

AB 953 Subcommittee – Searches & Seizures

This subcommittee will advise the Racial and Identity Profiling Advisory Board (Board) regarding recommendations the Board may wish to make to the Office of the Attorney General concerning the Data Values to collect for any searches of persons and/or property, and any seizure of property as a result of a stop.

I. BACKGROUND

A “Data Element” is the category of information that is collected – for example, the “gender” of the person stopped. “Data Values” are fields that an officer would select in responding to the data element. AB 953 does not provide the particular data values that must be assigned to each data element. For example, “female, male, transgender, and gender non-conforming” are possible data values that could be assigned within the data element of “Perceived Gender” of the person stopped.

AB 953 requires officers to report on actions taking during a stop, including the following required categories:

“(7) Actions taken by the peace officer during the stop, including, but not limited to, the following:

(A) Whether the peace officer asked for consent to search the person, and, if so, whether consent was provided.

(B) Whether the peace officer searched the person or any property, and, if so, the basis for the search and the type of contraband or evidence discovered, if any.

(C) Whether the peace officer seized any property and, if so, the type of property that was seized and the basis for seizing the property.” (Gov. Code, § 12525.5, subd. (b)(7).)

This subcommittee may wish to consider the appropriate Data Values provided below in responding to the bases for searches and seizures, as well as the actual contraband or property discovered and/or seized during a search.

II. BASIS FOR SEARCH OF PERSON

The subcommittee may wish to discuss the Data Values for the reasons that the officer searched a person, including the following proposed Data Values. This list is not exhaustive. Board members should also feel free to consider and discuss data elements and values not accounted for in this document.

1. Consent given
2. Probation/Parole
3. Warrant
4. Incident to Arrest
5. Weapons
6. Visible contraband
7. Odor of contraband
8. Incident to patdown/frisk
9. Canine sniff
10. Other

III. TYPE OF CONTRABAND OR EVIDENCE DISCOVERED DURING SEARCH OF PERSON, IF ANY

The subcommittee may wish to discuss the Data Values for the type of contraband or evidence discovered during a search, including the following proposed Data Values. This list is not exhaustive. Board members should also feel free to consider and discuss data elements and values not accounted for in this document.

1. Firearms
2. Other weapons
3. Narcotics
4. Alcohol
5. Money
6. Other contraband
7. Other evidence
8. Drug paraphernalia
9. Stolen property
10. None

IV. BASIS FOR SEARCH OF PROPERTY

The subcommittee may wish to discuss the Data Values for the officer's justification for conducting a search of a person's property, including the following proposed Data Values. Again, this list is not exhaustive, and the Board members should also feel free to consider and discuss data elements and values not accounted for in this document.

1. Consent given
2. Search Warrant
3. Probation/Parole
4. Incident to Arrest
5. Vehicle inventory
6. Weapons
7. Visible contraband
8. Odor of contraband
9. Canine sniff
10. Other

V. TYPE OF CONTRABAND OR EVIDENCE DISCOVERED DURING SEARCH OF PROPERTY, IF ANY

The subcommittee may wish to discuss the Data Values for the type of contraband or evidence discovered during a search of a person's property, including the following proposed Data Values. Again, this list is not exhaustive, and the Board members should also feel free to consider and discuss data elements and values not accounted for in this document.

1. Firearms
2. Other weapons
3. Narcotics
4. Alcohol
5. Money
6. Other contraband
7. Other evidence Drug paraphernalia
8. Stolen property
9. None

VI. TYPE OF PROPERTY SEIZED

The subcommittee may wish to discuss the Data Values for the type of contraband or evidence seized during a search of a person's property, including the following proposed Data Values. Again, this list is not exhaustive, and the Board members should also feel free to consider and discuss data elements and values not accounted for in this document.

1. Firearms
2. Other weapons
3. Narcotics
4. Alcohol
5. Money
6. Other contraband
7. Other evidence Drug paraphernalia
8. Stolen property
9. None

VII. BASIS FOR SEIZURE OF PROPERTY

The subcommittee may wish to discuss the Data Values for justification for seizing a person's property during a search of a person's property, including the following proposed Data Values. Again, this list is not exhaustive, and the Board members should also feel free to consider and discuss data elements and values not accounted for in this document.

- i. Safekeeping
- ii. Forfeiture
- iii. Contraband
- iv. Evidence
- v. Vehicle impound

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD

<http://oag.ca.gov/ab953>

SEARCHES & SEIZURES SUBCOMMITTEE
MEETING NOTICE AND AGENDA

Monday, August 8, 2016, 11a.m. - 1p.m.

Teleconference Locations: California Department of Justice Offices

Los Angeles

300 S. Spring Street
5th Floor Conference Room
Los Angeles, CA 90013

Oakland

1515 Clay Street
20th Floor, Suite 2000
Oakland, CA 94612

San Diego

600 West Broadway St.
Suite 1800
San Diego, CA 92101

Other Teleconference Locations:

Kings County Sheriff's Office
1444 W. Lacey Blvd, Administration Building
Hanford, CA. 93230

1. Introductions (3 min.)
2. Selection of Subcommittee Chair (7 min.)
3. Discussion of advice this subcommittee wishes to provide to the Racial and Identity Profiling Advisory Board (Board) on recommendations it might make to the Attorney General's Office concerning the Data Values to collect for any searches of persons and/or property, and any seizure of property as a result of a stop. Topics for discussion may include, but are not limited to the following: (1.5 hours)
 - a. Basis for Search of Person, including Type of Contraband or Evidence Discovered during Search of Person, if any
 - b. Basis for Search of Property, including Type of Contraband or Evidence Discovered during Search of Property, if any
 - c. Type of Property Seized
 - d. Basis for Seizure of Property
4. Next Steps (10 min.)
5. Public Comment (10 min.)
6. Adjourn

The meeting will begin at the designated time. Other times on the agenda are approximate and may vary as the business of the Board requires. Access to the meeting sites are accessible to persons with disabilities. For information or assistance with accommodation requests, please contact Supervising Deputy Attorney General Nancy A. Beninati at 510-622-2194, at least five calendar days before the scheduled meeting. For all other questions about the Board meeting please contact Legal Assistant M. Luzy Ochoa, California Department of Justice, 300 S. Spring Street, Suite 1702, Los Angeles, CA 90013, (213) 897-2636.

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD

SEARCHES & SEIZURES SUBCOMMITTEE
MEETING MINUTES

Monday, August 8, 2016

Teleconference Locations: California Department of Justice Offices

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Other Teleconference Locations:

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1444 W. Lacey Blvd., Administration Building
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Subcommittee Members Present: Oscar Bobrow, Pastor J. Edgar Boyd, Douglas Oden, Sheriff David Robinson

California Department of Justice Staff Present: Angela Sierra, Shannon Hovis, Rebekah Fretz, Glenn Coffman, Jerry Szymanski

1. Call to Order and Introductions

The first meeting of the Searches & Seizures Subcommittee was called to order at 11:12 a.m. by Shannon Hovis of the California Department of Justice (DOJ). The meeting was held by teleconference with a quorum of members present. Member Oden joined the meeting at 11:52 a.m., and all subcommittee members were present for the remainder of the meeting. After the meeting was called to order, the members of the subcommittee and DOJ staff members present at the meeting introduced themselves.

2. Selection of Subcommittee Chair

VOTE: Member Oscar Bobrow was selected as Subcommittee Chair with Member Robinson and Member Boyd voting "Yes", no "NO" votes, and no abstentions. Member Oden was not present for the vote.

3. Basis for Search of Person, including Type of Contraband or Evidence Discovered during Search of Person¹

¹ In advance of the meeting, California DOJ staff sent the subcommittee members a document containing the proposed data elements to be discussed by the subcommittee during the meeting,

Chair Bobrow commented that the 10 data values proposed by the DOJ provide a fairly complete list, but suggested adding the data value “investigation.” Ms. Sierra suggested that they should also consider whether there should be sub-reasons for the proposed “investigation” data value.

Member Robinson commented that given the difficulties of comprehensive data collection, data values that are tailored to what is already collected by officers would make collection easier. He suggested breaking down basis for a search into two data values—(1) “consent” (verbal or written) and (2) “probable cause”—and creating a dropdown menu under “probable cause” for the other proposed data values. He also expressed the concern that if they try to narrow the categories too much, some situations may be missed. Chair Bobrow responded that there are situations that may fall under neither consent nor probable cause, which emphasizes the need for specificity. He gave the example that reasonable suspicion is a very common justification, but different from probable cause, and the resulting searches are often not conducted with consent.

Member Boyd asked for examples of justifications for a search that would fall under the “other” category. Member Robinson answered that other justifications may include a civil order or a pat-down for officer safety, but that this is tricky given the unknown possibilities. Member Boyd commented that the “other” category is problematic for purposes of detecting profiling because they would want to know about the substance of the stop.

Member Robinson proposed that they may want to break the data value “weapons” down into “suspected” and “actual.” Member Boyd expressed some discomfort with the “suspected weapon” language.

Chair Bobrow proposed that “investigation of a crime” be added to the data values list, as well as categories for “probable cause” and “reasonable suspicion.” Member Robinson proposed that “canine sniff” should be changed to “canine detection” and that a “civil order” should be added to the data values list. Member Boyd proposed eliminating the blanket category of “other” and identifying other categories that should be included, so that the subcommittee could make the list as tight and inclusive as possible. Member Oden proposed eliminating the category “odor of contraband.” Ms. Sierra suggested that an “exigent circumstances/emergency” data value may be worth adding. Member Robinson suggested adding “evidence to a crime” as a data value because a secondary person who has knowingly or unknowingly received contraband may need to be searched.

MOTION: Chair Bobrow made a motion to recommend the following data values to the RIPA Board for basis for search of a person: (1) Consent given, (2) Probation/Parole, (3) Warrant, (4) Incident to arrest, (5) Weapons (Suspected/Actual), (6) Visible contraband, (7) Odor

as well as lists of proposed data values for these data elements. This document was made available to members of the public at the meeting and will be made available upon request.

of contraband, (8) Incident to pat-down/frisk, (9) Canine detection, (10) Civil court order, and (11) Evidence of a crime.

VOTE: The motion carried with Chair Bobrow, Member Boyd, and Member Robinson voting “Yes” to all 11 proposed data values. Member Oden who voted “YES” for 10 of the 11 proposed data values, and “NO” to “Odor of contraband.” There were no abstentions.

4. Type of Contraband or Evidence Discovered During Search of Person

Member Boyd asked for a definition of the data value “money.” Member Robinson explained that contraband in the law enforcement context could include cash or bank accounts and suggested that contraband could be more specifically defined, such as cash or coin. Member Boyd commented that some people carry large amounts of cash on their person but may not necessarily look like they should have that much.

Chair Bobrow commented that the data values of “other contraband” and “other evidence” seem non-descript and too vague. Member Boyd stated that there was a need to explain the “other” contraband or weapons. Member Robinson commented that any type of contraband seized by officers will be described in a case report, and police systems have hundreds of categories of contraband or evidence. Given the fact that the lists of all possible categories of contraband or evidence could be endless, he believed that there is a need to categorize the major ones and include the “other” categories.

Chair Bobrow proposed adding “ammunition” to the “other weapons” data value. Member Boyd proposed changing “stolen property” to “suspected stolen property.”

MOTION: Chair Bobrow made a motion to recommend the following data values to the RIPA Board for the type of contraband or evidence discovered during the search of a person: (1) Firearms, (2) Other weapons or ammunition, (3) Narcotics, (4) Alcohol, (5) Money, (6) Other contraband, (7) Other evidence, (8) Drug paraphernalia, (9) Suspected stolen property, and (10) None.

VOTE: The motion was carried with Chair Bobrow, Member Boyd, Member Oden, and Member Robinson voting “Yes”, no “NO” votes, and no abstentions.

5. Basis for Search of Property

Chair Bobrow proposed that “canine sniff” should be made changed to “canine detection,” as it was for the basis of search of a person. Member Oden proposed that the category of “exigent circumstances” should be added. Member Robinson suggested that the data value “city/municipal/county ordinance” should be considered because officers frequently do compliance checks and enter property, but this category may also fall under “evidence of a crime.” The other members agreed that it should be a stand-alone data value.

MOTION: Chair Bobrow made a motion to recommend the following data values to the RIPA Board for the basis for the search of property: (1) Consent given, (2) Search Warrant, (3)

Probation/Parole, (4) Incident to Arrest, (5) Vehicle inventory, (6) Weapons, (7) Visible contraband, (8) Odor of contraband, (9) Canine detection, (10) Evidence of a crime, (11) Exigent circumstances, (12) City/county ordinance

VOTE: The motion was carried with Chair Bobrow, Member Boyd, Member Oden, and Member Robinson voting “Yes”, no “NO” votes, and no abstentions.

6. Type of Contraband or Evidence Discovered During Search of Property, if Any

Chair Bobrow proposed that the data value “stolen property” should be changed to “suspected stolen property” and “ammunition” should be added to “other weapons.” Chair Bobrow and Member Robinson agreed that “evidence of a crime” should not be added since it would be covered under “other evidence.”

MOTION: Chair Bobrow made a motion to recommend the following data values to the RIPA Board for type of contraband or evidence discovered during the search of property: (1) Firearms, (2) Other weapons or ammunition, (3) Narcotics, (4) Alcohol, (5) Money, (6) Other contraband, (7) Other evidence, (8) Drug paraphernalia, (9) Suspected stolen property, and (10) None.

VOTE: The motion was carried with Chair Bobrow, Member Boyd, Member Oden, and Member Robinson voting “Yes”, no “NO” votes, and no abstentions.

7. Type of Property Seized

MOTION: Chair Bobrow made a motion to recommend the following data values to the RIPA Board for type of property seized: (1) Firearms, (2) Other weapons or ammunition, (3) Narcotics, (4) Alcohol, (5) Money, (6) Other contraband, (7) Other evidence, (8) Drug paraphernalia, (9) Suspected stolen property, and (10) None.

VOTE: The motion was carried with Chair Bobrow, Member Boyd, Member Oden, and Member Robinson voting “Yes”, no “NO” votes, and no abstentions.

8. Basis for Seizure of Property

Member Bobrow proposed that the proposed data value “evidence” should be replaced with “evidence of a crime.” Member Robinson agreed with Chair Bobrow’s proposal and suggested that, given this change, “contraband” does not need to be a data value. Chair Bobrow suggested that “evidence of a crime” could include property being investigated and things such as documents or proof of residence. Member Robinson also proposed that “civil code” or “court order” should be added to the list.

Member Oden asked for a definition of the data value “safekeeping.” Member Robinson explained that safekeeping may include seizures of otherwise legally-owned property, and that it is rather common for firearms to be seized for safekeeping because of a temporary restraining order or if someone has a mental health issue or in cases such as divorce proceedings or the

winding down of a business. Ms. Hovis commented that the Definitions subcommittee can look further into this issue, but Member Robinson should provide some input to tailor the definition appropriately. Member Robinson commented that safekeeping generally references codes or regulations, so the category should be labeled “safekeeping as allowed by law or statute.”

Chair Brobow suggested adding the data value “investigation of a crime.” Member Robinson responded that this would likely be covered under “evidence of a crime.” Member Boyd proposed that “evidence of a crime” be changed to “suspected evidence of a crime.”

MOTION: Chair Bobrow made a motion to recommend the following data values for the basis for seizure of property: (1) Safekeeping as allowed by law or statute, (2) Forfeiture, (3) Suspected evidence of a crime, (4) Vehicle impound, and (5) Civil court order.

VOTE: The motion was carried with Chair Bobrow, Member Boyd, Member Oden, and Member Robinson voting “Yes”, no “NO” votes, and no abstentions.

9. Next Steps

Chair Bobrow asked DOJ staff to provide a copy of the approved data values to subcommittee members. Ms. Hovis agreed to this request and reminded the members, that in accordance with the Bagley-Keene Open Meeting Act, they cannot discuss the proposed data values among themselves outside of a publicly noticed meeting.

MOTION: Chair Bobrow proposed that within 2 weeks, DOJ staff distribute a copy of the agreed upon data values to the subcommittee members, and that members communicate separately with staff regarding whether an additional subcommittee meeting is needed. If no additional subcommittee meeting is needed, the subcommittee will present these recommendations to the RIPA Board.

VOTE: The motion was carried with Chair Bobrow, Member Boyd, Member Oden, and Member Robinson voting “Yes”, no “NO” votes, and no abstentions.

10. Public Comment

Peter Bibring from the ACLU of California commented that the purpose of data collection is to document what officers are actually doing in the field and that there are two competing purposes: (1) making the data easy to document and (2) actually capturing the specifics of the incident. The totality-of-the-circumstance standard gives the need for as much detail as possible, which illustrates the need for a narrative field so that officers can provide additional information that is not captured by the data values. Because the purpose of AB 953 is to document what is going on and why, the data values should not be limited to legal justifications, which would create inaccurate portrayals of what happened.

Michele Wittig from the Coalition for Police Reform in Santa Monica commented that she liked everything that was discussed in the meeting but would like the subcommittee members and those writing the regulations to consider the consequences that this will have on how officers

behave, including unintended deleterious consequences, such as officers choosing less-scrutinized data values.

In response, Chair Bobrow stated that limiting the justifications to legal options is what allows the data collected to be accurate, as it would be unrealistic for officers to admit to illegal stops. He hoped that law enforcement agencies would conduct internal reviews of this data to uncover any issues. He also stated that a narrative field is a nice idea, but it would be tough to capture and would lead to inconsistent categories.

11. Adjournment

The meeting was adjourned at 1:02 P.M.