the Legislature amend Penal Code section 832.5 to define “civilian complaint” as follows:

(1) Complaint means either of the following:

(A) any issue brought to a department or agency where the complainant perceives that a department or agency employee engaged in criminal conduct, abusive or

¹ Racial and Identity Profiling Advisory Board, *Annual Report* (2020 Report) pp. 65-67; Racial and Identity Profiling Advisory Board, *Annual Report* (2022 Report) pp. 227-229; Racial and Identity Profiling Advisory Board, *Annual Report* (2023 Report) pp. 179; Racial and Identity Profiling Advisory Board, *Annual Report* (2024 Report) pp. 195-196.

² See Gov. Code § 12525.5; Cal. Code Regs., tit. 11 § 999.224; Pen. Code §§ 148.6, 832.5, 832.7, 832.8; Racial and Identity Profiling Advisory Board, *Annual Report* (2020 Report) p. 65 (“[T]here is no professional consensus within California on a definition [of “complaint”]”); Racial and Identity Profiling Advisory Board, *Annual Report* (2020 Report) p. 66 (finding that no Wave 1 reporting agency defined the term “civilian complaint” in its complaint policies).

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board’s consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

discriminatory behavior, inappropriate or discourteous conduct, or violation of any law or rules, policies, and regulations of the department or agency; or

*(B) disagreement solely with the policies, procedures, or services of the department or agency and not with the performance of any personnel. If during the course of investigating this type of complaint, conduct is discovered that could be the basis of a complaint under subdivision (1)(A), the investigator shall report this conduct to a supervisor, which should be logged, tracked, and investigated separately from the original complaint.*³

Neither this definition nor another definition that would provide a uniform definition of a complaint has been adopted under California law.

(2) *Recent developments demonstrate the continuing need for a uniform definition of “civilian complaint.”*

On February 15, 2024, the California Legislature introduced Assembly Bill 2923, seeking to ensure a “procedurally fair civil complaint process”⁴ by, in part, amending Penal Code section 832.5 to define “civilian complaint.” The bill proposed the following definition:

*(1) “Complaint” means a report, given either in writing or verbally, that brings to the attention of a department or agency an incident during which the complainant perceives that a department or agency employee engaged in criminal conduct, abusive or discriminatory behavior, inappropriate or discourteous conduct, or a violation of any law, rule, policy, or regulation of the department or agency.*⁵

While the proposed definition accounts for some of the Board’s prior recommendations, such as including written and verbal complaints, it is also narrower than the Board’s proposed definition of “civilian complaint.” Specifically, under AB 2923, a complaint would not include a statement of disagreement with a department’s policies, procedures, or services, separate from the performance of department personnel. Moreover, AB 2923 would not require investigators to report conduct that could be the basis of a complaint to supervisors, unlike subdivision (B) of the Board’s proposed definition below:

³ Racial and Identity Profiling Advisory Board, *Annual Report* (2022 Report) p. 229; Racial and Identity Profiling Advisory Board, *Annual Report* (2023 Report), p. 179; Racial and Identity Profiling Advisory Board, *Annual Report* (2024 Report) pp. 195-196.

⁴ Cal. Assem., Public Safety Com. Hearing (Apr. 2, 2024) <<https://www.assembly.ca.gov/media/assembly-public-safety-committee-20240402>> [as of XX, 2024].

⁵ Assem. Bill No. 2923 (2023-2024 Reg. Sess.) <<https://legiscan.com/CA/text/AB2923/id/2930681/California-2023-AB2923-Introduced.html>> [as of XX, 2024].

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board’s consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

PROPOSED DEFINITIONS OF “CIVILIAN COMPLAINT”

RIPA	AB 2923
<p>(A) Any issue brought to a department or agency where the complainant perceives that a department or agency employee engaged in criminal conduct, abusive or discriminatory behavior, inappropriate or discourteous conduct, or violation of any law or rules, policies, and regulations of the department or agency; or</p> <p>(B) Disagreement solely with the policies, procedures, or services of the department or agency and not with the performance of any personnel. If during the course of investigating this type of complaint, conduct is discovered that could be the basis of a complaint under subdivision (1)(A), the investigator shall report this conduct to a supervisor, which should be logged, tracked, and investigated separately from the original complaint.</p>	<p>A written or verbal report that “brings to the attention of a department or agency an incident during which the complainant perceives that a department or agency employee engaged in criminal conduct, abusive or discriminatory behavior, inappropriate or discourteous conduct, or a violation of any law, rule, policy, or regulation of the department or agency.”</p>

AB 2923 is still pending and, to date, there is still no uniform definition of “civilian complaint.”

[Area for discussion: What are the Board’s thoughts on the proposed definition of “civilian complaint” in AB 2923? Would the Board like to continue recommending its definition of “civilian complaint” instead? If so, how is the Board’s definition more beneficial for the community?]

[Area for discussion: Is the Board aware of any other developments related to defining “civilian complaint” that are not already included in the draft? Similarly, are there other factors to discuss in support of recommending a uniform definition of “complaint”?]

[Area for discussion: What would the Board like to do, in light of these developments?]

B. Remove Deterrent Language From Complaint Forms

(1) Board’s initial recommendation and reasons supporting it

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board’s consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

Since its inception, the Board expressed concern that, in addition to the lack of definition of civilian complaint, members of the community may be deterred from filing complaints if certain advisory language is included on the complaint form.⁶ Specifically, the Board cautions that complaint forms containing an advisory based on Penal Code section 148.6, warning that an individual may face criminal liability for filing a false complaint, may discourage members of the community from submitting valid complaints.

Penal Code section 148.6 states that law enforcement agencies shall require complainants to read and sign an advisory that states, in part:

IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.⁷

The Board is concerned that this language may have a chilling effect on members of the public seeking to file a complaint. For example, in its inaugural 2018 Report, the Board reviewed 85 civilian complaint forms and found that the vast majority (81%) included language based on the Penal Code section 148.6 advisory.⁸ The Board examined additional complaint forms in its 2020 Report and found that some, but not all, agencies had removed the advisory from their complaint forms.⁹ And, in its 2021 and 2022 Reports, the Board found that many agencies still included language from Penal Code section 148.6 on their complaint forms.¹⁰

Given the continued inclusion of the advisory on many agencies' complaint forms, the Board has repeatedly recommended that the Legislature amend Penal Code section 148.6 to eliminate the criminal sanctions for filing a false complaint, as well as the requirement that a complaint must be signed and in writing.¹¹

(2) *Recent developments demonstrate the continued need to amend Penal Code section 148.6*

i. *Los Angeles Police Protective League v. City of Los Angeles*

As discussed in the Board's 2023 Report, the constitutionality of Penal Code section 148.6 is currently at issue in the matter of *Los Angeles Police Protective League v. City of Los Angeles*

⁶ See Racial and Identity Profiling Advisory Board, *Annual Report* (2018 Report) p. __; Racial and Identity Profiling Advisory Board, *Annual Report* (2020 Report) pp. 73-75.

⁷ Pen. Code § 148.6, subd. (a)(2).

⁸ Racial and Identity Profiling Advisory Board, *Annual Report* (2018 Report) pp. 28-29.

⁹ Racial and Identity Profiling Advisory Board, *Annual Report* (2020 Report) pp. 74, 87-90.

¹⁰ See Racial and Identity Profiling Advisory Board, *Annual Report* (2021 Report) pp. 129-134; Racial and Identity Profiling Advisory Board, *Annual Report* (2022 Report) pp. 211-226.

¹¹ Racial and Identity Profiling Advisory Board, *Annual Report* (2020 Report) pp. 74-75; Racial and Identity Profiling Advisory Board, *Annual Report* (2022 Report) p. 232; Racial and Identity Profiling Advisory Board, *Annual Report* (2023 Report) pp. 182-183.

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board's consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

(Cal. Case No. S275272), indicating a continuing need for legislative intervention.¹² This matter arose after the state and federal courts reached conflicting decisions regarding the constitutionality and enforceability of section 148.6.¹³ The Los Angeles Police Department subsequently stopped enforcing section 148.6’s written advisory requirement and, in turn, was sued by a police union—the Los Angeles Police Protective League.¹⁴ The matter is currently pending before the California Supreme Court.¹⁵

The Board continues to recommend, that, pending a ruling in *Los Angeles Police Protective League*, law enforcement agencies accept complaints even when a complainant has not signed the advisory required by section 148.6.¹⁶ The Board notes that this recommendation is consistent with SB 2, which allows POST to accept anonymous complaints. Lastly, the Board emphasizes that legislative action is necessary to resolve this conflict while also minimizing the deterrent effect of section 148.6.

ii. AB 2923 Proposed Amendments to Penal Code section 148.6

AB 2923, as discussed above, also addresses the deterrent language in complaint forms. AB 2923 seeks to amend Penal Code section 148.6 to require that a complainant “knowingly and intentionally make a false statement that is material... with the intent that the false statement will be used as a basis to punish a peace officer” to be found guilty of a misdemeanor.¹⁷ The bill also proposed amendments to section 148.6, which would clarify that (1) complainants “will not be punished or penalized for making a complaint,” and (2) the prohibition against making false statements “does not include a statements of facts that [the complainant] in good faith believe[s] to be true but are disputed by the officer.”¹⁸ In other words, AB 2923 sought to assure complainants that they would not be penalized for filing a complaint they believed, in good faith, to be true.

¹² Racial and Identity Profiling Advisory Board, *Annual Report* (2023 Report) pp. 182-83.

¹³ In 2002, the California Supreme Court found that section 148.6 is a permissible regulation of prohibited speech (i.e., false allegations against peace officers) in 2002. (*People v. Stanistreet* (2002) 29 Cal.4th 497, 506, 512.) But, in 2005, the Ninth Circuit Court of Appeals found that section 148.6 is an impermissible content-based regulation of speech, creating confusion among law enforcement agencies as to the enforceability of section 148.6. (*Chaker v. Crogan* (9th Cir. 2005) 428 F.3d 1215, 1228.) The California Court of appeal affirmed this decision in May of 2022, and the City of Los Angeles appealed.

¹⁴ The Superior Court ruled in favor of the union, finding the court was bound to follow the California Supreme Court decision upholding section 148.6, rather than the Ninth Circuit’s decision finding it unconstitutional. *L.A. Police Protective League v. City of L.A.* (2022) 78 Cal.App.5th 1081, 1088.

¹⁵ *L.A. Police Protective League v. City of L.A.* (2022) 514 P.3d 892 (review granted).

¹⁶ Racial and Identity Profiling Advisory Board, *Annual Report* (2023 Report) p. 183 (citing Attorney General Opinion No. 96-111, which concluded that law enforcement agencies may accept and investigate civilian complaints, even when the complainant has not signed the advisory required by Penal Code § 148.6).

¹⁷ Assem. Bill No. 2923 (2023-2024 Reg. Sess.) <<https://legiscan.com/CA/text/AB2923/id/2930681/California-2023-AB2923-Introduced.html>> [as of XX, 2024].

¹⁸ Assem. Bill No. 2923 (2023-2024 Reg. Sess.) <<https://legiscan.com/CA/text/AB2923/id/2930681/California-2023-AB2923-Introduced.html>> [as of XX, 2024].

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board’s consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

The bill’s sponsor, Assembly Member Reginald Jones-Sawyer, emphasized that “mistakes over minor details should not bring forth prosecution.”¹⁹ As currently written, Penal Code section 148.6 is very broad, meaning that prosecution for filing a false complaint could be based on fact that is not material to the allegation or is simply a mistake of fact.²⁰ The bill’s sponsors stated that the purpose of the proposed amendments was to add a specific intent requirement, which is common in many other sections of the Penal Code, in order to prosecute false complaints.²¹

Those in opposition to the bill argue that there is already a “robust” system in place, at the state and local level, for individuals to file complaints; AB 2923’s intent requirement was drafted too narrowly to mean “intent to punish the officer” and does not include intent for material gain or other benefits (such as having an officer’s credibility questioned), information gathering, or other nefarious reasons to file a complaint; and AB 2923’s amendment preventing prosecution based on disputed statements was drafted too narrowly, such that someone could knowingly and intentionally file a false complaint without facing prosecution since most statements would be in dispute.²²

In discussing the bill further, Member Wilson suggested replacing the bill’s intent requirement with language requiring that a false statement be knowingly made and material to the allegation.

[Area for Board discussion: What are the Board’s thoughts as to each argument here? Is there a “robust” complaint system in place? Should a “false complaint” be defined broader than proposed by AB 2923 to include grounds such as filing a complaint to gather information? What does the Board think about changing the language of AB 2923 so that a false statement be knowingly made and material to the allegation, in order for someone to be prosecuted for a false statement?]

[The Board is monitoring the progress of this bill.]

There are currently no other pending bills to amend Penal Code section 148.6.

[Areas for discussion: In light of these developments, what actions does the Board wish to take? Does the Board agree with the language proposed in AB 2923 (as initially proposed and/or as amended)? Are there other provisions that should be included in the bill?]

¹⁹ Cal. Assem., Public Safety Com. Hearing (Apr. 2, 2024) <<https://www.assembly.ca.gov/media/assembly-public-safety-committee-20240402>> [as of XX, 2024].

²⁰ Cal. Assem., Public Safety Com. Hearing (Apr. 2, 2024) <<https://www.assembly.ca.gov/media/assembly-public-safety-committee-20240402>> [as of XX, 2024].

²¹ Cal. Assem., Public Safety Com. Hearing (Apr. 2, 2024) <<https://www.assembly.ca.gov/media/assembly-public-safety-committee-20240402>> [as of XX, 2024].

²² Cal. Assem., Public Safety Com. Hearing (Apr. 2, 2024) <<https://www.assembly.ca.gov/media/assembly-public-safety-committee-20240402>> [as of XX, 2024].

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board’s consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

PROPOSED LEGISLATIVE CHANGES TO PENAL CODE § 148.6 ADVISORY STATEMENT²³

Penal Code § 148.6	AB 2923 (as introduced)	AB 2923 (as amended)
<p>You have the right to make a complaint against a police officer for any improper police conduct. California law requires this agency to have a procedure to investigate civilians' complaints. You have a right to written description of this procedure. This agency may find after investigation that there is not enough evidence to warrant action on your complaint; even if that is the case, you have the right to make the complaint and have it investigated if you believe an officer behaved improperly. Civilian complaints and any reports or findings relating to complaints must be retained by this agency for at least five years.</p> <p>It is against the law to make a complaint that you know to be false. If you make a complaint against an officer knowing that it is false, you can be prosecuted on a misdemeanor charge.</p>	<p>You have the right to make a complaint against a police officer for any improper police conduct. California law requires this agency to have a procedure to investigate civilians' complaints. You have a right to written description of this procedure. This agency may find after investigation that there is sufficient evidence supporting the complaint and the department is required to take action and provide you notice of their decision. In the event the investigation determines that there is not enough evidence to warrant action on your complaint, you have the right to make the complaint and have it investigated if you believe an officer behaved improperly. You will not be punished or penalized for making a complaint. Civilian complaints and any reports or findings relating to complaints must be retained by this agency for at least five years.</p> <p>However, it is against the law to make a complaint that contains material false statements if you know the</p>	<p>You have the right to make a complaint against a police officer for any improper police conduct. California law requires this agency to have a procedure to investigate civilians' complaints. You have a right to written description of this procedure. This agency may find after investigation that there is sufficient evidence supporting the complaint and the department is required to take action and provide you notice of their decision. In the event the investigation determines that there is not enough evidence to warrant action on your complaint, you have the right to make the complaint and have it investigated if you believe an officer behaved improperly. You will not be punished or penalized for making a complaint. Civilian complaints and any reports or findings relating to complaints must be retained by this agency for at least five years.</p> <p>However, it is against the law to make a complaint that contains false statements material to the</p>

²³ The relevant sections of each version are noted in bold text. Changes between versions are noted in blue font.

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board's consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

	<p>statements to be false and intentionally make the false statements with intent to improperly take action against the peace officer. This does not include a statement of facts that you in good faith believe to be true but are disputed by the officer. If you make a complaint against an officer knowing that it is false, you can be prosecuted on a misdemeanor charge.</p>	<p>allegation of misconduct by the officer if you know the statements to be false and intentionally make the false statements with intent that the statements will be used to improperly take action against the peace officer or to harass or otherwise harm the officer. If you make a complaint against an officer knowing that it is false, you can be prosecuted on a misdemeanor charge.</p>
--	---	---

III. INCORPORATING ROOT CAUSE ANALYSIS IN COMPLAINT INVESTIGATIONS

Last year, the Board explored the principles of root cause analysis and urged law enforcement agencies to begin incorporating those principles into their civilian complaint procedures.²⁴ This year, the Board explores the application of those principles, within law enforcement and other fields, to develop recommendations for how to apply those principles in the civilian complaints process.

A. Root Cause Analysis in the Healthcare, Transportation, and Education

[Forthcoming]

B. Root Cause Analysis in Law Enforcement

[Area for discussion: Since there is little guidance on how to apply root cause analysis to the complaints process, how would the Board like to develop these recommendations? Are there law enforcement agencies, organizations, or representatives the Board would like to consult during the next subcommittee meeting to develop these recommendations?]

²⁴ Racial and Identity Profiling Advisory Board, *Annual Report (2024 Report)* pp. 199-203.

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board’s consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.