



Roll Call Training Bulletin

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Katherine Lester, Chief of Police
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The Racial Justice Act (RJA)

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Background:

Assembly Bill 2542, the California Racial Justice Act (RJA) was signed into law by the Governor in 2020. AB 2542 established Penal Code § 745 which prohibits the state from seeking or obtaining a criminal conviction on the basis of race, ethnicity, or national origin. As it pertains to the police, a violation of the statute is established if the defendant proves by a preponderance of the evidence that a law enforcement officer in the case exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin. The defendant does not need to prove intentional discrimination.

In passing the bill, the State Legislature articulated that both explicit (intentional) bias as well as implicit (unintentional) bias creates harm in the criminal justice system. The intent of the Legislature is to eliminate racial bias from California's criminal justice system and to provide remedies for defendants who can prove a law enforcement officer acted with intentional (explicit) or unintentional (implicit) bias towards that defendant. Remedies for a violation of the RJA include declaration of a mistrial, empanelment of a new jury, or potential dismissal of enhancements, special circumstances, special allegations, or reduction of one or more charges.

In a recent published court decision from the First Appellate District Court of Appeal*, a defendant alleged a violation of the RJA, in part, by the arresting officer's use of the descriptive term "high-crime neighborhood" as one of his motivations for contacting the defendant, who was later arrested for unlawful possession of a firearm. An expert on policing and anti-racism testified for the defense at trial that the use of the term "high-crime neighborhood" demonstrates bias against people of color. The trial court denied the defendant's RJA motion but was reversed by the Appellate Court who found that the trial court strayed from the prima facie standard established by the RJA. As a result, the court of appeal ordered a re-hearing on the motion under the RJA and vacated the trial court's decision to deny the motion.

Best Practice: Avoid Canned Language with Negative Connotations

Because use of generalized descriptive terms with negative connotations such as "high-crime neighborhood" or "high crime area" may be construed as euphemisms for minority neighborhoods, or in the words of the expert witness referenced in the decision noted earlier "a notorious reference to neighborhoods with a high concentration of Black people or other people of color", officers should avoid using such terms in both their police reports as well as in their courtroom testimony.

Officers should instead use individualized language describing their recent and personalized knowledge of criminal activity in the area in question to articulate their reasons for making a contact or enforcement stop. Officers should rely on knowledge gleaned from recent daily activity reports, roll calls, crime bulletins, articulable information from fellow officers and other current and specific sources of information. They should relate this information to the crimes articulated in the police report, rather than using canned terminology that may not be a current reflection of criminal activity in the neighborhood or area described. For example:

"I am personally aware that there have been at least 6 gang related shootings in the Avondale neighborhood in the past 2 months as well as numerous gun arrests made on traffic stops near Lemon Hill and Stockton by late watch units this week alone. I have also personally responded to various weapons calls reporting armed MAA's brandishing guns near Max Baer Park during the evening hours."



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In addition, officers should also be as descriptive as possible when writing their reports regarding what they observed prior to and while making contact during a subject or vehicle stop. For example, if the officer could not see who was driving a vehicle prior to making a vehicle stop (e.g., race, ethnicity, gender), the officer should articulate that in their report:

"I made a traffic stop on a red Honda Civic for 22107 CVC with tinted windows and as I approached the vehicle, the driver rolled down his window and I observed a MHA driver with three MHA passengers".

Conversely, if an officer could see the race or ethnicity of a driver and/or passengers prior to a stop, they should also be accurate with that description and articulate all of the considerations for making the stop as well. Using personal knowledge and providing articulate descriptions in writing and relaying an officer's observations will enhance the accuracy and professionalism of a police report and will help to reduce any appearance of implicit bias or racial profiling.

*See: <https://law.justia.com/cases/california/court-of-appeal/2023/a167311.html>