

**AMERICAN BAR ASSOCIATION**  
**ADOPTED BY THE HOUSE OF DELEGATES**  
**FEBRUARY 22, 2021**

**RESOLUTION**

RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments and police commissions to establish officer training concerning automatic exit orders during discretionary traffic enforcement stops;

- 1) aimed at de-escalating police encounters in the absence of officer safety concerns or a reasonable suspicion that a crime has occurred; and
- 2) aimed at educating officers on implicit bias and racial profiling,

FURTHER RESOLVED, That the ABA urges federal, state, local, territorial, and tribal governments and police commissions to establish guidelines to be used by officers in giving exit orders during discretionary traffic enforcement stops where the officer has safety concerns or a reasonable suspicion of criminal activity.



## **REPORT**

### **INTRODUCTION**

The United States of America is in a national crisis over the long-standing disparate treatment of minorities in multiple aspects of our society, particularly in the criminal justice system. In his forthcoming Stanford Law Review article, Professor Jordan Blair Woods states that “[t]raffic stops are the most frequent interaction between police and civilians today and are a persistent source of racial and economic injustice. Black and Latinx motorists in particular are disproportionately stopped as well as questioned, frisked, searched, cited, and arrested during traffic stops. Traffic enforcement is also a common gateway for funneling over-policed and marginalized communities into the criminal justice system.”<sup>1</sup>

Resolution 10F urges law enforcement agencies to set guidelines and implement training to eliminate or reduce the circumstances under which an officer may make exit orders of any occupant from a vehicle during a traffic stop. Research shows that implicit bias plays a role in discretionary traffic enforcement stops causing disparate impacts. New data shows that de-escalation techniques enhance officer safety.

Resolution 10F also urges law enforcement to establish training programs aimed at ending or reducing the practice of forcing occupants out of a vehicle without reasonable suspicion that a crime has occurred or when necessary to protect the officer. Implicit bias informs discretionary decisions. Contemporary data establishes that officers detain and remove more African Americans than Caucasians. Training can help to eliminate or reduce the occurrence of implicit bias. In his 2019 Michigan Law Review articles, Professor Jordan Blair Woods reported that the rate for a felonious killing of an officer during a routine traffic stop for a traffic violation is only 1 in every 6.5 million stops. The rate of assaults that result in serious injury to an officer was only 1 in every 361,111 stops. This was a conservative estimate. His figures are based on the largest, most recent, and most comprehensive study on violence against police officers during traffic stops: “Policing, Danger Narratives and Routine Traffic Stops.”<sup>2</sup>

### **I. IMPLICIT BIAS PLAYS A ROLE IN TRAFFIC STOPS CAUSING DISPARATE IMPACTS**

A key factor in the disparate impacts of traffic stops is implicit racial bias. Sadly, this can be seen in numerous examples around the country. Stanley Claiborne, an African American male, was stopped by Redlands police officers for a broken taillight and tinted windows. During the stop, the officers asked him to exit the car. Not understanding, Mr. Claiborne asked why and generally refused. This escalated into the officers pulling on his ponytail and yanking him out by his arm. He was ultimately arrested for resisting,

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<sup>1</sup> See Woods, Jordan Blair, Traffic Without the Police (September 30, 2020). Stanford Law Review, Vol. 73, 2021, Available at SSRN: <https://ssrn.com/abstract=3702680>

<sup>2</sup> Woods, Jordan Blair, Policing, Danger Narratives, and Routine Traffic Stops (March 26, 2019). 117 Michigan Law Review 635-712 (2019), Available at SSRN: <https://ssrn.com/abstract=3355119>

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obstructing, or delaying an officer in the performance of their duties. Redlands Police Department explained that as a matter of course, it was their standard safety procedure to order occupants out of their cars during a traffic stop. Following a brief review, the department stated their officers had not violated the law or any department policies.<sup>33</sup>

This is an example what law enforcement is permitted to do in the name of officer safety. The citizen must comply without question or hesitation, otherwise the citizen faces injury, arrest, fear and humiliation or worse. This is happening to African American and Latinx people at a higher rate than their white counterparts, as well as people with disabilities, as shown by the data. The data also shows that the risks to officers during traffic stops has been long overestimated. Policies must be improved to reflect what we know today.

The most common interaction a citizen will have with law enforcement is during a “traffic stop”. The average citizen has never been arrested but that same citizen has likely been pulled over by the police perhaps numerous times. In the “Traffic Stops Statistics Study Act of 2000”, the House of Representatives requested that the Attorney General conduct a nationwide study of stops for traffic violations by law enforcement. They justified their request by arguing that:

Race-based traffic stops turn driving, one of our most ordinary and quintessentially American activities, into an experience fraught with danger and risk for people of color. The offense of “D.W.B.” or “driving while black or brown” is well-known to African Americans and Hispanics across the country. There are virtually no African American males—including Congressmen, actors, athletes and office workers—who have not been stopped at one time or another for a pretextual traffic violation. Because traffic stops can happen anywhere and anytime, millions of African Americans and Hispanics alter their driving habits in ways that would never occur to most white Americans. Some completely avoid places like all-white suburbs, where they fear police harassment for looking “out of place.” Some intentionally drive only bland cars or change the way they dress. Others who drive long distances even factor in extra time for the traffic stops that seem inevitable. H.R. 1443 is intended to provide a comprehensive analysis of the scope and magnitude of the racial profiling problem.<sup>4</sup>

This same report cites statistics from an ACLU analysis of Maryland State Police Data showed that 73% of cars stopped and searched on a particular highway in a two- and half-year period (1995-97) were African American; despite the fact that only 14% of people who used that highway were African American. Similarly, in Florida, 70% of the people stopped were African American though they made up only 10% of the driving population.

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<sup>3</sup> See <https://losangeles.cbslocal.com/2020/07/27/redlands-traffic-stop-rough-arrest-caught-on-camera-police-pull-black-man-from-car/>.

<sup>4</sup> See <https://www.congress.gov/congressional-report/106th-congress/house-report/517/1>

A recent and expansive national study of traffic stops and searches was conducted by “The Stanford Open Policing Project.” It determined that police officers stop more than 50,000 drivers on a typical day; equating to more than 20 million motorists every year. Thus, the “traffic stop” is the most common interaction between law enforcement and citizens. This project determined:

Using data from 21 state patrol agencies and 29 municipal police departments, comprising nearly 100 million traffic stops, are sufficiently detailed to facilitate rigorous statistical analysis. The result? The project has found significant racial disparities in policing. These disparities can occur for many reasons: differences in driving behavior, to name one. But, in some cases, we find evidence that bias also plays a role.<sup>5</sup>

As an example, African American drivers are 20% more likely to be pulled over than white drivers and the statistics for people of color and the rate that they are searched grows from there. This point is strengthened by the study’s further findings that people of color are less likely to be pulled over at night as it is more difficult for law enforcement to ascertain a driver’s race; calling it “veil of darkness”.<sup>6</sup>

In their book called “Suspect Citizens”, Professors Frank Baumgartner and Derek Epp analyzed 20 million traffic stops in North Carolina. In the context of pretextual stops, they determined that successful drug busts were rare but the cost to the citizen was rather high.

In the midst of a national conversation about “Driving While Black,” North Carolina legislators, urged on by members of the Black Caucus, mandated the collection of routine traffic stop statistics. Since January 1, 2000, the state has collected data on over 20 million traffic stops. Originally, there was concern that black drivers might be stopped more than white drivers, and that a particular drug interdiction unit of the Highway Patrol could have searched black drivers as much as twice as often as it searched white drivers. Editorial writers anticipated that systematic data would reveal such allegations to be false – or, alternatively, validate the allegations and set the stage for immediate steps by police leaders to end disparate practices. Our comprehensive analysis shows that, indeed, black drivers are about twice as likely to be stopped on the highways. And once pulled over, they experience about double the likelihood of being searched. Younger male drivers are searched at an alarmingly high rate. None of this surprises people who believed that police engage in different kinds of behaviors depending on whom they encounter. But the results nevertheless raise troubling issues of fairness and equity. And they certainly help make sense of the vastly different orientations and levels of trust in the police we see from whites and members of minority communities.<sup>7</sup>

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<sup>5</sup> See [www.openpolicing.stanford.edu](http://www.openpolicing.stanford.edu)

<sup>6</sup> See <https://5harad.com/papers/100M-stops.pdf>

<sup>7</sup> See <https://scholars.org/brief/what-20-million-traffic-stops-reveal-about-policing-and-race-america>

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While the law might allow an officer to ask a driver or passenger to exit a car, research has shown that this practice has not been implemented fairly as certain racial groups have been disproportionately targeted. Based on the data, it appears that the law enforcement community uses traffic stops as pretextual stops and reasons to search, rather than enforcement of traffic rules for safety. Officer training on implicit bias, as well as the implementation of guidelines for use in discretionary traffic stops, will help to eliminate or reduce the disparate impact of traffic stops on persons of color.

Particularly noteworthy is the intersection between race and disability. One in four Black individuals have a disability.<sup>8</sup> Disability can increase the risk of death or injury by police particularly if the person is also Black.<sup>9</sup> Yet media reports of police violence focus on the victim's race or disability rather than the connection and overlap between the two identities.<sup>10</sup> Individuals with disabilities such as deafness, autism, or mental health conditions may not respond immediately to police commands or may react in ways police do not expect. Police may misinterpret their movements and actions as threatening or non-compliant behavior.<sup>11</sup>

## II. DE-ESCALATION TECHNIQUES ENHANCE OFFICER SAFETY

In Professor Wood's Michigan Law Review Article, he points out that prior studies and case law opinions had always presented a monolithic view of officer safety as it related to traffic stops and that currently, "this narrative finds little support in existing studies or data. One key shortcoming of leading sources is that they are largely devoid of context" with no appreciation for the different types of contexts or patterns under which an officer faces harm. Professor Woods' study examined eight nuanced categories of traffic related interactions with citizens of which two are relevant; one relates to "drivers or passengers who engaged in violence *before* the officers invoked their authority during the stop" and far more germane, when "drivers or passengers who violently resisted *after* the officers invoked their authority during the stop."

The outcome of this dissection? Of the 861 cases that fell under this last category (23.18%), violence towards the officer escalated when the officer invoked some type of authority over the individual. Professor Woods concluded that a "considerable amount of violence against the police during routine traffic stops occurs when the stops escalate after the officers invoke their authority in a substantial way during the stop (for instance,

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<sup>8</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, ADULTS WITH DISABILITIES: ETHNICITY AND RACE, <https://www.cdc.gov/ncbddd/disabilityandhealth/materials/infographic-disabilities-ethnicity-race.html>.

<sup>9</sup> Diaz-Camacho, V., Hoffman, C. & Boston, C. (2020, Nov. 11), After the Stop: People of Color With Disabilities Face More Risks with Police, <https://www.flatlandkc.org/stopped-profiling-the-police/after-the-stop-people-of-color-with-disabilities-face-more-risks-with-police/>.

<sup>10</sup> Elyse Wanshel (2020, July 23), Police Violence Against Black Disabled People Can't Be Ignored Anymore, *Huff Post*, <https://diversity.ucsd.edu/files/21-Day%20Anti-Racism%20Challenge%20Files/Police%20Violence%20Against%20Black%20Disabled%20People%20Cant%20Be%20Ignored.pdf>.

<sup>11</sup> Abrams, A. (2020, June 25), Black, Disabled, and at Risk: The Overlooked Problem of Police Violence Against Americans with Disabilities, *Time*, <https://time.com/5857438/police-violence-black-disabled/>.

ordering drivers or passengers out of the car, touching drivers or passengers, or searching their vehicles). Thus, the very policy law enforcement employs believing it to be a strong tool for safety, is in fact, placing them in danger.

Professor Woods recommends a commonsense, evidence-based approach to police show of authority in routine traffic stops suggesting:

Accordingly, law enforcement policy might discourage officers from routinely ordering drivers and passengers out of vehicles during traffic stops based only on traffic violations, in the absence of convincing grounds that the drivers or passengers pose a threat. Or, with greater contextual information that a motorist's hands, fists, or feet are the most common threat during stops for only traffic violations, law enforcement agencies might discourage officers from responding to minor civilian resistance or aggression (for instance, cursing, pulling away, or pushing) with force in order to reduce possibilities for escalation. Some law enforcement policies, however, do the exact opposite. In certain instances, these greater invocations of police authority embody hyperaggressive officer responses to perceptions of danger. In other instances, however, these exercises of authority may be connected to authoritarian or hypermasculine officer personalities.

A case where the show of unnecessary authority on a citizen turned into a horrific event for the driver was the case of Sandra Bland. Ms. Bland, an African American woman, was pulled over by a Texas state trooper for failing to signal during a lane change. After receiving her documents, the trooper returned to her car intending on issuing her a warning. Ms. Bland was irritated, expressed being unhappy about being pulled over while smoking a cigarette. The trooper asked her to put out her cigarette – a show of authority – but Ms. Bland refused. The officer escalated the situation further by ordering Ms. Bland out of her car, opening her car door, forcefully pulling her out and onto the ground before smashing her head into the ground. The only charge Ms. Bland was arrested for was resisting arrest. Three days later as she sat in jail for this incident, Ms. Bland killed herself. Professor Woods stated “[t]hese troubling facts call attention to how issues concerning implicit racial bias must inform policy and practice surrounding how officers respond to minor civilian resistance of aggression during routine traffic stops.” And this is a ripe area for training and de-escalation tools for police officers. Professor Woods makes a strong case for police reform from the perspective of officer safety.

### **III. LOCAL GOVERNMENTS AND LAW ENFORCEMENT SHOULD BE ENCOURAGED TO FOLLOW NATIONAL LEGISLATIVE TRENDS TO DE-ESCALATE POLICE ENCOUNTERS AND REDUCE DISPARATE IMPACTS**

The most efficient way to address the disparate racial impacts of traffic stops and the forcible removal of occupants is for the law enforcement community to make policy changes. Change in any other form, such as new case law or changes to state constitutions, would simply take years and are much more impractical to accomplish. Local governments and law enforcement are urged to examine the changes that have

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occurred nationally and be encouraged that there is support for this type of policy change and reform.

For example, on September 23, 2020, the Governor's Highway Safety Association (GHSA), an influential non-profit agency, released eight recommendations designed to achieve reform including: (1) encouraging states to develop a framework to require law enforcement grant subrecipients to take proactive steps to root out bias in traffic stops; (2) analyzing and reforming policies on use of force and officer intervention, when necessary; and (3) ensuring high quality officer recruitment and ongoing training. GHSA supports the use of state or federal funding to pursue these objectives in traffic enforcement units, and supports the development and rigorous evaluation of effective public safety programs or technologies that can supplement existing and necessary traffic enforcement efforts. GHSA also supports policies and trainings on racism, bias, de-escalation, use of force and officer intervention, as well as advocating for states and communities to invest in empathy, stress management, early warning systems and mental health programs for officers who are often on the front lines of highway carnage and trauma. GHSA also wants leadership to hold accountable police officers who have violated public trust.<sup>12</sup> Resolution 10F encourages many of the types of reform the GHSA's has proposed.

Numerous states have had varying responses to the problematic outcomes of discriminatory traffic stops. In 2020, a different type of movement has gained some traction. In Virginia, Governor Northam is likely to sign HB 5058/5059 into law. The new law represents significant progress in criminal justice reform as it would reduce police officers targeting minority drivers with unwarranted or pretextual traffic stops. The bill's summary provides as follows: "No law-enforcement officer may lawfully stop a motor vehicle for operating without a light illuminating a license plate." The bill also provides that no law-enforcement officer may lawfully stop, search, or seize any person, place, or thing solely on the basis of the odor of marijuana, and no evidence discovered or obtained as a result of such unlawful search or seizure shall be admissible in any trial, hearing, or other proceeding. However, the final draft has been modified slightly and awaiting signature by the Governor.<sup>13</sup>

In October 2020, New Yorker State Senator Alessandra Biaggi opined that New York's likely voters, particularly those under 45 years old, supported a recommendation removing law enforcement from routine traffic stops to reduce police violence.<sup>14</sup> Further, New York State Attorney General, Letitia James, authored the "Report on the Investigation into The Death of Allan Feliz" in which she stated that the city should remove NYPD from non-criminal traffic enforcement. Attorney General James specifically wrote "[a]s explained in the report, the vast majority of traffic stops – including this one – do not involve criminal conduct, yet often end in violence." The report also highlighted studies

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<sup>12</sup> See <https://www.ghsa.org/resources/news-releases/Equity-In-Traffic-Enforcement2>

<sup>13</sup> See <https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+HB5058>

<sup>14</sup> See <https://www.dataforprogress.org/blog/2020/10/13/voters-support-removing-traffic-enforcement-from-police-purview-in-new-york>



demonstrating disparities in the use of force during traffic stops against Black and Latino men. The untimely death of Mr. Feliz further underscores the need for this change.”<sup>15</sup>

In Oakland, California, Oakland Police Department has reduced traffic stops from 31,528 to 19,900 from 2018 to 2019. While African Americans still made up 55% of 19,000 stops, the total drop from 2016 to 2018 went from approximately 20,000 to 11,000 African American people being stopped.<sup>16</sup>

In Berkeley, California, the city council passed a measure with new sweeping public safety reforms including cutting the police department budget by half and creating a Department of Transportation to reduce traffic stops based on race. The idea is to reduce the use of police officers in the traffic enforcement “Pretextual stops have too often escalated into use of force or unnecessary arrests that disproportionately harm innocent Black Americans,” said Councilman Rigel Robinson who introduced the bill “Driving while Black is not a crime.”<sup>17</sup>

According to the National Conference of State Legislatures, the volume of law enforcement legislation that has been considered between 2014-17 has been greater than ever before. “In 2017 alone, over 1,500 bills were introduced in nearly every state and more than 260 were enacted into law” with the overall goal being to improve police-community relations. One area of reform is law enforcement training. “New legislation addresses their responses to people who have behavioral health needs, interactions with civilians during traffic stops, and de-escalation tactics.” Interestingly, following several high-profile news stories, an emerging trend is to require training for both drivers and officers on appropriate behavior during traffic stops. In 2016, Illinois became the first state to enact a law requiring driver education courses to include police procedures and appropriate actions for drivers during traffic stops. A handful of states enacted similar legislation in 2017.

States are also looking at general law enforcement training standards and oversight. Connecticut and Oklahoma created task forces to review current law enforcement training. Louisiana now requires new police officers to complete a minimum of 400 hours of core curriculum and an additional 20 hours of in-service training annually.<sup>18</sup>

In the Midwest, they are similarly following suit in addressing police interactions with civilians. Illinois’ 2020 Rules of the Road, under Chapter 4 “Traffic Laws”, delineates how a driver is to act when stopped by law enforcement.<sup>19</sup>

## SUMMARY

<sup>15</sup> See [https://ag.ny.gov/sites/default/files/sipu\\_allan\\_feliz\\_report\\_final](https://ag.ny.gov/sites/default/files/sipu_allan_feliz_report_final).

<sup>16</sup> See <https://www.sfchronicle.com/bayarea/article/To-curb-racial-bias-Oakland-police-are-pulling-14839567.php>

<sup>17</sup> See <https://www.sfchronicle.com/crime/article/Berkeley-council-bans-police-from-traffic-15410326.php>

<sup>18</sup> See <https://www.ncsl.org/research/civil-and-criminal-justice/state-trends-in-law-enforcement-legislation-2014-2017.aspx>

<sup>19</sup> See [https://www.cyberdriveillinois.com/publications/pdf\\_publications/dsd\\_a112.pdf](https://www.cyberdriveillinois.com/publications/pdf_publications/dsd_a112.pdf)

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This resolution urges law enforcement agencies to set guidelines and implement training to eliminate or reduce the circumstances under which an officer may make exit orders of any occupant from a vehicle during a traffic stop. Research shows that implicit bias plays a role in discretionary traffic enforcement stops causing disparate impacts. New data shows that de-escalation techniques enhance officer safety. Law enforcement agencies should be encouraged to examine national legislative trends and current data for use in establishing new training programs and guidelines to de-escalate police encounters. Civilians as well as law enforcement officers would benefit from a significant overhaul in law enforcement training. Officer safety is enhanced by establishing training and guidelines such as that urged by Resolution 10F. Civilian trust and respect is enhanced by guidelines aimed at equal treatment of those individuals stopped by police officers. This resolution will ultimately address the concerns of both civilians and law enforcement.

Respectfully submitted,

Emilio Varanini  
President, California Lawyers Association  
February 2021

**GENERAL INFORMATION FORM**

Submitting Entity: California Lawyers Association

Submitted By: Emilio Varanini, President of CLA and Chair of the CLA Delegation

1. Summary of the Resolution(s).

Urges federal, state, local, territorial, and tribal governments and police commissions to establish officer training aimed at de-escalating police encounters during discretionary traffic enforcement stops, training aimed at educating officers on implicit bias and racial profiling, and to establish guidelines to be used by officers in giving exit orders during discretionary traffic enforcement stops where the officer has safety concerns or a reasonable suspicion of criminal activity.

2. Approval by Submitting Entity.

California Lawyers Association Board of Representatives approved on July 14, 2020. The Section of Civil Rights and Social Justice approved co-sponsorship of the resolution on November 16, 2020. The Civil Justice Section approved co-sponsorship of the resolution on December 17, 2020.

1. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

a). Profiling. Support legislation requiring the systematic collection and annual reporting of certain data by all law enforcement agencies that engage in traffic stops, including the race and ethnicity of each person stopped. 99A10A

b). Urges federal, state, local and territorial governments to enact effective legislation, policies and procedures to ban law enforcement's use of racial or ethnic characteristics not justified by specific and articulable facts suggesting that an individual may be engaged in criminal behavior. 08A104C Criminal Justice Section; 2008 policy amended August 2012 to include religious profiling and characteristics indicative of religious affiliation. 12A116

c). Urges states, territories and the federal government to strive to eliminate actual and perceived racial and ethnic bias in the criminal justice system and recommends the establishment of Criminal Justice Racial Task Forces to reduce or eliminate racial disparities at each stage of the criminal justice process. 04A121B

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d). Racial and Ethnic Profiling. Urges federal, state, local and territorial governments to enact effective legislation, policies and procedures to ban law enforcement's use of racial or ethnic characteristics not justified by specific and articulable facts suggesting that an individual may be engaged in criminal behavior. 08A104C

e). Racial Discrimination Convention. Support accession of the United States to the International Convention on the Elimination of All Forms of Racial Discrimination, subject to certain understandings and reservations. 78A105.3

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A

6. Status of Legislation. (If applicable) N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The Association will work with relevant stakeholders within and outside of the American Bar Association and the Governmental Affairs Office to implement the policy.

8. Cost to the Association. (Both direct and indirect costs)

None

9. Disclosure of Interest. (If applicable) NA

10. Referrals.

ABA Section of Criminal Justice  
ABA Diversity and Inclusion Center

11. Name and Contact Information (Prior to the Meeting. Please include name, telephone number and e-mail address). *Be aware that this information will be available to anyone who views the House of Delegates agenda online.)*

Emilio Varanini, CLA Delegate and Delegation Chair  
Hayward, CA  
Tel: (310) 991-1959  
Email: [eevaranini@gmail.com](mailto:eevaranini@gmail.com)

Beth Whittenbury, CLA Delegate and Delegation Vice Chair  
Palos Verdes Estates, CA  
Tel: 310-613-2102  
Email: [beth@bkwhittenbury.com](mailto:beth@bkwhittenbury.com)

Ellen Miller, CLA Associate Executive Director  
Sacramento, CA  
Tel: 916-873-6809  
Email: [ellen.miller@calawyers.org](mailto:ellen.miller@calawyers.org)

Mark I. Schickman, CRSJ Section Delegate  
San Francisco, CA  
Tel.: (510) 4672909  
E-mail: [mark@schickmanlaw.com](mailto:mark@schickmanlaw.com)

12. Name and Contact Information. (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

Emilio Varanini, CLA Delegate and Chair of CLA delegation  
Hayward, CA 94544  
Tel: (310) 991-1959  
Email: [eevaranini@gmail.com](mailto:eevaranini@gmail.com)

## EXECUTIVE SUMMARY

### 1. Summary of the Resolution

The American Bar Association urges governments and police commissions to establish officer training aimed at de-escalating police encounters during discretionary traffic enforcement stops, training aimed at educating officers on implicit bias and racial profiling, and to establish guidelines to be used by officers in giving exit orders during discretionary traffic enforcement stops where the officer has safety concerns or a reasonable suspicion of criminal activity.

### 2. Summary of the issue that the resolution addresses.

This Resolution urges law enforcement to end or reduce the practice of forcing occupants out of a vehicle without reasonable suspicion that a crime has occurred by encouraging guidelines and training designed to eliminate or reduce the circumstances under which an officer may order a driver or passenger to exit a vehicle during a traffic enforcement stop.

### 3. Please explain how the proposed policy position will address the issue.

The proposed policy position will allow the ABA to advocate for enhanced guidelines and training to eliminate or reduce the circumstances under which an officer may make exit orders of any occupant from a vehicle during a traffic stop.

### 4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

None have been identified.