

CALIFORNIA RACIAL AND IDENTITY PROFILING BOARD
DEFINITIONS SUBCOMMITTEE: MEETING MINUTES

Thursday, August 11, 2016, 11 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

Sacramento

13000 "I" Street.
Conference Room 730
Sacramento, CA 95814

Other Teleconference Locations:

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

Subcommittee Members Present: Oscar Bobrow, Mike Durant, Joe Farrow, Alex Johnson, Mariana Marroquin, David Robinson

Subcommittee Members Absent: Reverend Ben McBride

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

1. Call to Order

The first meeting of the Definitions Subcommittee was called to order at 11:10 a.m. by Shannon Hovis from the California Department of Justice (DOJ). The meeting was held by teleconference with a quorum of members present.

2. Selection of Chair and Introductions

MOTION: Member Robinson made a motion for Member Mariana Marroquin to be elected as Subcommittee Chair, but Member Marroquin declined the nomination. Member Robinson then nominated Oscar Bobrow for the position.

VOTE: Member Bobrow was selected as Subcommittee Chair with Member Durant, Member Farrow, Member Marroquin, and Member Robinson voting "Yes", no "NO" votes, and no abstentions. Member Johnson was not present for the vote.

A short break was taken until Member Johnson arrived. Upon Member Johnson's arrival at 10:20 a.m., the meeting resumed, and the subcommittee members, DOJ staff, and members of the public available at each teleconference location then introduced themselves.

3. Discussion Regarding Potential Additions to “Peace Officer” and “Stop”

Chair Bobrow started the discussion period by asking for comments from the subcommittee members regarding potential additional definitions for the terms “peace officer” and “stop.” Member Farrow recalled a conversation during the full RIPA Board meeting in which the suggestion was made that the definition of peace officer should be expanded to include community college police officers. Member Johnson commented that both he and Member Ali had recommended that school district police officers be included within the categories of peace officers covered under AB 953 because the first encounters with law enforcement for a significant number of young people is with school police officers. He pointed out that this is particularly true in Los Angeles, as the Los Angeles Unified School District (LAUSD) Police Department is one of the largest police departments in the state. Thus, school police officers should be covered.

Ms. Hovis commented that AB 953 already covers school resource officers if the school district contracts with local law enforcement. She stated that the primary question was whether school district police officers who are not members of a municipal or county law enforcement agency are covered under AB 953. Chair Bobrow asked if LAUSD contracts with city law enforcement, and Member Johnson answered that it does not.

Member Durant commented that the RIPA Board does not have the authority to expand the definition of “peace officer” under AB 953 beyond what was intended by the legislature. Ms. Beninati from the DOJ commented that even though the statute limits the definition of peace officer to certain peace officers, there were still some areas of ambiguity within those categories of officers.

Chair Bobrow commented that even though the RIPA Board could not go beyond intent of the legislation, perhaps the Board could make suggestions to the Attorney General’s Office, and they could go to the legislature with the Board’s recommendations. Ms. Beninati stated that while the regulations must be drafted consistent with the statute, AB 953 gives the Attorney General’s Office discretion to include additional data elements not mentioned in the statute. However, making recommendations to the legislature is a separate issue.

Chair Bobrow suggested that the Board could recommend that any law enforcement agencies that are not covered by AB 953 act in accordance with the statute even if not required to do so. Member Robinson stated that the penal code covers more peace officers than those covered under AB 953, and suggested that for the purposes of the meeting, the subcommittee should focus on the definitions relevant to the largest agencies that are required to begin reporting stop data in 2017.

4. Discussion of What Constitutes a “Detention” for Purposes of AB 953

Chair Bobrow then turned the discussion to the question of what constitutes a “detention” for purposes of AB 953. He stated that a stop for purposes of AB 953 means any detention in which a search is conducted, so the primary question is what is a detention? He posed the

question of whether a detention includes a situation where an officer approaches someone on the street and asks what they are doing in the area, or a casual conversation that results in asking to see someone's identification, or a situation where an officer asks to talk to someone for a few minutes about a report in the area.

Member Durant suggested that a detention occurs where an individual is not free to leave, and the officer is detaining the individual for purposes of investigation. If there is no thought of detention and the person has the ability to ignore the officer or leave, it is not a detention. He explained that officers try to make clear to the person that they are looking into an incident. Because law enforcement is trying to build rapport with the communities they serve, documenting every interaction would become extremely burdensome.

Chair Bobrow commented that although situations that are not legally detentions ideally should not be included, there may be situations in which an individual who is not being detained may not be free to leave, such as where an armed officer asks to run a person's identification or where a person matches a suspect description and is pulled over or stopped but no action is taken and the person is free to go. He proposed that the definition should include any time an officer asks for personal identification or a response, and a reasonable person would not feel free to leave.

Member Durant commented that a traffic stop is always a detention because a person is not free to leave. Member Farrow agreed but stated that pedestrian stops are problematic because an individual is not free to leave if an officer has his or her ID and may not feel free to leave if asked where he or she is going. He stated that it is not the law anymore that a person has to give their ID when requested by an officer, but questioning about events generally constitutes a detention. Member Durant agreed that if an officer asks for ID and the officer is investigating an incident, it would be considered a detention, even if consensual. However, if the individual ignores the officer and walks off, it would not be a detention. Chair Bobrow commented that a detention may still include consensual identification.

Member Johnson commented that the legal standard here is reasonableness, which creates ambiguity, and the perception of what is reasonable has expanded over time. He agreed that casual conversations should not be detentions, as this would create a chilling effect on officers trying to engage in community policing, and that traffic stops clearly are detentions. He thought that investigative questioning should fall into the detention category, and that asking for an ID is not casual in nature. People are generally fearful of officers, so reasonableness for them may be different than what officers believe to be reasonable.

Chair Bobrow proposed that the definition of detention include any traffic stop, any time an officer asks for identification, and any physical contact between the officer and the individual, such as a search of a pat-down. Member Johnson suggested that the line should not be drawn at asking for identification as detentions should also include investigative questioning.

Member Marroquin commented that she has been stopped just because she, as a transgender woman, is perceived as different, and asked questions such as where she was going and why she was in a certain neighborhood. She explained that this type of questioning can feel

like harassment to many in the community, and that this is particularly true in the transgender community.

Chair Bobrow suggested changing the definition to any time investigative questions are asked. Member Robinson replied that some investigative questioning is directed at individuals who are not being investigated for a crime, such as witnesses. He suggested instead that possible language may include “individuals who feel that they may be the subject of an investigation,” and that the line may be drawn at who is the target of the questioning. Chair Bobrow suggested that the definition could potentially include “investigative questioning where the individual being questioned is the focus.”

Member Johnson commented that hypotheticals are going to be key in defining what is and is not investigative questioning, especially for interactions that are not detentions, such as witness questioning and every day engagement with the public. He cautioned that they do not want the reporting requirements to have a chilling effect when it comes to witnesses and community policing.

Ms. Hovis raised the issue of situations where individuals are questioned about someone they know. Member Farrow commented that this may just come down to whether the individual is reasonably free to leave; if not, it should be documented. Member Durant commented that officers may need to make it clearer when individuals are not free to leave, but officers should not have to document incidents where individuals are just uncooperative and leave.

Member Farrow commented that traffic accidents could be problematic because officers need to ask probative and investigatory questions where the person is not free to leave, which may lead to a search or arrest. However, these types of stops are not initiated by police. Member Durant stated that the same problem exists for all calls to service. Chair Bobrow replied that not all calls to service should be excluded. For example, if a neighbor calls the police because he suspects a drug deal is taking place in the neighborhood, and the officer stops and questions people in the area based on the tip, those stops should be documented. Mr. Johnson agreed on the issue of traffic accidents not being reported, but stated that there are other types of calls that are distinct and data on these calls should be reported and considered.

5. Public Comment

Michele Wittig from the Coalition for Police Reform in Santa Monica commented there was a concern about whether detentions that do not involve a search are within the scope of AB 953, based on the language of the statute. Chair Bobrow responded that the statutory language specifically separates detentions and interactions that result in searches, with the operative word in the statute being “or”.

Peter Bibrig from the ACLU of California commented that it is important to document and capture actions of law enforcement made during non-discretionary interactions that include a detention. Thus, traffic accidents that lead to detentions should be documented.

6. Additional Discussion on What Constitutes a Detention

After public comments, Chair Bobrow recapped the detention examples that had been discussed: any traffic stop, any time identification is requested, any time there is physical contact between a person and an officer, any time a reasonable person would not feel free to leave, and any questioning where the person is the focus of an investigation of a crime.

Member Farrow commented that during traffic accidents, individuals are always detained at the scene to get information, and if the stop goes a step further to garner information about the incident, the person is definitely not free to leave. He explained that there are around half a million documented traffic collisions a year, and officers are always required to ask for identification. He suggested that a general traffic accident should not count as a detention unless it becomes investigative to the point where an officer will take some action, such as a citation, arrest, search, or it simply goes beyond the scope of a regular report.

Member Robinson commented that the focus of AB 953 is on a stop, and if a definition includes all situations where probative questions are asked, this could open up many areas that were not intended to be covered under AB 953. Chair Bobrow suggested that maybe this type of situation should be limited to questioning because of a criminal investigation, which could be included in the hypotheticals.

Member Robinson suggested that maybe the statute was only meant to apply to stops which include a search, and he asked DOJ staff for their opinion on this issue. Ms. Hovis replied that the stops under AB 953 includes both detentions that do not include a search and interactions that result in a search. Ms. Beninati commented that defining detention has been one of the most difficult and time-consuming parts of drafting the regulations, and that hypotheticals would help guide officers in the field.

Regarding requests for identification, Member Robinson explained that sheriffs have civil divisions, and their duties involve asking for identification very frequently to carry out their jobs. For example, officers frequently respond to restraining order issues and must identify the parties. He suggested that civil calls for service should not be included if officers are merely asking for identification, as this is done frequently for verification purposes to make sure the officer is talking to the correct person. Chair Bobrow commented that a person would probably not be free to leave if they said no to a request for identification, but, even if calls for service are covered, if the officer is legitimately there, the analysis is going to show this.

Member Farrow commented that responding to calls to residences seems to be outside the scope of AB 953, as these calls are not initiated by the officer. Officers do this frequently and need to get identification just to figure out what is going on. Member Durant commented that officers need to identify victims and get their information in cases in which there is no active suspect. Documenting these interactions would create a tremendous amount of data that also seems outside of the scope of AB 953, so perhaps the focus should be on who initiated the contact.

Chair Bobrow suggested that perhaps the language should exclude calls for service that were not initiated by an officer and where an ID is required in conjunction with that call.

Member Farrow replied that the line is somewhere between initial fact-finding and focusing on the investigation, but this is difficult to define. For example, someone may call the police about a domestic disturbance at a neighbor's house, and the police will have to knock on doors to figure out what is happening. He suggested including calls for service if the officer makes an arrest and/or search, but not including interactions during an investigation to identify the person on whom the complaint is made.

Member Johnson commented that there could be situations however, where officers are responding to a call and given a general description of a suspect, and then make certain stops or detentions; these incidents should be documented and are well within the scope of AB 953. Member Durant commented that the intent of the statute should just be to create transparency for stops initiated by officers.

7. Public Comment

Michele Wittig from the Coalition for Police Reform commented that it might be helpful for DOJ staff to draft a decision tree or flowchart that shows major decision points in incidents. For example, was the interaction initiated by the officer (Yes/No), was ID requested (Yes/No), etc.

Peter Bibrig from the ACLU commented that non-discretionary contacts like calls to service should also be documented. The intent of AB 953 is not just to document discretionary actions but also to measure the impact of policing that may have a disproportionate impact on certain communities within the entire process of the criminal justice system. The statutory language answers many of these questions.

Jacqueline Horton from the Riverside County Sheriff's Department commented that the intent of AB 953 was geared to self-initiated activity and not legitimate calls for service. At the Riverside County Sheriff's Department, a deputy sheriff responds to every call, and it would be overly burdensome to collect and report data on each call, which include calls where the officer questions or conducts pat down searches for officer safety.

8. Next Steps

Chair Bobrow proposed that the subcommittee members take a closer look at the statute and reconvene at a later time to decide on the definition of detention they wanted to recommend to the full RIPA Board and to discuss the other items on the agenda. Ms. Beninati encouraged the members to come up with hypotheticals that fall within the definition of detention, as well as hypotheticals that are excluded from the definition. Ms. Hovis informed the members that she would coordinate with them regarding scheduling a follow up meeting.

Member Marroquin asked whether they could submit hypotheticals by email to staff. Ms. Hovis answered that members could submit the hypotheticals to staff but could not discuss them with other members.

9. Adjournment

The meeting was adjourned at approximately 1:10 p.m.