

## AB 953 Subcommittee – Special Considerations/Settings

### I. BACKGROUND

This subcommittee will provide advice and recommendations to the Racial and Identity Profiling Advisory (RIPA) Board regarding peace officer interactions with individuals in certain settings, namely, in K-12 school settings, as well as other contexts in which the reason for stopping and searching individuals may differ from, for example, pedestrian stops that take place on a sidewalk or traffic stops.

### II. STOPS IN K-12 SCHOOL SETTINGS

#### A. OVERVIEW

AB 953 defines “stop” to mean:

“For purposes of this section, "stop" means any *detention* by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a *search*, including a consensual search, of the person's body or property in the person's possession or control.”

Given the unique setting of a school campus, where students are generally not free to leave, the subcommittee will consider the proposed data values for Reason for Stop, and provide advice and recommendations to the Board regarding whether additional or different data values should be provided to capture stops in school settings. Questions the subcommittee may wish to consider include:

- Should the regulations specify hypotheticals or examples of interactions in a school setting and whether they will be subject to reporting under this statute? If so, what are some of these hypotheticals?
- In particular, the subcommittee may wish to consider what data, if any, to require peace officers to report for the following scenarios on K-12 school campuses:
  - i. Mass evacuations
  - ii. Bomb scares
  - iii. Interrogations in the presence of peace officer (even if by school official)
  - iv. Randomized searches conducted on *all* students prior to entering campus pursuant to official policy.
  - v. Other situations
- How should a “school setting” be defined?
  - For example, California law defines “school zones” in various provisions, including the following definition of “school zone” in California’s Gun-Free School Zone Act, Penal Code § 626.9, subd. (e)(4):

“School zone” means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.” (Pen. Code, § 626.9, subd. (e)(4).)

- The subcommittee may wish to consider whether this or other similar definitions of “school zones” will be useful in defining “school setting.”

## **B. DEFINITION OF “SEARCH” IN A SCHOOL SETTING**

The subcommittee may also wish to consider the Data Elements that should be included under “Reason for Search” when a stop occurs on school grounds.

### **III. ARE THERE STOPS IN OTHER CONTEXTS THAT REQUIRE SPECIAL CONSIDERATION?**

This subcommittee may wish to consider and discuss public safety or other scenarios in which stop data need not be collected, unless the officer takes additional action toward the individual. Such scenarios might include circumstances where the officer or a member of the public’s *health and/or safety* would be jeopardized by requiring the officer to report the interaction:

- Mass evacuations
- Bomb scares
- Active shooters
- Street sweeps or crowd control

This subcommittee may wish to consider the turning point at which interactions in these scenarios do in fact constitute a stop and trigger the stop data collection requirement, i.e., what additional action by the officer toward the individual would require the office to report the interaction as a stop, e.g., search, arrest, handcuff, etc?

Similarly, are there circumstances where reporting on stops of multiple individuals would be *impracticable or unnecessary*, unless the officer takes additional action toward the individual. Several scenarios to consider include:

- DUI, sobriety or other checkpoints in which the officer has no discretion in selecting which vehicle to stop
- Large numbers of persons detained
- Others?

As with the scenarios provided above in which health and/or safety are at issue, the subcommittee may wish to consider the turning point at which interactions in these scenarios do in fact constitute a stop and trigger the stop data collection requirement, i.e., what additional action by the officer toward the individual would require the office to report the interaction as a stop, e.g., search, arrest, handcuff, etc.?

**CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD**

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

**SPECIAL CONSIDERATIONS/SETTINGS SUBCOMMITTEE**  
**MEETING NOTICE AND AGENDA**

**Monday, August 15, 2016, 9:00a.m. – 11:00a.m.**

**Teleconference Locations: California Department of Justice Offices:**

**Los Angeles**

300 S. Spring Street  
5<sup>th</sup> Floor Conference Room  
Los Angeles, CA 90013

**Oakland**

1515 Clay Street  
20<sup>th</sup> Floor, Suite 2000  
Oakland, CA 94612

**San Diego**

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

**Other Teleconference Locations:**

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

Compton USD, Education Service Center  
501 South Santa Fe Ave. Conference Rm. #132  
Compton, CA 90221

1. Introductions (3 min.)
2. Selection of Subcommittee Chair (7 min.)
3. Discussion of advice this subcommittee wishes to provide to the Racial and Identity Profiling Advisory Board on recommendations it might make to the Attorney General's Office regarding peace officer interactions with individuals in certain settings, including K-12 school settings and other context that require special considerations. Topics for discussion may include, but are not limited to the following: (1.5 hours)
  - a. Stops in K-12 School Settings, including How to Define Stop and How to Define School Setting, etc.
  - b. Stops in Other Contexts that Require Special Consideration, including Mass Evacuations, Active Shooters, Street Sweeps/Crowd Control etc.
4. Next Steps (10 min.)
5. Public Comment (10 min.)
6. Adjourn

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

**CALIFORNIA RACIAL AND IDENTITY PROFILING BOARD**  
**SPECIAL CONSIDERATIONS/SETTINGS SUBCOMMITTEE**  
**MEETING MINUTES**

**Monday, August 15, 2016, 9 a.m.**

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**Subcommittee Members Present:** Micah Ali, Sahar Durali, Sheriff David Robinson, Timothy Walker

**Subcommittee Members Absent:** Reverend Ben McBride, Chief Edward Medrano, Tim Silard

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

**1. Call to Order and Introductions**

The first meeting of the Special Considerations/Settings Subcommittee was called to order by Nancy Beninati of the California Department of Justice (DOJ) at 9:20 a.m. 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 Ali made a motion that David Robinson be elected as Subcommittee Chair.

**VOTE:** The motion was passed with Member Robinson, Member Walker, and Member Ali voting "Yes", no "No" votes, and no abstentions. Member Durali was not present for the vote.

**3. Swearing In of Member Sahar Durali**

Member Durali joined the meeting at 9:20 a.m. and was sworn in as a member of the California Racial and Identity Profiling Advisory (RIPA) Board.

#### **4. Defining Stops in K-12 School Settings**

Ms. Beninati from the DOJ asked for comments from the subcommittee members regarding how to define detentions in a K-12 school setting and reasons for a stop that are unique to a K-12 school setting. Chair Robinson provided a brief summary of the discussion held during the Definitions Subcommittee meeting regarding the definition of “detention”.

Member Durali asked if reporting officers included both sworn police officers on campus and school security officers. Ms. Beninati replied that only sworn officers were required to report stop data. Member Durali suggested looking at how detentions are defined for purposes of reporting to the Civil Rights Data Collection (CRDC) system.

Chair Robinson asked whether the AB 953 reporting requirements encompassed all police officers associated with a school district. Member Ali commented that AB 953 does not specifically include school police. Ms. Beninati replied that city and county police officers who contract with a public school district are covered, but the question of whether school districts that have their own police department must report is being reviewed by the DOJ. Mr. Szymanski from the DOJ commented that Los Angeles Unified School District (LAUSD) school police officers respond to calls outside of school settings and also have complete Penal Code Section 830 powers. Member Ali commented that the 15-18 school district police departments in the state all fall under Section 830. Chair Robinson suggested that the subcommittee may want to focus on the largest law enforcement agencies that are required to report in 2017, and expand the scope of their discussions later as needed.

Member Durali suggested that interrogations of students in the presence of peace officers should be reported. Member Ali commented that, in the Compton Unified School District, the sheriff’s department only gets involved in school matters when an incident rises to the level of a sex crime; all other incidents are handled by school police.

Member Durali asked for clarification regarding whether law enforcement agencies with 1,000 officers or less would be required to report. Chair Robinson replied that large agencies are required to begin reporting first, and then gradually all smaller agencies will also be required to report stop data.

Chair Robinson asked whether there were any additional circumstances where data should or should not be reported. He proposed that situations involving an active shooter should be excluded from reporting because the priority of officers during such events should be on the shooter and not on collecting data.

Chair Robinson then turned the conversation to the question of how a school setting should be defined. He commented that the California Gun Free School Zone Act has a definition, but the definition may be less relevant if the focus is on the type of officer involved. Regardless

of whether the setting is a public or private school, if a peace officer is involved, the officer would have to report. Ms. Hovis replied that defining a school setting is important for data purposes, and that the data needs to be disaggregated and the location documented for this reason.

Member Durali asked whether the DOJ had looked at the Education Code for a definition. Ms. Hovis replied that the Education Code has a variety of definitions, and that different legal standards apply in school settings for detentions. For example, an officer in a school setting does not need reasonable suspicion to conduct a search, but a search would clearly be a stop.

Ms. Hovis asked the members for comments on whether the definition of a detention should be different on school campuses and also for any examples of situations that would qualify as a stop and those that would not. Chair Robinson commented that the Kings County Sheriff's Department has a grant with the school district that makes it clear that the school district has priority in enforcement actions and that officers are on campus for community policing. He proposed that if a student is searched or detained pursuant to a criminal investigation, these incidents should be documented, but detentions for purpose of school-related investigations should be exempt from data collection.

Member Durali proposed a broader definition that would include any disciplinary matter in which officers are involved, even if they do not rise to the level of criminal investigations, because this data is not available elsewhere. Member Robinson commented that school disciplinary matters are usually initiated by the school. Member Durali replied that this is not always the case if an officer sees an incident occurring on campus. Ms. Hovis commented that the handling of disciplinary matters varies by school district, and the chain of command is often unclear.

Ms. Beninati asked the members for any hypotheticals of incidents they had witnessed in the school setting that would be a stop and those that would not. Member Durali commented that she has seen cases where an officers will intervene if it looks like there is going to be a fight between students and also in situations where there is simply a student dress code violation.

Member Walker commented that, at his former high school, even in cases that were not serious, officers often approached suspicious-looking students and took them into the office for questioning. There were many instances where officers approached groups of students that were hanging out on campus just to see what was going on. He suggested that violent fights and any physical intervention by an officer should be considered stops, but not situations where an officer simply approaches students to see what is going on. Member Durali commented that seemingly benign situations can escalate into something more, and valuable data will be lost if detentions in the school setting are limited to physical interventions.

Chair Robinson commented that officers often are assigned to patrol the areas around a school and encouraged to build rapport with students. Making the definition of detention too broad would deter officers from engaging with students and would have a chilling effect on community policing with respect to officer-student relationships. He proposed that it would be

better to start cautiously and address the most serious matters, so as not to discourage data collection.

## **5. Public Comment**

Peter Bibring from the ACLU of California commented that the ACLU and other organizations had written a letter to the California Attorney General outlining recommendations on how data collection should be implemented in schools. This letter recommended that the definition of “stop” in a school setting should be similar to the definition of a stop on the street—any situation in which a student is not free to leave and return to his or her class or activities. He also asked the subcommittee to extend the definition of detention to situations where an officer is present when school staff questions or searches students, as well as any search based on individualized suspicion. These searches should exclude wandering or metal detectors but should include any secondary searches triggered from these types of searches. The data reported should also include the outcome of the encounter, including referrals to other disciplinary bodies or law enforcement agencies. “School setting” should be defined to include the areas surrounding schools, within 1,000 feet of schools because school police patrol those areas. There should also be additional data values for location in the school setting.

Chief Deputy Kevin Vest from the Riverside County Sheriff’s Department commented that the initiation of contact by the officer should be the primary source for data collection. He also urged the subcommittee to wait to see how the Definitions Subcommittee decides to define “detention” before trying to define it themselves.

Jacqueline Horton from the Riverside County Sheriff’s Department commented that situations involving school-based discipline should be excluded from data collection, even if an officer is present because school administrators have their own rules and discipline procedures. She gave the example that in a school of 2,300 students, there may only be one school resource officer (SRO), and it would be impossible for the SRO to document all incidents.

Diana Tate Vermeire from the ACLU of California expressed a concern over the motivation of officers in school disciplinary matters, as well as criminal investigations, and urged that the data collection include school disciplinary incidents where an officer’s presence is used to bring greater weight and gravity to the situation.

A representative from Public Counsel commented that the discussion with respect to stops and investigations should focus on the grey area of where there is an Education Code violation that does not amount to a criminal violation.

## **6. Further Discussion on the Definition of a Stop in a School Setting**

After the public comment period, Ms. Hovis reminded the members that the Attorney General’s Office is writing the regulations now, and while they may need to be tweaked in the future, all possible issues need to be considered now even though actual implementation may be a ways off for most law enforcement agencies.

Chair Robinson commented that data collection was intended to be easy for officers and only take a few minutes. He cautioned that using a data form that is too long will put an additional burden on law enforcement agencies, especially in school settings where there is constant contact between officers and students. Member Durali asked whether the length of the data collection form has been discussed. Chair Robinson replied that it had not been discussed in the Definitions subcommittee meeting. He also commented that they needed to be careful about sending the wrong message to a vast majority of officers who care about the communities they serve, and that requiring too much detail in data collection would have a chilling effect on community policing.

Chair Robinson then asked members whether the definition of stops in a school setting should mirror the definition of stops in other settings as defined by the Definitions Subcommittee. Member Ali disagreed that the definitions should be the same in all contexts because smaller school districts and police departments may have stronger relationships with students and the community, and school officers sometimes act more like social workers. He stated that he was interested in the stops these officers made outside of the school setting, and that the discussion of other settings ought to include a discussion of settings such as public housing.

Member Durali commented that the same relationship that exists between students and officers in smaller districts may not exist in larger school districts. Even if there is a friendly relationship, students are not necessarily free to leave, so any incidents in which students are not free to leave should be documented. She also stated that each year more officers are being introduced on school campuses through the local control funding formula. Member Ali asked what school districts are using the local control funding formula to increase the number of officers, and Member Durali and Ms. Hovis answered that Kern County, Oakland, and Los Angeles school districts have all increased the number of officers through this method.

Chair Robinson asked whether a detention in a school setting should be defined as any situation in which a student is not free to leave. Member Ali stated that this definition is excessively too broad, and that documenting situations involving a simple discussion is not a good use of resources. He suggested that only situations where there is a full detention and arrest should be reported. Member Robinson suggested that this was an area where examples could come into play.

Member Durali proposed that a good middle ground may be to include situations involving referrals for discipline and disciplinary proceedings in which an officer is present for questioning. Member Ali suggested including incidents where there is an arrest, incidents in which officers provide medical assistance, and incidents involving miscellaneous documentation, such as referrals to school administration for handling a matter.

Ms. Beninati asked how, if an officer is referring a student to discipline, they would know the student has been disciplined and whether this information is confidential. Member Ali answered that the outcomes of student disciplinary matters are confidential if they do not implicate the Penal Code, and school police are not involved in administrative matters or the outcomes of disciplinary matters, so they do not generate reports on these incidents. Chair

Robinson commented that the point of the data collection should be to document the initial contact only, and that asking about outcomes of a disciplinary matter is unrealistic. Member Durali suggested that referrals to school administration could be a checkbox on the form.

## **7. Public Comment**

Diana Tate Vermeire from the ACLU of California commented that the school referral issue was less about the outcome and more about the discretionary action taken by the officer to make the referral. While there is a need to be careful about being too overinclusive, it is also important to determine the line where a simple discussion turns into something more significant, and the student becomes the target of an investigation or questioning and is not free to leave.

Peter Bibring from the ACLU of California commented that the purpose of AB 953 data collection is not just to examine individual officer discretion but to understand how policing works and its impact on certain communities, even in situations that do not involve officer discretion and where officers are being utilized by school administration. He also reemphasized that the definition of detention should be the same in schools as on the streets—any situation in which a student is not free to leave.

Chief Deputy Kevin Vest from the Riverside County Sheriff's Department expressed concern over the chilling effect on community policing if the data collection is too extensive and onerous. He warned that the reaction from law enforcement will be a drop in both encounters and data collection.

## **8. Stops in Other Contexts That Require Special Consideration**

After the public comment period, Chair Robinson initiated discussion on stops in other contexts. He commented that data is already collected at DUI checkpoints that result in detentions, arrests, searches, or interrogations. He proposed that if a person is stopped and searched or an arrest made during a DUI checkpoint, then the data should be reported, but not if the driver passes through the checkpoint without incident.

Chair Robinson also commented that, with respect to large numbers of people, there should be a threshold for when data reporting is no longer required. For example, if there is only one officer on duty, which is often the case in rural settings, and a large number of people is involved, at what point should data collection start.

Ms. Hovis commented that there are some mass detention situations that will fit within the definition of detention, but may not be included because the detention is made for public safety reasons. She explained that with respect to mass detentions, they need to determine the turning point where the detention triggers the data collection requirements.

## **9. Public Comment**

Peter Bibring from the ACLU commented that for detentions of large numbers of people, it is important to distinguish between individual detentions and crowd control. Situations involving individualized suspicion should be documented.

A representative from Public Counsel commented that in the school setting, an entire classroom of students may be searched even though only one student is the reason for the search. She urged the subcommittee to define what constitutes a “large” group.

In response, Chair Robinson proposed that the committee should determine a number to quantify a large group. He also gave the example that when his officers are breaking up a large party, they detain any youth until they have a ride, but this is done for safety purposes rather than to make arrests. In such situations, officers would not be able to document each person present. He suggested that the detention of a large group should be documented only if the individuals are detained to the point of search or that a checkbox could be included on the form indicating that the group was too large to document.

Member Walker commented that in the case of classroom searches, individual students are often called out of the classroom for a search, and that searches are often so normalized that students are searched three times in a single week. Ms. Beninati commented that AB 953 requires all searches to be reported even if the search includes a large group.

## **10. Next Steps**

**MOTION:** Chair Robinson made a motion to schedule a subsequent meeting to determine what recommendations they would present to the full RIPA Board.

**VOTE:** The motion carried with Member Ali, Member Durali, Member Robinson, and Member Walker voting “Yes”, no “No” votes and no abstentions.

## **11. Adjournment**

The meeting was adjourned at 11:10 a.m.

**CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD**

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

**SPECIAL CONSIDERATIONS/SETTINGS SUBCOMMITTEE**  
**MEETING NOTICE AND AGENDA**

**Friday, September 30, 2016, 11:00a.m. – 1:00p.m.**

**Teleconference Locations: California Department of Justice Offices:**

**Los Angeles**

300 S. Spring Street  
1<sup>st</sup> Floor Reception  
Los Angeles, CA 90013

**Oakland**

1515 Clay Street  
20<sup>th</sup> Floor, Suite 2000  
Oakland, CA 94612

**Other Teleconference Locations:**

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

Dolores Huerta Foundation  
1527 19th St, 4th Floor  
Bakersfield, CA 93301

1. Introductions (5 min.)
2. Approve minutes from prior meeting (5 min.)
3. Further discussion regarding stops in K-12 school settings, including what constitutes a stop as applied to students in K-12 schools, how to define K-12 school setting, K-12-specific data values for result of a stop, etc. (45 min.)
4. Public Comment (10 min.)
5. Further discussion of stops in other contexts that require special consideration, including mass evacuations, active shooters, street sweeps/crowd control etc. (45 min.)
6. Public Comment (10 min.)
7. Next Steps (10 min.)
8. Adjourn

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

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**Subcommittee Members Present:** Sahar Durali, Rev. Ben McBride, Chief Edward Medrano, Tim Silard, Timothy Walker

**Subcommittee Members Absent:** Micah Ali, Sheriff David Robinson (Chair)

**California Department of Justice Staff Present:** Nancy Beninati, Shannon Hovis, Rebekah Fretz, Kathy Radez, Glenn Coffman, Jerry Szymanski, CJIS Staff

**1. Call to Order and Introductions**

The meeting was called to order by Nancy Beninati of the California Department of Justice (DOJ) at 11:05 a.m. The subcommittee members, DOJ staff members, and members of the public present at each teleconference location introduced themselves. Member Tim Silard agreed to chair the meeting in Sheriff David Robinson's absence.

**2. Approval of Minutes**

**Motion:** Member Silard moved to approve the minutes from the prior meeting.

**Votes:** The motion was passed with Members Durali, McBride, Medrano, Silard, and Walker voting "yes"; no "no votes or abstentions"

**3. What Constitutes a "Stop" of a Student in the K-12 Setting**

**a. General definition of a "stop"**

Member Silard opened the floor for comment on what constitutes a stop as to students in the K-12 setting. Ms. Beninati provided additional background regarding the different Fourth Amendment concerns for children who generally are not free to leave school in K-12 setting; given that limitation, Ms. Beninati suggested the subcommittee should decide on what kind of interactions in schools the RIPA Board and DOJ should focus on.

Member Durali expressed concerns raised by advocacy organizations that metal detectors or similar situations where all students entering a building should not trigger data collection, but data should be collected whenever a student is subject to secondary search based on individualized suspicion. These groups suggested that a “stop” be defined as any time a student is not free to leave and go back to his or her assigned school/classroom activity. Member Durali further noted that members of the public have suggested that anytime officers are used in a disciplinary proceeding—even if it is just a referral to the office—that should be recorded, and that the subcommittee came to agreement on that point last time because the presence of an officer elevates the consequences for a student, even if that interaction is not initiated by the officer.

**Motion:** A motion was made by Member McBride and seconded by Member Medrano to define “detention” in a school setting to require officers to report on interactions with students when students are not free to return to their assigned activity or location. No public comment was offered on this motion.

**Votes:** The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.

#### **b. Individualized suspicion versus suspicionless searches**

**Motion:** A motion was made by Member Durali and seconded by Member Medrano to define “search” and “detention” in this context as actions based on individualized discretion and not random selection or suspicionless search prompted by school administration (for example, part of a routine classroom inspection).

**Votes:** The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.

Public comment: Anabel Agloro/Public Counsel said she would want officers to provide more information about the decision to select a specific classroom to search. Jacqueline Horton/Riverside County Sheriff’s Office commented that, if the intent of AB 953 is to capture officer’s conduct, it is not relevant to require reporting when an officer’s action is initiated by school administration and not the result of the officer’s discretion. Rosa Aqeel/PolicyLink responded that there are concerns with the actions a peace officer takes after the stop/detention, and so every time an officer is involved in a search it should be documented. A representative from the San Diego Sheriff’s Office asked whether this would cover a canine search of a classroom initiated by school administration. Ms. Beninati clarified that AB 953 does not cover private security hired by schools, only police officers hired by a city/county law enforcement agency if contracted or called by a school.

In response to a question by Member Durali, Member Medrano clarified that the only time an officer would randomly search a classroom without suspicion is as part of an operational practice of a particular school. Peter Bibring/ACLU commented that officers should not be conducting mass searches of particular classrooms unless justified by individualized suspicion of each student. Bibring further commented that, if officers are conducting full classroom searches based on individualized suspicion, AB 953 requires data recording on each student; if officers are conducting suspicionless searches, that is a separate problem, but one that does not prompt a reporting requirement under AB 953.

**Motion:** Member Durali revised her prior motion, seconded by Member Medrano, to recommend that data be collected any time there is a search conducted on suspicion, either as to an individual or group, but not when an officer conducts a suspicionless search; Member Durali further recommended the Attorney General include a hypothetical to clarify the distinction.

**Votes:** The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.

### c. Who initiates?

Member Silard opened the floor to comments about whether a peace officer is required to report data when a school administrator initiates a stop or search and then requests either the involvement or presence of a police officer. Member Medrano expressed a concern that data reporting might have a chilling effect on when school administrators request law enforcement presence.

Public comment: Peter Bibring/ACLU commented that AB 953 is not limited to officer intent, but is intended to capture interactions with officers. Outside of schools, a call for service must be recorded when it becomes a stop, even if the interaction begins as a mandatory contact by the officer. Similarly here, when an officer’s interaction with a student becomes a stop—even if the officer’s presence was initially prompted by administration—that would be reported, but data collection is not required simply because an officer is present at a meeting or in the lunch room.

A representative from the San Diego Sheriff’s Department raised a question about School Attendance Review Boards—which students are required to attend and which may include the presence of an officer as a “bailiff” who does not act unless fighting breaks out—and suggested a carve out for such meetings. Member Silard agreed that situation should not be covered, and Member Medrano suggested there is a consensus on that point. Member Durali suggested a distinction might be made when the student’s parents are present because the student would be free to leave with them.

**Motion:** Member Medrano made a motion that if a school administrator initiates an activity and an officer is asked to participate in any part of the process, that activity is reportable, but if an officer is asked to be present at a special meeting in the capacity of security or as a “bailiff” but is not part of the detention nor process, that is not reportable. Member McBride seconded the motion.

**Votes:** The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.

Public Comment: Alexandra Santa Ana/National Center for Youth Law suggested that the term “special meeting” be clearly defined so that it does not exclude a meeting between a student, parent, and administrator, for example. Peter Bibring/ACLU seconded that motion, and suggested that when a student is compelled to attend a large group meeting—like a School Attendance Review Boards—that is the student’s assigned activity and the officer’s actions would not be reportable because the officer is not preventing the student from returning to his or her assigned activity.

#### **4. K-12 Specific Data Values**

##### **a. Location within the school**

Public comment: Anabel Agloro/Public Counsel suggested that additional data on the location of a stop or search within the school would be valuable to show whether a detention occurred out of site of other students. Alexandra Santa Ana/National Center for Youth Law agreed it would be helpful to distinguish settings such as a classroom versus lunchroom. A representative from the Orange County Sheriff’s Office suggests that such data would be difficult to decipher because every school is different. Peter Bibring/ACLU commented that, while this level of detail may not make sense in other settings, it is valuable when a school resource officer is assigned at all times to a particular school because otherwise every stop for that officer would be at the same location

Member Medrano commented that he has not seen that level of specificity in any other data collection effort, and asked whether the distinction between inside or outside the school would account for school hours. Member Durali suggested the Attorney General clarify this final point by reference to the Education Code, which provides that students can be disciplined going to/from school and in school hours.

**Motion:** Member McBride moved that the form distinguish between stops in a school or outside the school, defined as within 1000 feet from the school. Seconded by Member Durali.

**Votes:** The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.

**Motion:** Member Durali moved that the form include a drop-down list of general locations within the school where a stop or detention occurred (classroom, hallway, cafeteria, gym, etc.). Seconded by Member McBride.

**Votes:** The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.

##### **b. Outcome of the stop**

Member Silard noted some discussion at the Additional Data Elements Subcommittee meeting of whether it is realistic for officers to follow up substantially after the incident to determine administrative outcome (suspension, expelled, etc.), and asked whether a data element for referral for administrative action or to other agencies (CPS, welfare, immigration, etc.) would be reasonable. Member Medrano suggested that, to the extent the officer has that information at the time he or she records the stop, it should be reported, but the regulations should not require the officer to follow up or leave the stop data in limbo until there is resolution. Member Durali noted that expulsion can take months to play out in some districts, and suggested the form might include “expulsion (if known).”

**Motion:** Member Silard moved to include the list of values set forth on page 5 of the June 15 letter from the ACLU and others (arrest, citation, suspension, expulsion, referral to school administrator, referral to a school counselor or other school support staff, referral to another organization like a mental health service provider, or no further action), adding “if known” where applicable. Seconded by Member Medrano.

**Votes:** The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.”

**Motion:** Member Durali moved to include a required field for name of the school. Seconded by Member McBride.

**Votes:** The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.”

### **c. Reason for the stop**

Ms. Hovis asked whether the Board should consider recommending specific data values for “reasons for the stop” that differ from the general setting. Member Medrano suggested that values could be added for truancy sweep, administration request. Member Durali suggested adding Education Code provisions, which might capture non-criminal activity (disruption, dress code violations, etc.). Member Medrano suggested that the field provide options for education-code violations, administrative school violations, administrative request, etc. Member Silard suggested the field for request from administration be coupled with an open field for further explanation.

## **5. Other Special Settings**

### **a. Mass events (excluding protests)**

Member Medrano suggested that that the general “stop” definition would cover these situations: if an individual is specifically detained, that is reportable, but mass evacuations or crowd control would not qualify. Ms. Beninati explained that during DOJ’s review of agencies that collect stop data that some agencies have specific exclusions for these situations (even though, for example, everyone ordered not to leave in an active shooter situation would be detained) because it would be impractical to collect data on large groups of people and because such reports would skew the general data. She noted there is no consensus among academics as

to whether the information on random searches is useful, and asked whether the subcommittee would like to make a recommendation about whether an exclusion for mass events, randomized searches, or metal detectors at large events.

Member Medrano suggested that the definition of detention would not apply to random screenings or metal detectors to enter a stadium; there was no objection from the board.

**Motion:** Member Medrano made a motion that if an officer in course of duty takes no action except for the protection of life or safety in emergency, no data needs to be recorded; however, data would need to be recorded fro any secondary activity that resulted in an individual detention or search. Seconded by Member Durali.

**Votes:** The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.

#### **b. DUI and other checkpoints**

Member Medrano suggested that officers should be not be required to report on randomized checkpoints, but they should be required to report any individuals selected for secondary screening. No objections from the board.

Public comment: Rosa Aqeel/PolicyLink expressed her concern that data should be collected on all checkpoints, as these are often placed in communities of color so that officers do not have to go to trouble of stopping individuals, either to detect undocumented individuals or for the purpose of harassment. A representative from the San Diego Sheriff’s Department stated that state law already requires departments to justify how and why a checkpoint is set up in a particular location.

Member Medrano concurred that the placement of checkpoints is covered by other law, and that an officer has no discretion of where he is assigned to work. Member McBride expressed a concern of whether the data will allow analysts to cross-reference which drivers are detained versus waived through. Member Medrano explained officers have no discretion of who to waive through or detain when the stop is based on random selection, but officers always have discretion to stop additional vehicles when they observe behavior or contraband giving rise to probable cause, or if the officer observes a vehicle violation.

**Motion:** Member Silard made a motion that the form include a field for “stop conducted incident to a checkpoint (DUI or otherwise),” with a check box indicated whether or not the individual was detained or searched based on random selection. Seconded by Member Medrano.

**Votes:** The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.

#### **c. Protests**

Member McBride expressed a concern about how to capture interactions between law enforcement and individuals that are a part of protests and other large community events,

explaining that data on who is detained and how is important when people are not free to leave, which happens many time in protests. Though these are large events, individuals and groups are regularly detained and unable to leave without being accused of any crime. Member Silard commented that the emergency exception for mass detentions should not encompass protests. Member Medrano expressed a practical concern: if an officer detains 50 people from crowd of 500 and then orders them to disperse, the officer will not realistically be able to collect the data and remain engaged in crowd control, but he agreed that data should be reported on anyone who is handcuffed or similarly detained.

Member McBride suggested that officer crowd control practices warranted further discussion in another context, but the question here is what data needs to be recorded when officers detain someone and prevent that person from leaving. Member McBride's position is that, if citizens are not free to walk away, they are detained and we should record that information—officers are exercising discretion in that scenario and that needs to be recorded. Member Medrano suggested that, because the goal of crowd control is to provide a way for people to leave freely, perhaps we should focus only on situations in which a specific group is not free to leave, which should trigger data collection.

Public Comment: A representative from the San Diego Sheriff's Department suggested that a reasonable distinction could be drawn between situations where individuals are not free to leave (should be recorded) and an officer's orders impeding forward progress, such as an order that the crowd cannot go on a freeway (should not be recorded). Rosa Aqeel/Policy Link and Peter Birbring/ACLU agreed with Member McBride's position.

**Motion:** Member McBride made a motion that, with respect to large crowd control and protests, data should be collected when community members are boxed in by law enforcement and unable to leave. Seconded by Member Walker.

**Votes:** The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting "yes"; no "no votes or abstentions.

#### **d. Public housing and other environments**

Member Silard solicited further comment from the Subcommittee on whether additional guidance is necessary for stops in public housing and other environments. Member Durali suggested that the general definition of "not free to leave" should cover these scenarios; Member Medrano agreed that definition should apply everywhere.

### **6. Adjournment**

The meeting was adjourned at 1:07 p.m.