

# RACIAL AND IDENTITY PROFILING ADVISORY BOARD 2020 REPORT – BEST PRACTICES

The 2020 Report contains model language for a written bias-free policing policy; definitions related to bias; the limited circumstances when personal characteristics of an individual may be considered; training; data collection and analysis; encounters with the community; accountability and adherence to the policy; and supervisory review. Agencies are also encouraged to develop policies and training on how to prevent bias by proxy when responding to a call for service. In addition to including model language, the Board conducted a policy review to assist Wave 1 agencies in identifying areas of opportunity to incorporate the best practices and model language presented in this report and the 2019 RIPA Annual Report with respect to civilian complaints and bias free policing policies. For the purposes of this report, Wave 1 agencies refers to the eight largest law enforcement agencies in the state that began collecting stop data on July 1, 2018, and reported it to the California Department of Justice on April 1, 2019.

The Board advises that these best practices are general recommendations –developed with the hope of eliminating racial and identity profiling in policing –but they are by no means exhaustive. These recommendations represent best practices that have appeared in various consent decrees, grand jury reports, and scholarly studies regarding policies related to bias-free policing. Each individual law enforcement agency should review its current policies, procedures, and trainings to determine which of the following recommendations fit best within its organization. These best practices can be found throughout the body of the report as well as in Appendix E for ease of reference.

It is the Board’s hope that these best practice resources will assist law enforcement agencies, policymakers, and community members in developing, assessing and implementing bias-free policing policies, procedures, and trainings. The Board understands that there must be sufficient funding in order to implement these recommendations, and further understands that the amount of funding and resources available to implement these recommendations varies depending on the agency; however, agencies are encouraged to seek out grants and funding that will ensure that the stop data collection is utilized to its fullest potential. The Board also encourages law enforcement agencies to partner with local community-based organizations or colleges or universities to help with translations and other implementation of these best practices.

Even without additional resources, there are recommendations that can and should be adopted to enhance the services that law enforcement agencies provide to the community. The Board encourages cities, counties, and policymakers to work with law enforcement agencies under their purview to ensure they are allocated the necessary funding and resources to implement the best practices described in the report.

As the Board continues to carry out its mission, it applauds the efforts of law enforcement agencies and stakeholders to improve law enforcement-community relationships and take steps toward eliminating racial and identity profiling in California. The Board recognizes and

understands that real progress requires both law enforcement and community support. California has been a leader on many fronts and this is yet another opportunity to demonstrate to the nation that real progress is possible when people work together towards a shared goal, in this case, the elimination of racial and identity profiling in California.

## Recommendations for Model Bias-Free Policing Policies

A model bias-free policing policy is a stand-alone policy devoted to bias-free policing. It uses clear language, including definitions of relevant terms, and expresses the agency or department's responsibility to identify and eliminate racial and identity profiling. In addition to stating the agency or department's core values and its commitment to bias-free policing, a model policy includes relevant federal and state law. A model policy is based on best practices, well researched, and regularly updated with changes in the law or best practices. A model bias-free policing policy includes cross references to other relevant agency policies on subjects such as civilian complaints, stops, use of force, training, and accountability. It also includes references to relevant training that agency or department personnel receive on subjects such as implicit bias, civilian complaint procedures, human and community relations, etc. A model stand-alone policy is easily accessible to both agency personnel and the public.

All personnel, including dispatchers and non-sworn personnel, should receive training on the bias-free policing policy. Specific examples of behavior that violates the bias-free policing policy should be included in either the training or the policy itself.

Below is model policy language and definitions that law enforcement agencies can consider including in their bias-free policing policies. The Board notes that these recommendations are merely a starting point for the development of best practices that agencies can include in their bias-free policing policies.

### *A. Model Policy Language for Bias-Free Policing Policy*

- The [agency] expressly prohibits racial and identity profiling.
- The [agency] is committed to providing services and enforcing laws in a professional, nondiscriminatory, fair, and equitable manner that keeps both the community and officers safe and protected.
- The [agency] recognizes that explicit and implicit bias can occur at both an individual and an institutional level and is committed to addressing and eradicating both.
- The intent of this policy is to increase the [agency's] effectiveness as a law enforcement agency and to build mutual trust and respect with the [city, county or state's] diverse groups and communities.
- A fundamental right guaranteed by the Constitution of the United States is equal protection under the law guaranteed by the Fourteenth Amendment. Along with this right to equal protection is the fundamental right to be free from unreasonable searches and seizures by government agents as guaranteed by the Fourth Amendment.

- The [agency] is charged with protecting these rights. Police action that is biased is unlawful and alienates the public, fosters distrust of police, and undermines legitimate law enforcement efforts.
- All employees of [agency] are prohibited from taking actions based on actual or perceived personal characteristics, including but not limited to race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability, except when engaging in the investigation of appropriate suspect-specific activity to identify a particular person or group.
- [Agency] personnel must not delay or deny policing services based on an individual's actual or perceived personally identifying characteristics.

### *B. Model Policy Language for Definitions Related to Bias*

- **Racial or Identity Profiling:** the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability<sup>1</sup> in deciding which persons to subject to a stop or in deciding upon the scope or substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description. Such activities include, but are not limited to, traffic or pedestrian stops, or actions taken during a stop, such as asking questions, frisks, consensual and nonconsensual searches of a person or any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest.<sup>2</sup>
- **Bias-Based Policing:** conduct by peace officers motivated, implicitly or explicitly, by the officer's beliefs about someone based on the person's actual or perceived personal characteristics, i.e., race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability.
- **Implicit Bias:** the attitudes or stereotypes that affect a person's understanding, actions, and decisions in an unconscious manner. These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual's awareness or intentional control. Implicit biases are different from known biases that individuals may choose to conceal.
- **Bias by Proxy:** when an individual calls/contacts the police and makes false or ill-informed claims of misconduct about persons they dislike or are biased against based on explicit racial and identity profiling or implicit bias.<sup>3</sup> When the police act on a request for service based in unlawful bias, they risk perpetuating the caller's bias. Sworn and civilian staff should use their critical decision-making skills, drawing upon their training to assess whether there is criminal conduct.
- **Reasonable Suspicion to Detain:** reasonable suspicion is a set of specific facts that would lead a reasonable person to believe that a crime is occurring, had occurred in the past, or is about to occur. Reasonable suspicion to detain is also established whenever

there is any violation of law. Reasonable suspicion cannot be based solely on a hunch or instinct.

- **Detention:** a seizure of a person by an officer that results from physical restraint, unequivocal verbal commands, or words or conduct by an officer that would result in a reasonable person believing that he or she is not free to leave or otherwise disregard the officer.<sup>4</sup>
- **Reasonable Suspicion to Conduct a Pat Search:** officers are justified in conducting a pat search if officers have a factual basis to suspect that a person is carrying a weapon, dangerous instrument, or an object that can be used as a weapon, or if the person poses a danger to the safety of the officer or others. Officers must be able to articulate specific facts that support an objectively reasonable apprehension of danger under the circumstances and not base their decision to conduct a pat search on any perceived individual characteristics. Reasonable suspicion to conduct a pat search is different than reasonable suspicion to detain. The scope of the pat search is limited only to a cursory or pat down search of the outer clothing to locate possible weapons. Once an officer realizes an object is not a weapon, or an object that can be used as a weapon, the officer must move on.
- **Probable Cause to Arrest:** under the Fourth Amendment to the United States Constitution, arrests must be supported by probable cause. Probable cause to arrest is a set of specific facts that would lead a reasonable person to objectively believe and strongly suspect that a crime was committed by the person to be arrested.

### *C. Model Policy Language for Limited Circumstances in which Characteristics of an Individual May Be Considered*

- [Agency] members may only consider or rely on characteristics listed in a specific description of a suspect, victim, or witness based on trustworthy and relevant information that links a specific person to a particular unlawful incident.
- Except as provided above, [agency] officers shall not consider personal characteristics in establishing either reasonable suspicion or probable cause.

### *D. Model Policy Language for Encounters with Community*

- To cultivate and foster transparency and trust with all communities, each [agency] member shall do the following when conducting pedestrian or vehicle stops or otherwise interacting with members of the public, unless circumstances indicate it would be unsafe to do so:
  - Be courteous, professional, and respectful.
  - Introduce themselves to the community member, providing name, agency affiliation, and badge number. [Agency] members should also provide this information in writing or on a business card.<sup>5</sup>

- State the reason for the stop as soon as practicable, unless providing this information will compromise officer or public safety or a criminal investigation.
  - Answer questions that the individual may have about the stop.
  - Ensure that a detention is no longer than necessary to take appropriate action for the known or suspected offense and [agency] member convey the purpose of any reasonable delays.
- All [agency] personnel, including dispatchers and non-sworn staff, shall not use harassing, intimidating, derogatory, or prejudiced language, including profanity or slurs, particularly when related to an individual's actual or perceived personal characteristics.
  - Dispatchers and sworn personnel shall be aware of and take steps to curb the potential for bias by proxy in a call for service.
  - Officers should draw upon their training and use their critical decision-making skills to assess whether there is criminal conduct and to be aware of implicit bias and bias by proxy when carrying out their duties.
  - All [agency] personnel, including dispatchers and non-sworn personnel, shall aim to build community trust through all actions they take, especially in response to bias-based reports.

### *E. Model Policy Language for Training*

- The [agency] will ensure that, at a minimum, all officers and employees are compliant with requirements regarding bias-free policing training.
- The [agency] will ensure that management includes a discussion of its bias-free policing policy with its officers and staff on an annual basis.
- [Agency] officers should be mindful of their training on implicit bias and regularly reflect on specific ways their decision-making may be vulnerable to implicit bias.

### *F. Model Policy Language for Data Collection and Analysis*

- As required by the California Racial and Identity Profiling Act of 2015, [agency] is required to collect data on: (a) civilian complaints that allege racial and identity profiling and (b) perceived demographic and other detailed data regarding pedestrian and traffic stops. The data to be collected for stops includes, among other things, perceived race or ethnicity, approximate age, gender, LGBT status, limited or no English fluency, or perceived or known disability, as well as other data such as the reason for the stop, whether a search was conducted, and the results of any such search. All agencies must report this data to the California Department of Justice.
- The [agency] should regularly analyze data, in consultation with [academics, police commissions, civilian review bodies, or advisory boards], to assist in identifying practices that may have a disparate impact on any group relative to the general population.

### *G. Model Policy Language for Accountability and Adherence to the Policy*

- All [agency] personnel, including dispatchers and non-sworn personnel, are responsible for understanding and complying with this policy. Any violation of this policy will subject the member to remedial action.
  - Types of remedial action should be outlined.
- All [agency] personnel, including dispatchers and non-sworn personnel, shall not retaliate against any person who complains of biased policing or expresses negative views about them or law enforcement in general.
- All [agency] personnel, including dispatchers and non-sworn personnel, share the responsibility of preventing bias-based policing. Personnel shall report any violations of this policy they observe or of which they have knowledge.
  - Processes and procedures for reporting violations should be included.

### *H. Model Policy Language for Supervisory Review*

- Supervisors shall ensure that all personnel under their command, including dispatchers and non-sworn personnel, understand the content of this policy and comply with it at all times.
  - Supervisory processes and procedures for monitoring should be included.
- Any employee who becomes aware of any instance of bias-based policing or any violation of this policy shall report it in accordance with established procedure.
- Supervisors who fail to respond to, document, or review allegations of bias-based policing will be subject to remedial action.
  - Types of remedial action should be outlined.
  - Supervisor processes and procedures for review should be included.

## **Recommendations Regarding Bias by Proxy**

Bias by proxy occurs in a call for service “when an individual calls the police and makes false or ill-informed claims about persons they dislike or are biased against.”<sup>6</sup> Because calls for service are a common way in which law enforcement officers make contact with the public, it is critical that law enforcement agencies have policies and training in place about how to prevent bias by proxy when responding to a call for service.

### *Best Practices for Responding to Biased-Based Calls for Service<sup>7</sup>*

The Board reviewed evidence-based best practices for responding to bias-based calls for service and identified the following best practices:

- Agencies should have a policy detailing how sworn personnel and dispatchers should respond to bias-based reports, reports regarding bias, or bias by proxy from the

community. This policy could be a stand-alone policy or integrated into the bias-free policing policy.

- An agency policy covering biased-based calls for service should include:
  - How an officer should identify a biased-based call for service.
    - It should first instruct the officer to determine whether there is evidence of criminal misconduct or if there is a need to engage in a community caretaking function.
    - It should include clear direction on next steps with respect to the caller and subject of the call (see below) if an officer determines that there is no criminal conduct or no need to conduct a well-being check.
    - It should allow officers to respond to the area and independently assess the subject's behavior from a distance. If no suspicious criminal behavior is observed, then the officer can report the call to dispatch as "unfounded."
  - How sworn personnel and dispatchers should interact with the community member who has made a bias-based call for service.
    - It should detail ways personnel can courteously explore if the call is bias-based and concerns an individual's personal characteristics (e.g., call regarding a person of color walking in the "wrong neighborhood") or if there are specific behaviors that warrant a call for police response. If the complainant can offer no further, concrete information, the complainant may be advised that the shift supervisor will be in contact at the first opportunity.
- Specifically, dispatchers could have a series of questions or a flexible script, which enables them to ask questions and explore whether there are concrete, observable behaviors that form the basis of the suspicious activity or crime the caller is reporting. Is the person looking into cars, checking doors, casing homes, etc.? What specific crime or activity does the person claim to be witnessing?<sup>8</sup>
  - If a call turns out to be a bias-based call for service, the shift supervisor may follow up with the caller to let them know that they found no suspicious or criminal activity. This way of "closing the call" may help educate callers about appropriate calls for service and possibly alleviate dispatching calls that have no merit, while serving to build trust between police and the community.
- How an officer should interact with a community member who is the subject of a bias-based call.

- It should detail methods on how to approach the subject of a bias-based call in a manner that respects their dignity and does not alarm them, but informs them about the reason that the officer is on scene.
    - It should include methods to account for situations in which the responding officer encounters both the caller and the subject of a potential bias-based call at the scene.
- Such methods should include de-escalation, respectful listening, and procedural justice techniques to ensure the scene is safe, the parties have an opportunity to communicate, and the officer has the opportunity to explain why no violation has occurred.
  - How the shift supervisor should interact with the caller:
    - It should detail how the shift supervisor can explain that the agency does not respond to calls for service based on an individual's personal characteristics and that lawful activities are not more suspicious because of the individual's personal characteristics.
    - It should detail ways the shift supervisor can educate the caller on the agency's bias-free policing policy and philosophy and explain that officers respond to behaviors/actions of individuals that appear suspicious, threatening, illegal, etc., and not to hunches or situations based on an individual's personal characteristics.
    - In the case of a call for service that is based on a caller's suspicion that an individual present in the jurisdiction is an undocumented immigrant, the supervisor could inform the caller that California law enforcement agencies are not responsible for enforcing federal immigration law, as provided for in the California Values Act (Cal. Gov. Code, §§ 7284 et seq.). These interactions should be documented by the supervisor.
- Agencies should have a training for officers and dispatchers that covers responding to bias-based calls for service. It should include:
  - Foundational instruction on how poor or inadequate responses to such calls can impair the agency's legitimacy and undermine other agency efforts to build community trust and communication.
  - How to be mindful of their training on implicit bias and regularly reflect on whether such bias is affecting a caller's decision-making (e.g., assuming a higher or lower threat level presented by an individual based upon his or her race, gender, or other personal characteristics).
  - How to assess a call for bias-based motivations.
  - How information regarding a call for service should be relayed without including biased assumptions.

- How to collect enough information necessary to verify reasonable suspicion of criminal activity.
- How to record and track any bias-based call in the agency's tracking systems.
- How on-scene responses to calls for service may require officers to apply de-escalation, communications, and procedural justice techniques.
- The subject of biased-based calls for service should also be included in supervisor and leadership training as desktop exercises so that attendees grasp the challenge bias-based calls present to the agency's overall mission.

It would be beneficial for dispatchers and officers to jointly attend training on calls for service so that the training can address the intersecting roles and responsibilities of both positions in dealing with bias-based calls for service. The Board also recommends that dispatchers go on a ride-along with a field officer as part of their training, and that field officers do a sit-along in the dispatch center so that each can build a better understanding of what the other job entails. This will open up the lines of communication between the two positions and enable them to better handle not only calls rooted in bias by proxy, but all dispatch calls generally.

## Best Practice Recommendations for Civilian Complaint Forms

In its 2019 report, the Board made recommendations for best practices for civilian complaint procedures and policies. In its 2020 report, the Board makes recommendations regarding the civilian complaint forms. After reviewing literature regarding best practices for civilian complaint procedures and forms and conducting an initial review of the Wave 1 agency civilian complaint review forms, the Board recommends that agencies consider the following in assessing and, if appropriate, revising their complaint procedures and forms:

### *Introductory or Background Information*

- The agency's complaint form should include an explanation of the policy to provide the complainant with clear direction on complaint procedures.
- The agency's policies, applicable forms, and training materials should communicate a clear, consistent definition of the term "civilian complaint."
- Complaint forms should include specific instructions for how to fill out and submit the complaint, as well as the contact information of specific department personnel who can assist in completing the form.
- The form should include pertinent information from the agency's complaint policy and procedures, such as:
  - A link to the agency's complaint policy.

- A statement on the agency’s commitment to the acceptance and prompt, fair, and thorough investigation of all complaints regardless of submission method or source.
- A statement that retaliation for making a complaint or cooperating in a complaint investigation is contrary to agency policy and may also be unlawful. The statement may encourage individuals to report any retaliation they face.
- A statement on the protection of personal information except as necessary to resolve the complaint. This should include a notice that the information is subject to the State’s public disclosure laws.
- A definition of racial or identity profiling consistent with RIPA.
- Information about the investigation process, including the potential finding dispositions and the timeline.
- Information on whom to contact regarding updates on the investigation of the complaint.

### *General Complaint Information*

- The form should capture:
  - If the complaint is being submitted anonymously, by a third party, or on behalf of a minor;
  - If a translator has been requested;
  - How the complaint was submitted (e.g., online, mail, in person).
- The form should include the name and contact information for agency personnel who filed or collected the complaint.
- The form should be accessible for people with disabilities.

### *Complainant Information*

- The form should ask for the following relevant information about the complainant (*if the complainant so chooses*):
  - Name
  - Age
  - Gender
  - Race or Ethnicity
  - Sexual Orientation

- Primary Language
- Address
- Home, work, mobile phone numbers.
- E-mail Address

### *Incident Information*

- The form should capture relevant information about the incident, including:
  - The location of the incident
  - Date of incident
  - Time of incident
  - If the incident was the result of a traffic or pedestrian stop
  - If the incident resulted in bodily injury
    - Including a narrative description field
    - If photos or videos of the injury were included with the complaint
  - If the complainant was present at the incident
  - If the incident was based in whole or in part on any factors such as:
    - Actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability<sup>9</sup>
    - Inappropriate use of force
    - Improper detention, search, or arrest
    - Substandard officer performance
  - Witness information, to the extent known
  - The name or a description of the officer(s)/employee(s) involved (potentially including Badge or ID number)
  - If the complaint or a related complaint has been previously submitted
  - A large narrative field for description of the alleged misconduct.

### *Processing of Complaints*

The agency's civilian complaint procedures should clearly explain how various types of complaints will be received, logged, and reviewed. The procedure should require that all complaints – including those that may be reviewed by a civilian review board or different

branch within the department (for example, Internal Affairs) – be logged into a central civilian complaint repository to facilitate systematic analysis of these complaints.

The agency’s complaint procedure should also include a time frame within which civilian complaints are to be investigated and a resolution reached.

The Board hopes that agencies will work to implement the Board’s best practice recommendations for handling civilian complaints. As with all of its recommendations, the Board notes that these recommendations are merely a starting point and not an exhaustive list of best practice recommendations for civilian complaint procedures. These recommendations will help ensure that complaints submitted to the Department of Justice accurately reflect the number and type of complaints of racial and identity profiling.

## Addressing the Lack of Uniformity Regarding What Constitutes a “Civilian Complaint” and How to Quantify Complaints

Law enforcement agencies should evaluate their civilian complaint processes and align their complaint forms with the best practices laid out in the Board’s 2019 Report. In examining the civilian complaint data for 2018, the Board found that there were significant disparities in the number of reported civilian complaints by agencies. Disparities in the numbers of complaints documented, investigated, and reported by agencies may arise in part because agencies do not necessarily share a common understanding of what counts as a “complaint.” Penal Code section 832.5 does not include a definition of “complaint” for reporting purposes, and there is no professional consensus within California on a definition.

Instead, agencies in California have the discretion to adopt or develop various definitions and systems for handling civilian complaints. One might suspect, then, that an agency with a relatively narrow definition of a civilian complaint — such as submitting a completed civilian complaint form signed under penalty of perjury — would have fewer reported complaints than an agency that has a broader policy that also includes oral complaints that are later memorialized in writing.

The lack of an agreed-upon definition or process for responding to complaints can contribute to wide differences in reported data, even if all agencies examined are acting in the utmost good faith.

### Factors to Consider When Defining a “Civilian Complaint”

- Verbal complaints – whether there is a duty to document, investigate, and report.
- Complaints – verbal or written – by arrested individuals.
- Complaints by uninvolved third parties who witness misconduct.

- Multiple complaints by third parties about one incident
- Is every complaint logged or are all associated complaints logged as one incident?
- Is an officer required to self-report when verbally accused of racial profiling or other forms of biased policing?

Even a brief consideration of the many ways community members might express dissatisfaction or allege misconduct will identify potential areas of disagreement. Consider the following:

- Community Member A informs a Sergeant she knows that a patrol officer has regularly been running red lights without any apparent emergency. She adds, “I don’t want make out one of those citizen complaints, because I like that officer. But there are lots of children out here, and thought you might speak to him.” The allegations, if true, would violate agency policy and possibly traffic laws. Should this communication count as a “complaint” within Penal Code section 832.5?
- Community Member B informs a Sergeant that an officer “roughed up” her neighbor’s teenage son. The teenager and his family state they do not wish to become involved “because we have to live in this neighborhood.” Should the allegation count as a “complaint” for reporting purposes?
- Community Member C is driving on her way home from work when she is pulled over by an officer. The officer checks Community Member C’s driver’s license and finds she has an outstanding arrest warrant for failure to appear at a court hearing. Upon arrest, Member C accused the officer of racial profiling. Does this allegation trigger the agency’s reporting, investigation, and retention requirements for civilian complaints? Should the accused officer be required to self-report the allegation, even if Community Member C does not take further action, such as completing a complaint form or otherwise making a more formal complaint?
  - Even if Community Member C did later submit a written statement that includes the racial profiling allegations, would all agencies treat the allegations as a civilian complaint, a defense to a criminal charge, an arrestee/prisoner grievance, or something else?
- During an agency’s investigation of an excessive force complaint, a neighborhood witness tells the investigator that he witnessed the same officer use excessive force on a different neighbor last week. Should that new allegation of misconduct count as a second “civilian complaint” for reporting purposes, or would the agency treat the new allegation as part of the original investigation?

Another factor related to the core concept of what constitutes a “civilian complaint” is how to accurately log such a complaint. For example, if 10 people witness an altercation between an officer and an individual at an event and submit written complaints about the incident to an agency, does the agency log 10 complaints or just one, because they all have to do with the same incident? Do all agencies accept complaints from third parties regarding interactions they

observe, even though the third parties are not directly involved in interactions with the peace officer?

With the emergence of social media, there is also the opportunity for law enforcement to consider accepting complaints from less formal means. Consider, for example, what might happen if an agency learned that a community member posted a video recording on the Internet that depicted apparent officer misconduct towards another community member. Would the agency consider the original posting a civilian complaint that must be logged, reviewed, and reported to the Department? What about additional comments following the original posting? What if one or more of those comments included separate allegations of misconduct by agency personnel?

The Board raises these examples to illustrate why there may be disparities in reporting and to further urge law enforcement agencies to think about how the term “complaint” should be defined and/or expanded. Clear policies that address these questions will provide officers with direction that will hopefully standardize the civilian complaint processes within each agency as well as across California. The Board’s review of the complaint policies of the Wave 1 reporting agencies reveals that the term “civilian complaint” is not defined in any of these policies. The Los Angeles County Grand Jury, in a recent report on the civilian complaint process of several law enforcement agencies in Los Angeles County, suggested the following definition:

A complaint is an allegation by any person that a sworn officer or custodial employee of an agency, or the agency itself, has behaved inappropriately as defined by the person making the allegation. The person making the allegation is the complainant.<sup>10</sup>

As another example of a possible definition of “complaint,” the Los Angeles County Sheriff’s Department defines “personnel complaint” as “an external allegation of misconduct, either a violation of law or Department policy, against any member of the Department.”

The National Association for Civilian Oversight of Law Enforcement (NACOLE) likewise suggests that the “types of complaints that should be investigated include allegations that, if proven true, would represent misconduct under the police department’s policies and procedures.”<sup>11</sup>

Even using one of these definitions, however, agencies may still vary regarding how to respond to a complaint, such as how to respond to verbal complaints, third-party complaints, or complaints reported by the officer who is the subject of the complaint.

### *Lack of Uniformity Regarding How to Process Civilian Complaints*

Another factor that could explain an agency’s relatively low number of civilian complaints is an agency’s system for processing complaints and, in particular, the lack of a centralized repository for civilian complaints. For example, complaints that allege use of force may be reported directly to an Internal Affairs or Professional Standards unit within an agency, or to a Civilian Review Board, and may not be classified as civilian complaints. By contrast, complaints that

allege verbal abuse or racial or gender identity slurs and not use of force may be processed and treated differently, through different investigative channels.

Likewise, some complaints may be classified as “inquiries” or “adverse comments” and not logged as a reportable civilian complaint. Complaints may also be classified according to the level of review they are afforded, which may skew the numbers.<sup>12</sup> And certain complaints, such as complaints of domestic violence involving officers, may be treated differently from complaints about an officer for interactions that occur while on duty.

For example, in 2016, the USDOJ issued a report regarding its investigation of the Baltimore Police Department (Baltimore PD), finding that the Baltimore PD “failed to effectively investigate complaints alleging racial bias—often misclassifying complaints to preclude any meaningful investigation.”<sup>13</sup> USDOJ uncovered only one complaint that that Baltimore PD classified as a racial slur in six years of complaint data. Yet a manual review of the complaints from the Baltimore PD revealed 60 additional complaints that alleged that officers used a racial slur; nonetheless, these complaints were misclassified as a lesser offense.<sup>14</sup> Indeed, USDOJ found that a particular racial slur was misclassified 98 percent of the time.<sup>15</sup> As the Baltimore PD exemplifies, how an agency classifies a civilian complaint – whether done intentionally or inadvertently – can skew the numbers of complaints reported, present an obstacle to the transparency that such data collection is designed to further, and make systematic analyses and comparisons across agencies difficult, if not impossible.

In its recent review of the Sacramento Police Department (Sacramento PD), the California Department of Justice noted that the Sacramento PD’s complaint intake procedure permitted complaints to be referred to either the employee’s supervisor or Internal Affairs and found that this system gave too much discretion for how personnel complaints were handled in the first instance. As a result, the Department recommended that all complaints be referred to Internal Affairs for processing, and that Internal Affairs should serve as the repository for all complaints, regardless of origin or level of severity.<sup>16</sup> The lack of a centralized information source for complaints, which is not unusual based on our review of complaint practices, could lead to underreporting of civilian complaints, which may in turn explain disparities in reporting.

Another recommendation the Department made in its review of the Sacramento PD was to establish a complaint classification system that would categorize complaints according to the severity of the offense. In reviewing the Sacramento PD complaint policies and procedures, the Department noted that Sacramento PD identified four types of complaint classifications: (1) inquiries; (2) Office of Public Safety Accountability (OPSA) complaints; (3) civilian complaints; and (4) Department complaints. Inquiries or OPSA complaints were investigated informally, and did not trigger the same tracking and documentation requirements as civilian or Department complaints, which required documentation on a specified form, forwarding via the chain of command, a formal investigation, and tracking via an electronic database. Accordingly, the Department recommended that personnel complaints be tracked uniformly and classified by type of alleged misconduct, such as excessive use of force or racial bias.<sup>17</sup>

Likewise, the Los Angeles County Sheriff's Department classifies complaints from members of the public as "service complaints" ("external communication of dissatisfaction with Department service, procedure or practice, not involving employee misconduct") or "personnel complaints" ("an external allegation of misconduct, either a violation of law or Department policy, against any member of the Department"),<sup>18</sup> which are governed by different procedures.<sup>19</sup>

These examples illustrate how agencies have differed in how they track complaints they receive; consequently, certain complaints alleging racial bias may not be processed as civilian complaints that are reported to the California Department of Justice.

Without a uniform system to accept, document, investigate, and report complaints, agencies may not only provide inaccurate or incomplete reporting data, but also blind themselves and limit their ability to respond to personnel or operational problems identified by the communities they serve. An agency's ability to audit its complaint system to account for complaints received by a variety of means (e.g., complaints logged in separate, unconnected databases) may also affect whether, or to what extent, it meets its legal obligations under Penal Code Section 832.5 to report civilian complaints. Because agencies may silo the various sources of misconduct allegations (e.g., civilian complaints, use of force incidents, domestic violence complaints, complaints by peer officers or supervisors, etc.), failure to integrate this information among various databases may impair or entirely defeat an agency's early intervention system that seeks to identify and remedy at-risk behavior as soon as possible.<sup>20</sup>

Without a uniform understanding of (1) what a complaint is under this section, and (2) how such complaints are handled internally, it is difficult to compare and contrast civilian complaints reported by agencies pursuant to Penal Code section 832.5. Because one of the goals of RIPA was to require agencies to provide more granular data regarding civilian complaints that allege racial or identity profiling, in order to better analyze these complaints, it is crucial that agencies use similar methods to define and track civilian complaints.

### *Accessibility and Knowledge of an Agency's Complaint Process*

Another factor that may explain the disparities in numbers of complaints between agencies is different levels of community access to agency complaint processes.<sup>21</sup> Barriers to accessing civilian complaint forms or processes could also explain the disparities in the number of reported complaints among agencies. In other words, one agency may report what seems like a disproportionately high number of civilian complaints, not because of inherent problems in how they interact with the community, but because their complaint system is widely publicized and individuals can easily submit complaints through the Internet, over the phone, or in their native language. By contrast, a different agency may have low numbers of reported complaints, not because they provide exceptional service, but because individuals cannot readily access a complaint form, or are required to mail or bring in complaints in person.

Agencies should increase public access by developing an easily understandable and usable form, available in multiple languages and multiple formats that individuals may use to make

complaints. A best practice would be to refrain from using any language in the form —such as requiring the complainant to sign under penalty of perjury — that could be reasonably construed as discouraging the filing of a complaint.<sup>22</sup>

### *Possible Barriers to Reporting of Civilian Complaints*

- *Lack of knowledge of complaint process:* complaint processes may not be prominently featured on an agency’s website or literature.
- *Inadequate explanation of process:* complainants may be confused or have misconceptions about the complaint process.
- *Language barriers:* complaint processes may not be available in languages other than English.
- *Difficulty of complaint process:* complaints may not be easily downloaded from a website or submitted online and may have to be filed in person.<sup>23</sup>
- *Inaccessibility of forms:* forms may not be available on an agency’s website, in the complainant’s language, or physically available or easy to obtain at the agency’s public waiting area; if forms are not displayed in public waiting area, an individual may have to specifically state “I want to file a complaint” in order to initiate the process.

### *Best Practices to Increase Access to Civilian Complaints for People with Disabilities*

A potential reason behind the disparities in the numbers of complaints among agencies is the varying degree of accessibility of the complaint process for people with disabilities. The Board seeks to ensure that individuals with disabilities have access to complaint forms. To that end, the Board reached out to Disability Rights California and other advocates to identify best practices to make complaint processes and forms more easily available and usable for individuals with disabilities.<sup>24</sup>

Given these discussions with stakeholders, the Board encourages law enforcement agencies to accept complaints filed in person, in writing, over the telephone, by Internet, by fax, anonymously, or on behalf of someone else, so that individuals with disabilities have multiple options to choose from based on what would be most assistive given their particular disability.<sup>25</sup> A phone-in option, for instance, may be more accessible for individuals with low vision or who are blind. Agencies should also develop and use a language assistance plan and policy that includes protocols for interpretation (including Braille and American Sign Language). For example, the World Wide Web Consortium (W3C) has a well-established set of programming standards and resource materials to assist web page designers in making content accessible to persons with a variety of disabilities — such as blind persons using text-to-speech software.<sup>26</sup>

An agency can also increase accessibility by offering a trained staff member to assist with completing a complaint form. When creating form and policy documents for the public,

agencies can use the following guidelines to make documents more accessible to individuals with disabilities in the following ways:

1. Documents should be easy to read. There are private vendors that have built-in accessibility check features that can identify solutions for accessibility errors in documents. There are also commercially available spelling and grammar checks that can score a document with a “Reading Ease Number” and a “Grade Level” for the readability of text. For the reading ease number, a score above 60 percent is recommended. For the reading level, a score between 7th and 9th grade reflects accessible text.<sup>27</sup>
2. The minimum font size should be 14 point.
3. Always use high contrast colors on text. Some people cannot see the text if the background color does not have enough contrast.
4. Text should be flush left. This makes it easier for people with disabilities to read the content.<sup>28</sup>
5. Numbered lists are more easily read than bullet points.
6. Correct formatting of the electronic document can make titles and headers, pictures, tables, footnotes, and endnotes accessible for assistive technology software/screen readers.<sup>29</sup>

Ensuring that individuals with disabilities have equal access to civilian complaint forms and processes not only fulfills agencies’ duties in complying with state and federal disability access laws, but will help agencies obtain valuable input from members of the disabled community.

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<sup>1</sup> Some agencies include other personal characteristics in their racial or identity profiling policies, such as socioeconomic status or immigration status.

<sup>2</sup> Cal. Pen. Code, § 13519.4, subd. (e).

<sup>3</sup> Fridell, A. (2017). Comprehensive Program to Produce Fair and Impartial Policing. In *Producing Bias-Free Policing*. USA: Springer International Publishing, p. 90.

<sup>4</sup> 11 CCR § 999.224(a)(7).

<sup>5</sup> President’s Task Force on 21st Century Policing. (2015). Final Report of the President’s Task Force on 21<sup>st</sup> Century Policing. Washington, DC: Office of Community Oriented Policing Services, p. 27. Available at <http://elearning-courses.net/iacp/html/webinarResources/170926/FinalReport21stCenturyPolicing.pdf>

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(identified as recommendation 2.11, with accompanying Action Item 2.11.1 for promoting effective crime reduction while building public trust).

<sup>6</sup> Fridell, A. (2017). A Comprehensive Program to Produce Fair and Impartial Policing. In *Producing Bias-Free Policing*. Springer, p. 90.

<sup>7</sup> We are aware that the San Francisco Police Department is in the process of incorporating bias by proxy into the new draft of its anti-bias policing policy. If adopted, we believe this would be the first policy in California, certainly of a major police department, to incorporate concepts of bias by proxy into its department general orders.

<sup>8</sup> One illustrative example is what Nextdoor, a neighborhood communication platform, has developed in collaboration with community groups, local law enforcement, academic experts, and neighbors to try to prevent racial profiling and make crime reporting more useful to neighbors and law enforcement. Nextdoor has the following tips: “1) Focus on behavior. What was the person doing that concerned you, and how does it relate to a possible crime?; 2) Give a full description, including clothing, to distinguish between similar people. Consider unintended consequences if the description is so vague that an innocent person can be targeted.; and 3) Don’t assume criminality based on someone’s race or ethnicity. Racial profiling is expressly prohibited.” See Nextdoor. (2017). Preventing Racial Profiling on Nextdoor. Available at <http://us.nextdoor.com/safety/preventing-profiling-approach>.

<sup>9</sup> Agencies may consider including language similar to the following: If you believe that the misconduct is based in whole or in part on your race, color, national origin, sex, gender identity, religion, or disability, please identify the basis and explain what led you to believe that you were treated differently from others.

<sup>10</sup> Los Angeles Grand Jury Report, 2017-2018, p. 86. Available at [http://www.grandjury.co.la.ca.us/pdf/2017-](http://www.grandjury.co.la.ca.us/pdf/2017-2018%20los%20angeles%20county%20civil%20grand%20jury%20final%20report.pdf)

[2018%20los%20angeles%20county%20civil%20grand%20jury%20final%20report.pdf](http://www.grandjury.co.la.ca.us/pdf/2017-2018%20los%20angeles%20county%20civil%20grand%20jury%20final%20report.pdf)

<sup>11</sup> National Association for Civilian Oversight of Law Enforcement. (2016). What Types of Complaints Should Be Accepted? Available at <https://www.nacole.org/complaints>.

<sup>12</sup> See, e.g., USDOJ, Civil Rights Division. (2016). *Investigation of the Baltimore City Police Department*, pp. 139, 141. Available at <https://www.justice.gov/opa/file/883366/download> (holding that “[a]ppropriately categorizing a complaint is critical because it affects which internal affairs component will investigate, the level of investigation undertaken, and the possible discipline imposed”; describing the Baltimore PD’s failure to consistently review how complaints are categorized in its internal affairs database, thereby vesting considerable discretion in supervisors; and finding that “supervisors frequently use this discretion to classify allegations of misconduct that result in minimal investigation”).

<sup>13</sup> *Ibid*, p. 47.

<sup>14</sup> *Ibid*, p. 62. See also p. 66 (“Even when individuals successfully make a complaint alleging racial bias, BPD supervisors almost universally misclassify the complaint as minor misconduct—such as discourtesy—that does not reflect its racial elements.”), and p. 68 (As a result of misclassification, “[Baltimore] PD does not investigate the frequent allegations of race-related misconduct made against its officers and has no mechanism to track allegations to correct discriminatory policing where it occurs).

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<sup>15</sup> *Ibid*, p. 69 (“Failing to recognize the potential for racial discrimination in the use of a racial epithet is difficult to attribute to a lack of training, policy guidance, or other systemic deficiency. This systemic misclassification of complaints, particularly when the classification is not difficult, indicates that the misclassification is because of the racial nature of the complaints.”), pp. 141-142 (finding that complaints were misclassified and sent to different track for review, for example, as “supervisor complaints,” which are not required to be investigated and that “[Baltimore] PD administratively closed 67 percent of supervisor complaints and sustained just 0.27 percent of them . . . . By administratively closing complaints, [Baltimore] PD investigators evade [Baltimore] PD policy that requires all complaints to be labeled as sustained, not sustained, exonerated or unfounded . . . . These administrative closures, combined with [Baltimore] PD’s failure to ensure that complaints are appropriately classified, undermine [Baltimore] PD’s system of accountability and contribute to the perception shared by officers and community members alike that discipline is inconsistent and arbitrary.”).

<sup>16</sup> California Department of Justice. (2019). *Sacramento Police Department Report and Recommendations*. California: Office of the Attorney General, p. 69. Available at <https://oag.ca.gov/system/files/attachments/press-docs/spd-report.pdf>.

<sup>17</sup> *Ibid*, p. 70. In August 2019, the Sacramento Police Department revised its complaint intake and investigation procedure in Internal Reference Manual 220.01, and in doing so appears to have eliminated the “inquiry” classification.

<sup>18</sup> Los Angeles County Sheriff’s Department. (n.d.). 3-04/10.00, Department Service Reviews. In *Manual of Policies and Procedures*. Available at <http://www.lasd.org/pdfjs/web/PublicComplaintPolicies.pdf>.

<sup>19</sup> *Ibid*, Sections 3-04/010.20 (Service Complaints) and 3-04/010.25 (Personnel Complaints).

<sup>20</sup> See, e.g., USDOJ, Civil Rights Division. (2016). *Investigation of the Baltimore City Police Department*, p. 134. (Baltimore Police Department’s failure to use integrated systems to maintain information blunts the usefulness of this data; data is maintained in 232 separate databases, most of which cannot be linked to each other); California Department of Justice. (2019). *Sacramento Police Department: Report & Recommendations*, pp. 71-72 (recommending an early intervention program that collects and maintains, in a computerized database, various subsets of information, including civilian complaint data and disposition, as well as use of force allegations, disciplinary actions, awards and commendations, and training).

<sup>21</sup> See, e.g., 2012-2013 Santa Clara County Civil Grand Jury. (2013). Report: Law Enforcement Public Complaint Procedures. Available at [http://www.scscourt.org/court\\_divisions/civil/cgj/2013/LawEnforcementPublicComplaintProcedures.pdf](http://www.scscourt.org/court_divisions/civil/cgj/2013/LawEnforcementPublicComplaintProcedures.pdf); 2015/2016 Marin County Civil Grand Jury. (2016). Law Enforcement Citizen Complaint Procedures: The Grand Jury has a few complaints. Available at <https://www.marincounty.org/-/media/files/departments/gj/reports-responses/2015/law-enforcement-citizen-complaint-procedures.pdf?la=en>; 2018 Los Angeles County Grand Jury Report. Available at <http://www.grandjury.co.la.ca.us/pdf/2017-2018%20los%20angeles%20county%20civil%20grand%20jury%20final%20report.pdf>.

<sup>22</sup> See, e.g., *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB (mandating that the written notice of receipt sent to non-anonymous complainants should “not contain language that could be reasonably construed as discouraging participation in the

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investigation, such as a warning against providing false statements or a deadline by which the complainant must contact the investigator.”)

<sup>23</sup> The USDOJ found, for example, that the Baltimore PD placed unnecessary conditions on the filing of complaints, including requiring many types of complaints to be signed, notarized, and filed in person at only a few locations. USDOJ, Civil Rights Division. (2016). *Investigation of the Baltimore City Police Department*, p. 140.

<sup>24</sup> Accessibility to the complaint process is required by both state and federal law. USDOJ, Civil Rights Division. (n.d.). Information and Technical Assistance on the Americans with Disabilities Act: ADA enforcement in criminal justice settings. Available at [https://www.ada.gov/criminaljustice/cj\\_enforcement.html](https://www.ada.gov/criminaljustice/cj_enforcement.html).

<sup>25</sup> See, e.g., Police Executive Research Forum. (2015). *Critical Response Technical Assessment Review: Police Accountability – Findings and National Implications of an Assessment of the San Diego Police Department*. Washington, DC: Office of Community Oriented Policing Services. Available at <https://cops.usdoj.gov/RIC/Publications/cops-w0756-pub.pdf> (“Consistent with accepted best practice, the SDPD has a multifaceted system for receiving complaints; community members in San Diego may file a complaint in person, by phone, by mail, or by e-mail”); *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB (describing how Baltimore PD will ensure widespread and easy access to its complaint system: “BPD will ensure individuals may make complaints in multiple ways, including in person or anonymously, by telephone, online, and through third parties”). See also recommendations in reports issued by the Los Angeles County Grand Jury, Santa Clara County Grand Jury, and Marin County Grand Jury.

<sup>26</sup> See World Wide Web Consortium (W3C). (n.d.). Web Accessibility Initiative. Available at <https://www.w3.org/standards/webdesign/accessibility>.

<sup>27</sup> Disability Rights California. *Guide to Accessibility*. AC 01; AC 08 – v.01.

<sup>28</sup> Disability Rights California. *Guide to Accessibility*. AC 01; AC 09 – v.01.

<sup>29</sup> Disability Rights California. *Guide to Accessibility*. AC 03; AC 06; AC 07; AC 09 – v.01.