CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD
https://oag.ca.gov/ab953/board

STOP DATA ANALYSIS SUBCOMMITTEE MEETING MINUTES

November 12, 2020, 3:03 p.m. - 4:54 p.m.

Subcommittee Members Present: Co-Chair Steven Raphael, Co-Chair David Swing, LaWanda Hawkins, Lily Khadjavi, Brendon Woods

Subcommittee Members Absent: None

1. Introductions
Co-Chair Raphael called the meeting to order at 3:03 pm.

2. Approval of October 8, 2020 Subcommittee Meeting Minutes
Member Woods made a motion to approve the minutes. Member Khadjavi seconded the motion. All members voted "Yes", there were no "no" votes and no abstentions.

3 & 4. Overview of AB 953 Proposed Regulations Updates by Department of Justice & Discussion of Proposed Updates
DAG Tanya Koshy of the DOJ provided an overview of some possible RIPA regulatory fixes to discuss with the subcommittee. She provided background for the subcommittee and explained that the DOJ issued regulations in 2017 knowing they would likely need to revise them at some point in the future. She stated that since issuing the regulations, the DOJ received feedback from Board members, law enforcement agencies, and experts about clarifying existing obligations and recommendations for additional categories. DAG Koshy explained that after receiving feedback from the Board regarding the proposed amendments and any additional recommendations, Department staff would make revisions and present the proposed amendments to the Attorney General for approval. She explained that the Department would also present proposed amendments at a full Board meeting.

DAG Koshy stated that one proposal might be to add a "Nature of Stop" data element in which officers would indicate if the stop was vehicular or pedestrian. Co-Chair Raphael recommended calling that the data element "Stop Type" rather than "Nature of Stop" and suggested adding a bicycle stop category. Member Khadjavi recommended distinguishing between drivers, passengers, cyclists, and pedestrians. She recommended adding "cyclist" and "other" values in the "Stop Type" data element to make it easy to distinguish between vehicle stops and pedestrian stops.

Another proposal was to add "Unincorporated Area" as an option for "Location of Stop" and the option for officers to provide geocoordinate data for the stop location. DAG Koshy stated that LEAs requested this and it would provide information that is more accurate. Board members agreed with the proposals.

Another possible category to modify is the "Perceived Gender of Person Stopped" data element, which would be modified from "Male" and "Female" to "Cisgender Man/Boy" and "Cisgender Woman/Girl" respectively and replace "Gender Nonconforming" with "Nonbinary Adult/Child."

Stop Data Analysis Subcommittee Meeting Minutes - November 12, 2020

DAG Koshy stated that the categories would reflect a contemporary understanding of gender. Subcommittee members agreed with the proposal.

DAG Koshy stated that the existing regulations include a data element for officers to report if they perceived the person stopped to be LGBT through a "yes" or "no" response and require a "yes" response in reports where the perceived gender of the person stopped was "Transgender Man/Boy" or "Transgender Woman/Girl." She stated that one possible revision to this data element would be to replace this with a "Perceived Sexual Orientation of the Person Stopped" data element, which would provide information that is more accurate by including distinct sexual orientation and gender data elements. She stated that the proposed data values would be "LGB+" and "straight/heterosexual." Member Khadjavi stated that she appreciated the effort to use modern language in these data categories. Member Woods asked if LGBTQ advocacy organizations provided input on this data element. DAG Koshy stated that LGBTQ organizations provided feedback when the Department first developed the regulations but had not yet provided feedback on these potential amendments.

The next potential proposal was to add a "Perceived Homeless Status" data element. DAG Koshy stated that several organizations recommended including this data element during the development of the regulations and the increase in policies to address the criminalization of unhoused people emphasized the need for this data element. Member Khadjavi stated that the proposal was consistent with the recent Inspector General Report regarding the Los Angeles Police Department's collection of perceived homeless status data.

DAG Koshy also discussed potential additional data values for the "Reason for Stop" data element, including "Probable Cause to Arrest or Search." She stated that LEAs described scenarios in which, at the time of the stop, officers had probable cause, and there was not an existing data value for reporting this reason for the stop. She stated that definitions would likely be added for "Reasonable Suspicion" and "Probable Cause." Other possibilities to include may be "Matched the Description of Suspect Vehicle or Vehicle Observed at the Scene of a Crime" value, in addition to the existing "Matched Suspect Description" value.

DAG Koshy next discussed the possibility of replacing the data value "Witness or Victim Identification of Suspect at the Scene" with "Witness or Victim Identification of Suspect and/or Questioning at the Scene." She stated the proposal would address scenarios when an officer stops a witness or victim to question them about an incident and the person does not feel like they are free to leave. Co-Chair Swing stated that this seemed to expand the definition of "stop" to include witnesses. He asked how this would help to accomplish the Board's mission. Co-Chair Raphael asked if stop data reporting currently included witnesses and individuals that make calls for service.

Member Hawkins asked if officers would report stop data for all crime victims or only when victims provided information about the person that committed the crime. SDAG Nancy Beninati from the DOJ stated that the Department does not intend for officers to complete stop data reports when talking to victims or witnesses since this would not help to address racial and identity profiling. She stated that officers would report stop data if the person were detained or searched, which is consistent with the definition of "stop." She stated that this addition would

potentially be considered because officers have indicated that often when they are talking with an individual during a consensual encounter something comes to their attention that causes them to detain the person. Co-Chair Swing asked if reasonable suspicion would apply to that scenario.

DAG Koshy next discussed a proposal to add a data value for "Welfare or Wellness Check, or Community Caretaking" to the "Reason for Stop" data element to address scenarios in which officers contact a person for a welfare check and, during the contact, the officer detains the person. She stated that under the existing data values, some officers are selecting "Reasonable Suspicion" as the reason for the stop in these instances, indicating "Community Caretaking" as the offense code, and indicating "Other Reasonable Suspicion of a Crime." She stated that many law enforcement agencies asked for clarification about this issue and it was being evaluated. Co-Chairs Swing and Raphael stated that this proposal seemed reasonable.

SDAG Beninati asked the subcommittee to provide additional feedback on this data value, since officers should only report stop data when there is a detention or a search. Co-Chair Raphael stated that, while it would not directly serve the goals of RIPA, it would be beneficial for researchers to know how often these types of stops are occurring. He asked if an instance when an officer does not arrest a person who is likely to harm themselves but transports them to a hospital or to the care of a relative would qualify as a detention. Co-Chair Swing stated that when an officer holds a person for mental health reasons, it is a detention. He stated that if an officer contacts a person for a welfare check but does not detain them, this is not a stop. Member Woods stated that he supported the addition of this category.

SDAG Beninati stated that the statute determines when officers must complete stop data reports and this includes all detentions. She stated that the Department defined "detention" in the regulations based on how the law defines detentions, "when a person feels that they are not free to leave due to the officer's verbal commands or other authority directed toward the person," and this includes interactions in which an officer conducts any searches. She stated that it seemed appropriate for officers to report detentions that occurred because of a welfare or wellness check, but it would be important to distinguish these from welfare checks that did not result in a detention.

Member Khadjavi stated that the scenarios in the definition of "Welfare or Wellness Check" were helpful and asked what category officers should select among the "Type of Stop" data values, "vehicle", "pedestrian", and "bicycle", for stops occurring at a person's home. She referenced the stop type categories recommended in the Inspector General Report regarding the Los Angeles Police Department, which included "vehicle", "pedestrian", and "bicycle" stop types and "driver", "passenger", and "pedestrian" as another category. Member Woods agreed with the importance of capturing "pedestrian stops" as a stop type. DAG Koshy stated that the "Type of Stop" data element might require additional data values and definitions.

DAG Koshy stated that there could be a proposal to add a data value for officers to indicate when the stopped person is a passenger in a vehicle, when the person was inside a residence where the officer was executing a search or arrest warrant naming or identifying another person or conducting a compliance check on another person. She stated that existing regulations require officers to complete a stop data report for passengers when they violated a vehicle or penal code

Stop Data Analysis Subcommittee Meeting Minutes - November 12, 2020

or if the officer took certain actions toward the passenger. She stated that there was currently no way, other than the narrative field, for officers to indicate that the stopped person was a passenger. DAG Koshy stated that similarly there was currently no way for officers to indicate that the person stopped was a person inside a residence who was not the subject of a warrant or supervision compliance check, toward whom the officer took certain actions.

DAG Koshy next addressed potential amendments to the "Actions Taken by Officer during Stop" data element. One potential amendment would be replacing the "Canine Removed from Vehicle or Used to Search" data value with two values, "Canine Removed from Peace Officer's Vehicle" and "Peace Officer's Canine Used to Search", to more accurately reflect the actions, and to clarify that this refers to the peace officer's canine. Co-Chair Raphael stated that the data values for "Actions Taken by Officer during Stop" include use of force actions and other types of actions taken during detentions. He suggested separating the data elements into separate questions, for instance, "Was forced used?", followed by the list of use of force actions. He stated that this might help improve reporting on actions taken more frequently. Co-Chair Swing agreed. He recommended adding a data element to report actions taken by the person stopped and stated that law enforcement colleagues from Wave 1 and 2 agencies also made this request. Member Khadjavi recommended grouping the actions taken by officers related to searches and seizure of property. SDAG Beninati stated that in light of the recent legislation banning carotid restraints and chokeholds, the Department is considering a proposal to remove references to these in an existing data value.

DAG Koshy next discussed possibly adding "Probable Cause the Person Committed a Crime" to the data values for "Basis for Search" because officers described scenarios in which, at the time of a search, they have probable cause to search. Member Khadjavi asked if the current data values captured reasonable suspicion or probable cause. DAG Koshy stated that some of the existing values, such as "Visible Contraband", constituted probable cause. She stated that officers should select all bases that apply. Member Khadjavi asked if there was an example scenario when an officer would select "Probable Cause" that could not be captured through any of the existing data values. DAG Koshy stated that the Department would follow up with the subcommittee on this question. Member Woods stated that "Probable Cause the Person Committed a Crime" seemed to fall under "Search Incident to Arrest" because the officer would have probable cause to arrest the person. Co-Chair Swing agreed. He stated that the "Reasonable Suspicion" data value might be sufficient.

DAG Koshy stated that, in the "Result of Stop" data element, there was a consideration to change the "Contacted Parent/Guardian or Other Person Responsible for the Minor" value to "Contacted Parent/Legal Guardian or Person Legally Responsible for the Person" to clarify that the parent or guardian is the person legally responsible and to expand the category to include people that are not minors. She stated that in the "Type of Assignment of Officer" data element, one possible proposal is to add "Off Duty and/or Working at a Private Event" as a data value for the officer's assignment at the time of the stop. Additionally, DAG Koshy sought feedback on adding data elements for the race or ethnicity and the gender of officers. Co-Chair Raphael stated that he supported adding these data elements and asked if officers could complete this once to automatically populate the officers' reports. Co-Chair Swing agreed that this information should

auto-populate. SDAG Beninati stated that this is how officers' years of experience and I.D. number were reported.

DAG Koshy provided that the Department was considering additonal definitions for "Matched Suspect Description", "Matched Description of Suspect's Vehicle", "Reasonable Suspicion", and "Probable Cause." Co-Chair Swing stated that the proposed definitions seemed analogous with the Penal Code.

DAG Koshy next addressed a proposal to amend the definition of "custodial setting" to include a courtroom or courthouse where a person is remanded into custody. She stated that existing regulations do not require an officer remanding a person into custody to report stop data, but the Department received questions from officers about this. Member Woods asked if the Department considered including police vehicles in "custodial setting" and requested clarification about the distinction between "in-custody" and "custodial setting." DAG Koshy stated that there might be scenarios in which officers should report the actions they have taken toward a person inside a patrol vehicle but including patrol vehicles under "custodial settings" would exclude these actions from the reporting.

DAG Koshy noted that experts indicated that the phrase "or may be implied by conduct" from the definition of "Consensual Search" should be removed because consent implied by conduct is subjective. Member Khadjavi asked if this suggested that officers in some agencies were obtaining verbal consent and officers in other agencies may have judged that consent was implied. She asked if the proposed change would import a policy change for LEAs. Co-Chair Swing stated that he was unaware of any consent searches undertaken without verbal or written affirmation. Member Woods stated that he had seen arguments that consent was implied, for example, when an officer asked to search a person's backpack and the person did not say anything but held their backpack away from their body. He stated there are many legal arguments about this. He stated that public defenders do not believe this implies consent, but there are instances in which officers used this as a reason to search backpacks or other property. Member Woods stated that there have also been arguments that consent is implied when, for example, an officer says they are going to search a person's pants, and the person does not say "no." Member Hawkins stated that "implied consent" was subjective. Member Khadjavi stated that the proposed amendment seemed to provide good clarification.

DAG Koshy next turned to the possibility of adding an example to the definition of "Duration of Stop" to clarify that the stop ends when the officer takes the person into physical custody, meaning when they are transported away from the location of the stop, or the person is free to leave. She stated that the additional language and example would clarify that actions, such as handcuffing a person, do not end the stop; officers need to report any actions taken after handcuffing the person.

DAG Koshy then discussed scenarios in which an officer working for a reporting agency responds to a stop in conjunction with a non-reporting agency. She stated that, when the reporting agency is not the primary agency of the stop, the officer that works with the reporting agency still needs to complete a stop data report. She stated that this could be clarified by adding

a data value for officers to indicate when they are working with a non-reporting agency during the stop.

DAG Koshy then discussed a potential addition to the list of actions that an officer may take toward a person when executing an arrest or search warrant in a residence that require that the officer complete a stop data report, to include pointing an electronic control device or an impact projectile weapon at the person. She stated that currently, officers must report stop data if they point a firearm at a person in a residence but are not required to report if they point an electronic control device or projectile weapon at a person. Co-Chair Raphael asked if there were different reporting requirements when an officer executes a warrant at a person's residence and when an officer stops a person because they believe there is an outstanding warrant for the person or during a stop, they discover there is a warrant. DAG Koshy stated that when an officer is executing an arrest or search warrant inside a residence, they do not need to report a stop for the subject of the warrant, however, if the officer's actions took place outside of the residence, the officer would need to report stop data.

DAG Koshy next discussed potential revisions to the provision of the regulations that require officers to complete a stop data report if an officer takes certain enumerated actions during a programmatic search. She stated that there is potential to add transit police to the category of programmatic searches that would require officers to complete a stop data report if the officer took certain enumerated actions, officers conducting transit sweeps would not need to complete a stop data report unless they took certain actions.

DAG Koshy next addressed the issue of allowing agencies to confidentially disclose stop data to advance public policy. She stated that current regulations allow the Department to disclose stop data to academics for scientific study and one potential proposal under consideration is to clarify that local law enforcement agencies can do the same.

Member Khadjavi asked for clarification of the distinction between "frisks" and "searches," and if the searches reported in stop data included frisks. Co-Chair Swing stated that there was not a value for "pat-down search for weapons" under the search data element. SDAG Beninati stated that the definition of search includes a pat-search. She stated that the reporting includes all searches, but does not differentiate between the different types of searches unless the officer records this in the narrative field. Co-Chair Swing recommended the addition of data values to distinguish between pat-searches and other types of searches.

Co-Chair Swing stated that since the Board includes demographic data from the American Community Survey in its report, he recommends adding a data element to indicate if the person stopped is a resident of the jurisdiction where the officer stopped them, allowing for comparison of the stops of residents and non-residents.

Co-Chair Raphael stated that he has seen some agencies include a question about whether officers asked the stopped person about their community corrections status and the person's response. He stated that this action is often a source of tension, and it could be added under "Actions Taken by Officer during Stop." He reiterated that reorganizing the data values into groups might help with the time required for reporting and the accuracy of reporting.

Co-Chair Raphael, Co-Chair Swing, and SDAG Beninati thanked DAG Koshy for the presentation.

5. Public Comment

Dr. Karen Glover stated her concern that there were not more community members providing comments. She thanked the subcommittee and the Department staff for all of their work.

6. Discussion of Next Steps

Co-Chair Raphael asked the subcommittee if they wanted another meeting to review revisions to the proposed amendments. DAG Elgart stated that the December 2nd Board meeting would focus on the Board's Report. DAG Koshy stated that a later Board meeting would focus, in part, on the regulations. SDAG Beninati stated that the Board would potentially schedule this meeting for later in the spring, once the Office of Administrative Law (OAL) published the proposed amendments, allowing time for the subcommittee to meet sooner if they desired. She stated that there would be plenty of time for subcommittee members and the public to submit recommendations once the OAL published the proposed amendments. Co-Chair Raphael recommended that the subcommittee wait to meet until the OAL published the proposed amendments and the full Board had the opportunity to discuss them. The subcommittee members agreed.

SDAG Beninati thanked the subcommittee members for their feedback on the proposed amendments.

7. Adjourn

Co-Chair Raphael adjourned the meeting at 4:54 pm.