

**CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD (BOARD)**

<https://oag.ca.gov/ab953/board>

**POLICIES SUBCOMMITTEE MEETING MINUTES**

**May 31, 2023 11:30 a.m.**

**Subcommittee Members Present:** Co-Chair Andrea Guerrero, Co-Chair Melanie Ochoa, Member Lily Khadjavi, Member Rich Randolph, Member John Dobard, Member Angela Sierra, and Member Manju Kulkarni

**Subcommittee Members Absent:** Member Chad Bianco

**1. Introductions**

Co-Chair Guerrero called the meeting to order at 11:35 a.m. Each Policies Subcommittee member (herein subcommittee) introduced themselves. Co-Chair Guerrero concluded introductions with a welcome to all attending the meeting.

**2. Approval of February 27, 2022 Subcommittee Minutes**

Member Sierra moved to approve of the draft meeting minutes as is. Member Kulkarni seconded the motion. With five Ayes, zero Nays, and two Abstentions, the motion passed.

**3. Overview by Subcommittee Work by Department of Justice and Discussion of Subcommittee Section Report**

**Accountability**

DAG Jennifer Soliman presented on accountability topics that the subcommittee would cover in their report section. DAG Soliman provided a summary of the report draft and stated that the report section would focus on police unions and on qualified immunity. She stated that the police union portion of the draft report section would first cover the history, structure, and function of police unions. The section would then cover the following topics:

- Police unionization
- Its collective bargaining powers
- The effects of police unionization on reform and accountability
- The police officer's bill of rights
- Potential impediments caused by the police officer's bill of rights

DAG Soliman expanded on the collective bargaining power topic and noted that the draft report section would cover agreements made in reference to interrogation, disciplinary records, civilian oversight, complaint investigation, and arbitrations. She then stated that the draft report section on police unions would then cover police unions in management and its effects on police subculture before closing out the section on a municipality's role in bargaining.

DAG Soliman stated that the second part of this draft report section would be on qualified immunity. She stated that the section would first cover the state of the current law as it is currently before covering the elements of qualified immunity consisting of:

- Discretionary function
- The established law prong
- The reasonableness of officials
- The reliance on extraordinary circumstances

She continued that the latter half of the topic would cover the balance between the state and the individual's interests before covering the effects of qualified immunity on financial liability and litigation.

DAG Soliman shared the potential recommendations the RIPA Board could adopt for the accountability section of their report. She stated that recommendations proposed were sourced from advocates and scholars familiar with the section discussed as well as discussions the subcommittee had and that the two particular recommendations discussed today were from UC Berkeley Law Professor Catherine Fisk and her colleagues.

The first recommendation proposed was to have increased transparency during police union negotiations. DAG Soliman stated that the recommendation would allow members of the public, who are most impacted by police practices, the opportunity to provide input on what is normally a closed door process. She stated that the recommendation would propose that certain laws, particularly the Meyers-Milias-Brown Act (MMBA), which require disclosure in other arenas of public employment be applicable to collective bargaining components not normally disclosed. She stated that applications of this proposal could include requiring public entities to conduct a public hearing on bargaining proposals while providing sufficient notice to the public to allow for comments and for closed session notes, related to bargaining, to be made available to the public.

Co-Chair Guerrero opened the floor for Subcommittee comments. Member Sierra thanked DAG Soliman and asked whether there are other government entities that have implemented the transparency recommendation proposed. DAG Soliman stated that Fisk and her colleagues did not explicitly model their recommendation from another government agency's practice but rather from sunshine laws already enacted in other areas of public employment. She also stated that there are laws in place which already permit these discussions to be disclosed; the MMBA expressly permits the release of information from legislative bodies acquired during closed sessions which include discussion of salaries, salary schedules, and compensation. Member Sierra stated that content on a government entity's application of the proposal would be beneficial to the draft report section.

Co-Chair Ochoa thanked DAG Soliman for her work and stated that the context on unions provided in the report section may be ahistorical and conflicting to the report's goal to remedy biases in policing. She shared that some of the content provided in the section could create inferences that could justify potential bias. She also recommended that less normative language should be used to describe protections gained during bargaining and that the comparative language be modified when referencing dangers associated to policing; she stated that without a reference point the language could lack the necessary context needed. She proposed that the protections referenced in

the section be listed before being followed by content on the dangers associated with policing compared to other public sector employees which could then facilitate discussion on whether these protections are detrimental to holding police officers accountable. She also proposed that the text describing the tensions unions face between representing their members and instilling progressive policing should be removed as the citation given actually stated the opposite. She also stated that the proposed recommendations did not address issues raised in the draft report section. Another recommendation she made was to highlight unions' roles outside of collective bargaining such as shaping policies through meet and confers.

Member Randolph thanked Co-Chair Ochoa for raising shared concerns on the ahistorical content on unions and thanked the DOJ for their continued effort on drafting the report. Member Randolph stated that as a subject matter expert, as a union president for 17 years, he was concerned on the section's divergence from the RIPA Board's purpose of addressing racial profiling. He also clarified that during contract negotiations topics relevant to RIPA are not discussed and that as a union president he took a firm stance against members who were found to have broken the law. He also proposed that the DOJ review and incorporate the positive effects unions provide to the community as a whole such as scholarships and contributions to community projects; he stated that unions in southern California alone provided \$1.7 million to their local communities.

Co-Chair Guerrero recommended that the section should include the variations that may occur regarding accountability as a result of collective bargaining. She stated that other states have taken steps to regulate how collective bargaining engages with accountability issues in an effort to standardize the practice throughout its respective state. DAG Soliman thanked the Subcommittee for their input before proceeding to the second proposed recommendation.

The second recommendation proposed was to separate managers above the rank of sergeant and those ranked sergeant and below into their own bargaining units. DAG Soliman stated that because a union could represent both managers and line officers, a tension can arise in certain topics which could make it difficult for unions to adequately represent both parties. She stated that topics such as discipline inherently create this conflict as unions have to navigate meeting the needs of managers who enact discipline and line officers who are subjected to it.

Co-Chair Guerrero opened the floor for Subcommittee comments. Member Randolph inquired whether police leadership was involved in developing the second proposed recommendation. He also clarified that it is common practice to have separate bargaining units based on rank tentative to the size of the agency and that the general trend was towards that direction. DAG Soliman reported that no one with a law enforcement background was involved in the development of the second proposed recommendation but that there were lawyers who specialized in representing fire fighter and police unions involved in developing the recommendation.

DAG Soliman also shared that a third topic could cover the accountability of data in the draft report section. She prefaced that the DOJ does not have the capacity to individually audit received data from law enforcement agencies and that the RIPA Board has previously discussed developing guidelines to allow for agencies to audit themselves. She reported that the Department of Justice

Research Center (DOJRC) is also working on creating a system to systemically review the data as well as identify anomalies.

Co-Chair Guerrero opened the floor for Subcommittee comments. Member Dobard inquired whether the DOJ's inability to audit was a result of capability or capacity. DAG Soliman answered that although individuals and advocacy agencies can file writs against law enforcement agencies germane to data collection that the DOJ does not have the capacity to do so for every agency that reports. DOJRC Data Supervisor Kevin Walker stated that the DOJRC is not the auditing arm of the DOJ and that its defined scope in assisting the RIPA Board was to help develop their annual reports.

Member Ochoa reiterated the importance of having the data vetted. She stressed that unaudited data could lessen the value of the report as well as provide potentially misleading information to stakeholders. She also shared that without audited data, it would be difficult to drill down particular agencies with the most opportunity to improve. She recommended that the topic be structured as follows:

- Framing the issue and acknowledging issues related to data received
- Expanding on the discrepancy issues found
- Advising law enforcement agencies of their obligation to provide accurate data as required by law

She also stressed, that the DOJ should expend what authority and options are available to them before considering the public's ability to address this endeavor as it is not the responsibility of the public to enforce compliance. In closing her comment, she also stressed that no other organization is reviewing the data as in-depth as the RIPA Board and that it was their responsibility to formally acknowledge data issues as the principle review of such data as it is being used in litigation.

### **Pretext Stops**

DAG Micklethwaite presented on pretext stop topics that would be included in this year's report. She noted that the RIPA Board has worked on the topic for several years and explored topics such as consent searches, probation searches, traffic stops, and infractions. She stated that this year's report would delve deeper into pretext stops by addressing some of the root causes of pretext stops.

DAG Micklethwaite stated that this draft report section would cover five main topics:

- Being solely charged for resisting arrest with no other charges
- Use of field interview cards and their link to pretextual policing
- Pretextual stops related to narcotics enforcement
- The use of specialized teams
- The intersection between the use of force and pretextual stops.

DAG Micklethwaite presented on recent changes in legislation and implemented agency and state practices related to pretext stops. They stated that the Los Angeles Police Department (LAPD) and the State of Virginia have enacted policy to limit pretextual stops. DAG Micklethwaite noted that as a result of this policy implementation there were observed reduction in stops and searches

related to pretextual stops and added that both entities experienced an increase in finding contraband when searches were based on a probable cause standard. DAG Micklethwaite reported that despite the State of Virginia's policy implementation, disparities were still apparent. Advocates in Virginia have proposed prohibiting consent searches during traffic stops, create civilian traffic enforcement agencies, and to identify overly enforced misdemeanors to address the disparities.

DAG Micklethwaite also reported on changes in legislation which may impact practices in the state. She stated that Senate Bill 50 (SB 50) would limit stops for certain violations which would include registration, license plates, and window tints among other similar violations. DAG Micklethwaite stated there were a number of support and in opposition that would be featured in this section of the report. They also reported that AB 93 proposed to limit consent searches and would require searches based on probable cause. DAG Micklethwaite shared that federal legislation would propose grant based funding for civilian based traffic enforcement..

DAG Micklethwaite next shared that Penal Code section 148(a) covers resisting arrest. They shared that the United States Department of Justice utilize this data in law enforcement investigations to examine racial disparities and to identify stops that may not have been made with reasonable suspicion or probable cause. They then stated that the state DOJ reviewed the data for particular reasons associated with the stops when only resisting arrest was charged, disparities and use of force rates. DAG Micklethwaite also explained that the section would cover various agencies' and district attorneys' policies that limit these types of charges and discovered the following:

- Prohibiting misdemeanor standalone resisting arrest charges if not accompanied by another citable offense
- Dismissing standalone misdemeanor resisting arrest charges if charged in conjunction with trespass, disturbing the peace, driving without a license, simple drug possession, a minor in possession of alcohol, drinking in public, being under the influence of a controlled substance, or loitering
- Requiring law enforcement supervisors to review any case alleging resisting arrest
- Requiring district attorneys to review body-worn camera footage in any case where resisting arrest was alleged prior to filing charges
- Preventing arrest in charges being filed in cases initiated through consensual encounters
- Restricting charges regarding resisting arrest if it involves a youth
- Preventing filing of charges of someone being stopped for community caretaking or is experiencing a mental health crisis.

DAG Micklethwaite next discussed the link between narcotics enforcement and pretextual stops, explaining that the War on Drugs encouraged the use of pretextual stops in order to locate narcotics. DAG Micklethwaite reported that those who are Black or Latino are more likely to be cited for these offenses, but are also more likely to suffer from the negative consequences of criminalizing narcotics. DAG Micklethwaite shared that review of district attorney and other state policies revealed the following practices aimed at restricting narcotics enforcement:

- Prohibiting charges for a small amount of drugs
- Prohibiting drug charges stemming from an infraction related stop or consensual search
- Reducing charges for larger amount of drugs
- Funding addiction treatment through grant based programs
- Funding community based crisis response and harm reduction services
- Making drug testing more widely available
- Requiring data collection from treatment providers on the effects of decriminalization, recidivism rates, diversion statistics, and audits from treatment providers

DAG Micklethwaite continued and presented the next covered topic on field interview cards. The RIPA Board has visited the topic in past reports as they reviewed the effect field interview cards have on the transgender community and on the youth. DAG Micklethwaite reported that this year, the topic will be reviewed on a broader scale. They stated that field interview cards are used in contacts where the individual has alleged gang membership. They stated that the information gathered is then collated into CalGang which revealed several concerns: there were clear disparities revealed and that as much as 25% of the data was compromised due to inaccurate reporting. DAG Micklethwaite shared that a remedy implemented was to remove false information from the database which was ineffective as those who requested for their information to be removed discovered that it was still in the database.

DAG Micklethwaite shared the following potential recommendations for this topic for the Subcommittee's consideration:

- Restricting the use of field interview cards and opting for recording the information in the police report
- Forbidding law enforcement agencies from creating criminal databases that are not regulated by the Department of Justice
- Prohibiting entries of youth in these databases
- Prohibiting coordination with the U.S. Immigrations and Customs Enforcement
- Making the information removal process more transparent
- Reallocating law enforcement resources to community based violence intervention programs

DAG Micklethwaite closed the presentation by covering the last section topic on the link between specialized policing teams and their use of force. They reported on research on crime-based data sourced from neighborhoods policed by law enforcement. DAG Micklethwaite stated that when specialized police teams are assigned to neighborhoods assigned as hotspots there is an increased concern of over policing. The following potential recommendations for this topic were shared for the Subcommittee's consideration:

- Prohibiting funding of military equipment and specialized teams
- Ending the use of no-knock-warrants
- Reallocating law enforcement resources to drug and violence based intervention programs that have been evidenced to prevent crime from happening

DAG Micklethwaite closed her presentation and invited the Subcommittee to provide feedback on research and recommendations presented. Co-Chair Ochoa stated that she was in favor of including all recommendations presented on. She shared concern of the use of force data's accuracy as upon review she observed that some of the largest policing agencies in the state did not report out use of force data relevant to the RIPA Board and that the data set was too small. As an alternative Co-Chair Ochoa recommended that the DOJ review the link between specialized police teams and traffic enforcement.

Member Khadjavi thanked DAG Micklethwaite for her presentation and recommendations. She appreciated the section's breakdown by topic and stated that the section's organization would help readers navigate the section more effectively. She suggested that singular reference to restorative justice be defined and noted that restorative justice as a topic itself could be expansive.

### **Youth Interaction with Disabilities**

DAG Yasmin Manners opened the presentation noting that an outline has been created per the Subcommittee's direction on which topics to pursue for this year's report. She stated that the draft report section is structured to cover data and trends related to police contact with youth with disabilities. She invited the Subcommittee to provide feedback on the scope of the draft report section's coverage and on the data used within. She stated that the following topics would be covered this year:

DAG Manners shared that the first topic would largely examine how police interact with youths with disabilities. She stated that the topic would cover this year's data and national data to identify trends. In addition to quantitative review, she reported that the first topic would also describe what types of use of force interactions are occurring between police and youth with disabilities

DAG Manners stated that the second topic in the report section would report on research about the impact of police interactions with youths with disabilities. She stated that the research indicated that youths with disabilities who experience police interactions are likely to experience higher rates of arrest, incarceration, and mental health consequences. She also shared that the topic would cover why these impacts occur with research suggesting that it could be due to an officer's inability to identify disabilities and the varied responses that could occur due to the disability. She also stated that research indicates that an inability to identify disabilities could lead to an escalated response from police.

DAG Manners shared the following recommendations for the Subcommittee's consideration:

- Implementing a care first model to reduce criminal justice intervention in favor of a community response
- Using de-escalation and stabilization tactics instead of control and command tactics
- Training law enforcement on age appropriate development and adolescent responses

DAG Manners closed out her presentation on the last topic of the report section. She stated that the mental health crisis topic would mirror the prior topic but would focus on best practices related to appropriately handling mental health crises. She reported that the topic would include information on the general decline of youth mental health because of the COVID-19 pandemic.

She informed that the topic would highlight that enhanced vulnerability youth with poor mental health could experience during police interactions that could result in traumatization, death, lower attainment at school & work, and serious bodily injury. She shared that the topic would also cover the use of youth-specific crisis intervention teams rather than a police response. DAG Manners closed the topic by providing best practices for the Subcommittee's consideration:

- Using mental health workers as first responders
- Make police responses the last resort for mental health crisis situations
- Training dispatchers to better gather information to respond appropriately
- Instructing police to respond with questions instead of demands
- Eliminating use of force practices on youth experiencing mental health crises

Co-Chair Guerrero opened the floor for Subcommittee thoughts and feedback. Member Randolph reminded the Subcommittee that the data utilized in the draft report section was from a limited set of agencies and asked the Subcommittee to consider postponing development of conclusions until after all data is received. Member Kulkarni responded to Member Randolph's proposal and stated that the draft report section could be contextualized to be a broad understanding of the topic. She stated that once the outstanding data is received the subsequent draft report sections could then be considered more robust and conclusive.

### **Youth in School Section**

Associate Government Program Analyst (AGPA) Anna Rick presented on the youth in school draft report section. She stated that this is the second year the RIPA Board has explored the racially disparate impact of school policing has in schools and how youth exposure to law enforcement in schools has generally increased. She reported that:

- Currently there are 19 school districts administered police departments in the state
- Nationally more than half of school based law enforcement officers work for a local police or sheriff's department
- As of 2015-2016 there are 2,080 school based law enforcement officers in California
- In the 2017-2018 school year, California schools referred 24,727 students to law enforcement and reported the arrest of 2,188 students at schools
- That this year's report would have a full account of the data required
- In 2022 the U.S. DOJ Community Oriented Policing Services Office (COPS) published guiding principles for school based law enforcement officers to follow

AGPA Rick stated that COPS guidance advised that there should be a prohibition on school based law enforcement officers from addressing school disciplinary issues or enforcing school code of conducts that can safely be handled by school officials. She stated that currently there is a lack of transparency and oversight in the contracts between school districts and law enforcement agencies and that data suggests that on a national level 51% of school based law enforcement officers who were present at least once a week were involved in maintaining school discipline. She stated that the lack of uniform guidance may create unclear boundaries on what school based law enforcement officers should be involved in. AGPA Rick closed her presentation with recommendations for the



Subcommittee's consideration. Co-Chair Guerrero opened the floor to the Subcommittee for their feedback. Upon hearing none, Co-Chair Ochoa moved the meeting to the next agenda item.

#### **4. Public Comment**

Co-Chair Ochoa then opened the floor for members of the public to provide their comments in today's meeting.

David asked the Subcommittee on the procedural process of filing a complaint for being racially profiled.

Karen raised concern that the accountability draft report section focused too much on police protections rather than racial and identify profiling.

Co-Chair Ochoa closed the agenda item and informed the public of resources they could refer to when filing a complaint.

#### **5. Discussion of Next Steps**

Co-Chair Guerrero opened the agenda item and instructed the DOJ to review feedback given at the meeting for direction. She also stated that the Subcommittee looks forward to the review the data component of the draft section report. She closed the agenda item by reminding the Subcommittee that they can provide additional instruction to the DOJ by e-mail correspondence. DAG Allison Elgart confirmed the DOJ received the Subcommittee's feedback and will work to produce a revised draft report section by the Subcommittee's next meeting.

#### **6. Adjourn**

Co-Chair Ochoa thanked all for their attendance and wished all a good day before adjourning the meeting.