

CALIFORNIA RACIAL AND IDENTITY PROFILING BOARD

ADDITIONAL DATA ELEMENTS SUBCOMMITTEE
MEETING MINUTES

Tuesday August 16, 2016, 10 a.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

Sacramento

1300 "I" Street
Conference Rm. 1540
Sacramento, CA 95814

Other Teleconference Locations:

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

Subcommittee Members Present: Jennifer Eberhardt, Andrea Guerrero, Edward Medrano, David Robinson, Honorable Alice Lytle

Subcommittee Members Absent: Mike Durant, Tim Silard

California Department of Justice Staff Present: Nancy A. Beninati, Shannon Hovis, Rebekah Fretz, Glenn Coffman, Jerry Szymanski,

1. Call to Order and Introductions

The first meeting of the Additional Data Elements subcommittee was called to order at 10:25 a.m. by Nancy Beninati of the California Department of Justice (DOJ). The meeting was held by teleconference with a quorum of subcommittee members present. After the meeting was called to order, the subcommittee members, DOJ staff members, and members of the public present at each teleconference location introduced themselves.

2. Selection of Subcommittee Chair

MOTION: Member Robinson made a motion to elect Member Edward Medrano as Subcommittee Chair. The motion was seconded by Member Guerrero.

VOTE: The motion was passed with Member Eberhardt, Member Guerrero, and Member Robinson voting “Yes”, no “No” votes, and no abstentions. Member Lytle was not present for the vote.

3. Perceived Race or Ethnicity of the Individual Stopped

Chair Medrano began the discussion period by providing an overview of the topics for discussion.¹ He then asked for the members’ comments regarding the data elements that should be collected on the characteristics of the individual stopped, starting with perceived race or ethnicity. Member Robinson suggested that the data values for race or ethnicity should be consistent with the categories used by the U.S. Census Bureau, and that the data collection form should have the option for officers to check multiple boxes for individuals perceived to be of mixed race.

Member Eberhardt asked what the options were if the officer cannot determine the race or ethnicity of the individual stopped. She suggested adding an “Other” category with an open field to write in the ethnicity in cases where the perceived ethnicity is not listed on the form. Member Robinson commented that adding open field or narrative boxes for race would create consistency problems, and it is important that racial categories be consistent throughout because of training issues. Member Guerrero commented that an “other” box may be insufficient without a narrative explanation. Member Eberhardt stated that there is a danger that valuable information would be lost if there is no narrative field, but they would have to find out whether adding an open field is possible from a technology perspective.

Chair Medrano suggested that there may be a need for a biracial checkbox, as well as an “other” checkbox. Member Guerrero agreed and stated that while further levels of detail would be nice, they needed to stick with macro-level categories. Member Robinson suggested that they should consider adding subcategories, for example including the data value “European” under the category “Whites.” He also suggested considering a skin tone or complexion option, such as light, medium or dark, to collect data on whether officers tend to stop individuals with certain skin tones. Member Guerrero proposed bringing up the issue of narrative fields in the Technology Committee meeting.

MOTION: Member Guerrero made a motion to recommend being able to check multiple boxes and include an “Other” option that includes an open field to the perceived race or ethnicity data element. The motion was seconded by Member Robinson.

VOTE: The motion was carried with Chair Medrano, Member Eberhardt, Member Guerrero and Member Robinson voting “Yes”, no “NO” votes and no abstentions.

4. Public Comment

¹ DOJ staff provided the subcommittee members with a document containing recommended topics for discussion, including lists of proposed data elements and data values for the AB 953 regulations.

Peter Bibring from the ACLU of California commented that capturing biracial information is important, and there are systems with broader data collection fields. Using narrative fields may be helpful for revision and may allow for expansion of the data categories collected in the future.

Chief Deputy Patricia Knudson from the Riverside County Sheriff's Department expressed support for including a multi-racial option under the race and ethnicity data element to help ensure that officers are accurately documenting the stop, as well as an "other" option.

5. Definitions for Race and Ethnicity Data Values

Chair Medrano then asked the members for comments on how the data values under the race or ethnicity field should be defined. Member Guerrero commented that definitions may not be that important since the data collection is about the officer's perception. Member Eberhardt commented that even though the data collected is only perceived race, officers should have guidance to make sure they are collecting data consistently. Looking at the definitions and breakdowns used in the U.S. census data may be helpful, particularly for training purposes. Member Robinson agreed that making the definitions consistent with federal and state census categories would make the most sense and provide the most consistency in data collection. Member Guerrero suggested that an "other" category with a narrative box would be useful, especially for officers that are assigned to communities with large concentrations of a certain ethnic subgroup.

6. Public Comment

Jennifer Orthwein from the Transgender Law Center suggested that race and ethnicity should be broken up into two separate categories, and the race category should be documented by complexion and the ethnicity category by perceived ethnicity.

Diana Tate Vermeire from the ACLU of California urged the subcommittee to consider the language of the statute and use the race elements found in the census data rather than skin tone.

Member Guerrero commented that the federal census forms make a distinction between race and ethnicity. Chair Medrano commented that the RIPA Board has discretion to recommend additional data elements, but they should not make the data collection form overly complex. Member Eberhardt suggested that the subcommittee stay with what they originally agreed upon for the race or ethnicity category.

7. Perceived Gender of the Individual Stopped

Chair Medrano then asked for comments regarding the DOJ's proposed data values for perceived gender. He suggested that they expand the current list of data values to five categories: male, female, transgender male, transgender female, and gender non-conforming. Member Robinson suggested that it would be helpful for officers to have knowledge of how these categories are defined.

MOTION: Member Guerrero made a motion to recommend expanding the list of data values for perceived gender to the five categories proposed by Chair Medrano. The motion was seconded by Member Robinson.

VOTE: The motion was carried with Chair Medrano, Member Eberhardt, Member Guerrero, and Member Robinson voting “Yes”, no “NO” votes and no abstentions.

8. Public Comment

Chief Deputy Jackie Horton from the Riverside County Sheriff’s Department commented that breaking transgender down into transgender male and transgender makes sense.

Jennifer Orthwein from the Transgender Law Center expressed a concern that transgendered individuals will be perceived as merely male or female rather than transgendered, but she agreed that the five categories make sense. She suggested that the form could use a 5-point Likert type scale of masculinity and femininity, and that this category could be broken down into perceived sex assigned at birth followed by the scale. The five points on the gradation scale could be very masculine, more masculine than feminine, equal to perceived sex, more feminine than masculine, and very masculine.

Jo Michael from Equality California commented that the reasoning behind the scale is to accurately capture who is being affected the most, and it would be a relatively new area where data would be collected for the first time.

Chair Medrano commented that the subcommittee needs to be mindful of the legislation and not go too far into breaking down these categories into subcategories. Member Robinson commented that the goal of data tracking is to ensure that people are being treated fairly by offices. The proposed 5 points are reasonable, but they do not want so much detail that officers would have to look too closely into characteristics such as male, female, or sexual orientation and make judgments that would otherwise be irrelevant.

Member Lytle joined the meeting at 11:03 a.m. After Chair Medrano gave her a brief summary of the discussion on perceived gender, Member Lytle asked for a definition of gender non-conforming. Jo Michael from Equality California explained that gender non-conforming is meant to capture people who do not fit easily into traditional gender categories but would have nothing to do with asking people whether they identify with one of the gender categories. Chair Medrano stated that officers should be trained on how to use this data field.

9. Sexual Orientation

Member Guerrero proposed that sexual orientation should be added as a data value along with the other 5 categories. Chair Medrano asked how an officer would determine sexual orientation without asking the individual. He then asked for public comment on this issue.

10. Public Comment

Peter Bibring from the ACLU of California commented that there would be many incidents where there would be no basis to perceive sexual orientation, so there should be a “no perception” option. However, there are some interactions where sexual orientation is clearly perceived, such as enforcement actions that seem to target individuals based on sexual orientation. For example, there have been sting operations in Long Beach for public sex incidents that have largely targeted game men, and this would be a situation where it would be important to capture perceived sexual orientation.

Chief Deputy Jackie Horton from the Riverside County Sheriff’s Department recommended that sexual orientation not be added to the five agreed upon data values.

Jennifer Orthwein from the Transgender Law Center suggested adding the category “perceived LGB.” She expressed the concern that using the category “sexual orientation” and breaking it down into identity words such as gay, lesbian, or bisexual could be problematic and risk conflating and confusing the categories of gender and sexual orientation. She suggested either using “perceived LGB” or breaking it down into attracted to men, attracted to women, etc.

Jo Michael from Equality California also expressed a concern over the categories of gender and sexual orientation overlapping and expressed support for measuring sexual orientation by the categories “no perception” or “perception of LGB”.

11. Recommendations to the RIPA Board Regarding Perceived Sexual Orientation

MOTION: Member Robinson made a motion to recommend adding “perceived LGB” as a data element. Member Guerrero seconded the motion.

VOTE: The motion was carried with Chair Medrano, Member Eberhardt, Member Guerrero, Member Lytle, and Member Robinson voting “Yes”, no “NO” votes and no abstentions.

12. Perceived Age of the Individual Stopped

Chair Medrano then asked for member comments regarding the age categories recommended by the CDOJ. Member Eberhardt commented that the proposed age ranges were similar to the categories used by the Oakland Police Department, and that using ranges is helpful because it is difficult to perceive age accurately. CJIS staff commented that these are the age ranges that CJIS uses for its data collection system. There was no public comment on this issue.

MOTION: Member Robinson made a motion to recommend keeping the perceived age categories that were recommended by the CDOJ.

VOTE: The motion was carried with Chair Medrano, Member Eberhardt, Member Guerrero, Member Lytle, and Member Robinson voting “Yes”, no “NO” votes and no abstentions.

13. Additional Data Elements for Characteristics of the Individual Stopped

Chair Medrano asked if the members had suggestions regarding any additional data elements that should be included in the subcommittee's recommendations to the Board. Member Eberhardt proposed adding an option for whether the officer could perceive race before the stop. She explained that the Oakland study uncovered greater racial disparities when they collected this data.

Member Lytle proposed an option for the officer's perception of the individual's mental or emotional state when stopped. Member Guerrero proposed that perception of the individual's mental or emotional state could be part of a disability section, and explained that these issues are already addressed in POST trainings. Member Robinson stated that this issue is already dealt with by legislation which requires officers to complete mental health training. He also commented that many officers respond to calls of service that involve individuals with a mental illness, so the data may look as if officers are targeting individuals with mental illnesses. The form was intended to take only a few minutes to complete, and there is a point where additional data elements will make data collection unfairly burdensome for officers.

Chair Medrano stated that he was comfortable with the data elements discussed and was in favor of not adding more. Member Eberhardt commented that demeanor could be captured in a narrative field if one is included.

14. Public Comment

Peter Bibring from the ACLU commented that the Disability Rights Project wrote a letter on this issue, suggesting that information on mental disabilities could be captured by a checkbox on the data collection form as evidence of mental disabilities or emotional distress. He pointed out that 1/3 to 1/2 of police shooting include people with mental disabilities. He also suggested that under the resolution of the stop data element, the form could include a data value for a 72-hour hold or mental health hold.

Chief Deputy Patricia Knudson from the Riverside County Sheriff's Department commented that most stops will cause individuals to exhibit high anxiety or stress, so it may be difficult for an officer to attribute an individual's emotional state during a stop to a mental health issue.

Chair Medrano asked if there is any other legislation capturing this type of information on mental disabilities, such as AB 71. Ms. Hovis answered that AB 71 has data values for disability but requires law enforcement agencies to report incidents only where the use of force by a peace officer results in serious bodily injury or death.

Member Robinson left the meeting at 11:30 a.m. due to a previous engagement, but a quorum of members was present for the remainder of the meeting.

15. Limited English Proficiency

Ms. Hovis commented that at the first RIPA Board meeting, there was a suggestion to add LEP as a data element through the use of a simple yes or no checkbox. Member Guerrero and Member Lytle both voiced support for this additional element.

MOTION: Member Guerrero made a motion to recommend adding LEP as an additional data element. Member Lytle seconded this motion.

VOTE: The motion was carried with Chair Medrano, Member Eberhardt, Member Guerrero, and Member Lytle voting “Yes”, no “NO” votes and no abstentions.

16. Characteristics of the Officer

Chair Medrano then asked for comments regarding collecting data on the characteristics of the officer making the stop. He commented that law enforcement did not think that characteristics of the officers would be included in the data collection when AB 953 was passed, and there would be a lot of push back from law enforcement agencies if this information was reported. For small agencies, a single element, such as race, could lead to personal identification of the officer. He also asked whether officers would need to be provided with information on where they stand relative to the reporting.

Member Lytle asked whether the identification number on the list of recommended characteristics of the officer to be reported was synonymous with the officer’s badge number. Member Medrano answered that identification numbers do not necessarily have to be synonymous with badge numbers, and maybe the Technology Subcommittee can weigh in on creating a new identification number. Ms. Beninati commented that the badge number would never become public; it would be reported for tracking purposes only and would be scrubbed in the event of a Public Records Act request.

Member Eberhardt commented that the identification number of the officer is useful for understanding the causes of discrepancies. She explained that this information may show that a small percentage of officers could be making all the questionable or illegal stops, or it could point to specific departments or squads.

Ms. Hovis commented that the goal of collecting the identification number was to link stops with subsets of officers, rather than identifying the particular officers, in order to understand police practices throughout the state. The language of AB 953 creates an assumption that information on officers will be collected but kept confidential. Member Medrano replied that the language of the statute could also be read as an assumption that individual officer information would not be collected.

Ms. Beninati commented that the statute states that the RIPA Board shall not disclose the personal information of officers. It is within the discretion of the Attorney General to collect this information if it will be useful in furthering the purposes of the statute, but this information will be used for internal purposes only. She explained that the purpose is to fully capture the data to help determine if an officer is stopping individuals of a particular race more often than others

because the officer is actually profiling or because the officer's assignment puts him or her in contact with individuals of that race more than others.

Member Eberhardt commented that in the Oakland study, the officers were given random numbers and a name was not attached to the numbers, so the researchers did not know the personal identity of the officers, even though the agencies themselves could probably figure out the officers' identities. Ms. Beninati stated that the DOJ would be collecting agency ORI numbers and officers would have numbers, but the officers could not be individually identified by them. CJIS staff commented that assigning random numbers while maintaining anonymity may be difficult and someone would have to assign the numbers and pass them on to the DOJ. Agencies could look at the data and only they would know which particular officers are profiling.

Chair Medrano commented that he understood the statute to require that the data be sent to the DOJ in the aggregate, and that many departments already have early warning systems to catch racial profiling. If this information is collected, it is probably the agencies are probably responsible to tell officers where they stand, and this could open up a lot of labor issues. He suggested making the identification number specific only to the agency and not the officer.

Member Eberhardt commented that the intent of collecting this information is to uncover patterns across agencies and among subsets of officers. Ms. Hovis stated that the intent of this data is also to open up a dialogue between law enforcement and the RIPA Board to discuss the findings.

Member Medrano asked how this information, once collected and retained by law enforcement agencies would be protected from Public Records Act requests. He expressed the concern that collecting this information would open law enforcement agencies up to Public Records Act legal challenges, and stated that it should be the agencies responsibilities to identify the particular officers who are profiling. Ms. Beninati replied that the protection of this information from Public Records Act requests is not limited to the Board and the DOJ but extends to other law enforcement agencies also. Member Eberhardt commented that there have been no issues from the Oakland study with collecting this type of information, but more information about the logistics of numbering is needed.

17. Public Comment

Peter Bibring from the ACLU commented that there is strong support for collecting officer identification data. He stated that the statute seems to make clear that the privacy of this information would be protected, and the use of unique identifiers is important for understanding the nature of the problem. He also pointed out that very few agencies have early warning systems for identifying racial disparities.

Chief Deputy Patricia Knudson from the Riverside County Sheriff's Department expressed support for keeping the data collection and reporting to the categories listed in the statutes and not identifying the officers in any way. She commented that the legislation would not

prevent law enforcement agencies from having to defend against Public Records Act requests for this data, and this information would likely be discoverable in federal court.

Corey Salzillo from the California State Sheriff's Association commented that when negotiating this legislation, the intent was that the officer not be identified. He stated that the overarching concern was that the more they drill down into the characteristics of officers, the easier it is to identify individual officers, particularly in smaller agencies.

Member Eberhardt commented that some agencies have been collecting this type of data for years and it is important to look at how these agencies have dealt with these concerns before deciding this issue. Chair Medrano reiterated his concern that the data agencies collect and retain is not protected from disclosure under the Public Records Act. He suggested that they could recommend that agencies evaluate their own data and could make recommendations on how agencies should use this data to address issues with profiling.

MOTION: Chair Medrano made a motion to request that DOJ staff look further into how other agencies have collected data on the characteristics of individual officers, and then reconvene the subcommittee to discuss the findings. This motion was seconded by Member Eberhardt.

VOTE: The motion was carried with Chair Medrano, Member Eberhardt, Member Guerrero, and Member Lytle voting “Yes”, no “NO” votes and no abstentions.

18. Public Comment

Jo Michael from Equality California noted that Equality California had joined an ACLU letter to the Attorney General that contained specific reconditions for collecting data on perceived gender and perceived sexual orientation.

Chair Medrano requested that DOJ staff forward a copy of these letters from the ACLU to the subcommittee members.

19. Adjournment

The meeting was adjourned at 12:10 p.m.