

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD

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

MEETING MINUTES

September 1, 2021 – 3:03 p.m. – 6:07 p.m.

Members Present: Co-Chair Steve Raphael, Co-Chair David Swing, William Ayub, Ammar Campa-Najjar, Andrea Guerrero, Edgar Hampton, Brian Eric Kennedy, Lily Khadjavi, Manju Kulkarni, Melanie Ochoa, Amanda Ray, Brendon Woods, Cha Vang

Members Absent: William Armaline, LaWanda Hawkins, Ronaldo Villeda

1. Call to Order by Board Co-Chairs

Co-Chair Swing welcomed everyone to the meeting.

2. Welcome and Introductions

Co-Chair Swing welcomed new members Kulkarni and Ayub to the Board. Member Ayub, Ventura County Sheriff, stated that he would serve as representative of the California State Sheriff's Association to the RIPA Board. He stated that he has served in law enforcement for 36 years and looked forward to participating in the Board's discussions. Member Kulkarni stated that she serves as Executive Director of the Asian Pacific Policy and Planning Council, a coalition of 40 community-based organizations that represent the 1.5 million AAPI individuals in Southern California. She stated that she also co-founded Stop AAPI Hate, a national coalition that fights anti-Asian hate. She thanked the Board and stated that she was honored to work with the Board.

3. Approval of June 9, 2021 Minutes

MOTION 1: Member Hampton made a motion for approval of the June 9, 2021 Minutes.

Member Guerrero seconded the motion.

VOTE ON MOTION 1: All Board members present voted "yes;" there were zero "no" votes and no abstentions.

4. Presentation regarding the 2021 Amendments to the RIPA Stop Data Regulations

Tanya Koshy, Deputy Attorney General with the Department of Justice, stated that she would provide a brief Power Point presentation summarizing the Department of Justice's proposed amendments to the RIPA Regulations. She informed the Board that the Racial and Identity Profiling Act (RIPA) directed the Attorney General's Office to develop regulations, in consultation with the Board, to implement the requirements of the Act, which first took effect in November of 2017. Ms. Koshy explained that the regulations specify the categories of information that officers must report, how law enforcement agencies must transmit data to the

Department, and definitions of commonly used terms. She stated that during the four years since the regulations were enacted, the Attorney General's Office has considered input from experts, community organizations, law enforcement agencies (LEAs), the Board's Stop Data Analysis subcommittee, and DOJ staff, and has identified several potential amendments to the regulations.

Under the rulemaking process, the Department submitted the proposed regulations to the Office of Administrative Law (OAL) and posted them July 1, 2021, which was followed by a public comment period that would end on September 3, 2021. During the comment period, the Department accepts written comments and oral comments that could be provided during two public hearings; one public hearing occurred on August 20, 2021 and the other would occur on September 1, 2021 at 6:00 p.m. She explained that following the public comment period, the Department would review every comment, would modify the proposals as needed, and would prepare the documents required by OAL, but if the Department makes any substantive changes to the proposals, the Department is required to post them publicly and provide a 15-day comment period for the public to provide comments on those changes. She stated that the Department intended to submit the proposals to OAL in early January 2022 and hoped to receive approval in the spring of 2022, for an effective date of January 1, 2023. Ms. Koshy stated that the time between the approval of the regulations and the effective date of the regulations would allow the Department, law enforcement agencies, and vendors to make necessary updates to their applications.

Ms. Koshy stated that there were several categories of proposed amendments. She stated that most proposed amendments were aimed at providing more context regarding stops, while others were aimed at streamlining the data reporting process by clarifying reporting obligations, and making data analyses more effective. She noted that the Meeting Materials Packet included a Draft Stop Data Entry Form as a visual reference regarding some of the proposed amendments. Ms. Koshy explained that "Data Element" is the term that the Department uses to describe the categories of information that officers must report regarding each stop and that there were five proposed new data elements: "Type of Stop," "Person Stopped Perceived to be Unhoused," "Race or Ethnicity of Officer," "Gender of Officer," and "Stop Made during the Course of Performing a Welfare Check or an Officer's Community Caretaking Function." She stated that with the proposed "Type of Stop" data element the Department is seeking to require officers to report whether the stop was vehicular, or a stop of a person on a bicycle, or pedestrian, in order to make data analysis more effective.

Ms. Koshy explained that "Data Value" is the term describing a response option that an officer can select for a specific data element; for example, "Asian," "Native American," and

“Black/African-American” are some of the data values for the data element “Perceived Race or Ethnicity of Person Stopped.” She stated that the Department proposes to add or revise data values for the following data elements: “Location,” “Perceived Gender of Person Stopped,” “Person Stopped Perceived to Be LGBT (revised title to “Perceived Sexual Orientation of the Person Stopped”), “Reason for Stop,” “Action(s) Taken by Officers during Stop,” “Basis for Search,” “Result of Stop,” and “Type of Assignment.”

The Department also proposes to require an officer to report information under certain circumstances including (1) whether the person stopped is a passenger in a vehicle, (2) whether the person stopped was inside a residence when an officer was executing a warrant, conducting a search warrant, or conducting a compliance check for another person, and (3) when an officer does not work with the primary agency that made the stop. She stated that all of the aforementioned proposals are reflected in the example revised Stop Data Entry Form provided in the Meeting Materials Packet.

Ms. Koshy stated that other proposals include providing new definitions and revising existing definitions to clarify existing reporting obligations and streamline the process of reporting stop data. She explained that one of the proposals was to revise the definition of “custodial setting” to make it clear that officers do not need to report stop data when they are remanding a person into custody in a courtroom. Ms. Koshy stated that the Department also proposed to revise the “Duration of Stop” data element to clarify when a stop ends. She stated that to assist with consistency in the data, the Department proposes to prohibit agencies from assigning an officer a new I.D. and from reassigning an I.D. to another officer. She stated that the Department proposed to require officers to report stops of individuals who are the subject of a warrant or compliance check, if the stop occurred in any place other than the person’s residence. Ms. Koshy explained that existing regulations specify several types of uniform searches and seizures, such as traffic control due to a traffic accident or crowd control for public safety purposes, and officers are only required to report stops in these circumstances if they detain a person based on individualized suspicion or if they took actions toward the person that are specified in the regulations. In addition, the Department proposes to add transit sweeps to the list of types of uniform searches and seizures and clarify that officers are not required to report any non-enumerated uniform searches and seizures unless an officer takes certain actions during the interaction.

Ms. Koshy stated that the Department proposes to require LEAs to report when no stops were conducted; for example, a District Attorney’s office or Coroner’s office that employs a peace officer who made no stops would be required to report that no stops were conducted. She stated that the Department proposes to require LEAs to attest that the data that they are

submitting to the Department does not include any information that is exempt from disclosure. The Department also proposes to expand the circumstances under which the Department and LEAs can disclose stop data confidentially for purposes of advancing public policy and for scientific study, and that the regulations seeks to require LEAs to maintain a record of their stop data.

Ms. Koshy explained that the Board's meeting would be an opportunity for the Board to discuss and vote on recommendations that they want to make to the Department regarding the proposed amendments. She stated that a representative of the Board would be able to orally present the Board's cumulative recommendations to the Department during the public hearing, which would take place at 6:00 pm, immediately after the Board meeting.

Ms. Koshy clarified that any comments made during the public comment agenda item of the Board meeting would not constitute a comment to the Department regarding the proposed regulations; these comments would be treated as comments regarding the Board's actions. She stated that members of the public could make a comment to the Department regarding the regulations by providing an oral comment at the public hearing that would begin at 6:00 p.m. or submitting a written comment to Tanya.Koshy@doj.ca.gov by 11:59 p.m. on September 3, 2021. She stated that additional information about how to submit a comment was available at <https://oag.ca.gov/ab953/regulations>. Ms. Koshy invited the Board to discuss the proposed regulations and any recommendation that it would like to make.

5. Board Discussion concerning Any Recommendations regarding the 2021 Amendments to the Stop Data Regulations

Nancy Beninati, Supervising Deputy Attorney General with the Department of Justice, stated that the Board could provide recommendations supporting any specific proposed amendments to the regulations, urging the Attorney General to enact the proposal. Ms. Koshy explained that the Board could also recommend that the Department eliminate or revise any specific proposed amendments.

Member Hampton asked if the same officer I.D. would be associated with an officer throughout their career, even when they transfer employment from one agency to another. Ms. Beninati stated that the officer I.D. does not remain the same if an officer transfers their employment to a new agency because each agency creates their own officer I.D. numbers.

Co-Chair Raphael suggested that, in order to streamline and increase accuracy of data reporting, the Board recommend separating the data values relating to use of force actions from the Actions Taken by Officers during Stop data element and listing these under a new Uses of Force during the Stop data element. Member Khadjavi stated her support for this

recommendation in order to address concerns that the existing long list of response options may hamper the accuracy of the data collection. Member Ochoa stated that because agencies differ in their definitions of uses of force she was concerned that officers may skip a Use of Force during Stop data element if officers took an action that their agency does not define as a use of force.

Member Ochoa suggested that the Board recommend adding data values to Actions Taken by Officers during Stop regarding the use of canine(s) as a show of force rather than an application of force, similar to pointing a firearm or pointing an impact projectile. Member Woods stated his support for the recommendation to add a data value to report the use of a canine as a show of force to achieve compliance. Member Hampton stated that Anaheim Police Department tracks the number of instances in which canines are used and the instances in which the officers' canines bit a person. Member Kulkarni stated her support for the addition of a data value or expansion of the existing data value. Co-Chair Swing suggested adding clarifying language to the existing data value rather than adding an additional data value. Co-Chair Swing and member Hampton stated that canines are sometimes required to be used in stops that are considered high risk and these instances do not always involve a person that is not being compliant. Member Ochoa suggested the addition of a data value to describe the action of officer displaying their canine during a stop. Co-Chair Swing stated his support for capturing the use of canines, through display of canines, and the similarity of this action to the action of pointing of a firearm.

Member Ochoa recommended that the Board affirm the proposed changes to the data values for the Perceived Gender of the Person Stopped data element to be more inclusive and conform to terms used in other areas of California law. To ensure accuracy of the stop data, she encouraged the Department to continue to address appropriate use of the terms in the perceived gender of the person stopped data element in the AB 953 training.

Member Khadjavi recommended that the Board affirm the proposed addition of the Type of Stop data element because the demographics of pedestrians and drivers can be very different.

Member Guerrero stated that she also supported the proposed changes to the Perceived Gender of the Person Stopped and the Type of Stop data elements.

Member Woods asked if the proposed text of the regulations was sufficiently clear in defining the data values for type of stop to address stops of motorized bicycles and scooters. Member Hampton stated that the Vehicle Code includes a definition of motor vehicle. Ms. Koshy stated that the existing regulations define "vehicle" and reference the Vehicle Code. Member Ochoa asked if the Board could expect officers across agencies to consistently define stops of

individuals on motorized bicycles as vehicle or pedestrian stops or if examples are needed in the regulations. Member Ray stated that the definition of “vehicle” in the existing regulations includes motorized scooters.

Member Ochoa stated that she appreciates the proposal to add a data element regarding officers’ perception of an individual’s unhoused status because there are huge disparities in how laws are enforced with the unhoused population.

Member Ochoa stated that the language in the proposed stop data entry template, “Stop Made in Response to a Call for Service,” might suggest that a person making a call for service would be a basis for an officer to stop an individual and suggested that this data element be revised to reflect that the officer may have been present at the scene because of the call for service and the stop was made for an independent reason. She stated that she had similar concerns about the language, “Stop Made in the Course of a Welfare Check,” and was particularly concerned that officers would be asked to provide information about the context of the welfare check in the Reason for Stop narrative field. She recommended including separate narrative fields for officers to provide information about the reason for the welfare check and information about the call for service.

Member Ochoa stated that she appreciated the additional use of force actions that the DOJ proposed to include as data values under Actions Taken by Officers during Stop and the addition of the action, “Asked whether the person is on parole, probation, PRCS, or some other form of mandatory supervision.”

Co-Chair Swing recommended adding a data value for actions taken by the stopped individual for officers to complete when officers took a use of force action during the stop. He recommended that the data values include: there was a foot pursuit, there was a vehicle pursuit, the person swung at the officer or clenched their fists, and no action taken. He stated that this would help the law enforcement profession to better understand situations where force is used. Member Ayub stated that adding this data element to the regulations would provide continuity to the data that is being collected across agencies. Member Woods asked if this data element would fit within the purpose of the Racial and Identity Profiling Act and stated that in collecting this data point, false justifications for uses of force may be reported. Member Ochoa stated that many of the justifications that officers provide for uses of force are driven by perceptions of how a person is acting that are influenced by racial biases; the perceived actions are dependent on the perceived identities of stopped individuals.

Member Guerrero stated that she shares the concern that how actions are perceived is not how they are occurring, but she is interested in understanding what the officers’ perceptions are

and recommended the addition of this data value, which would provide additional information about uses of force. Member Guerrero stated, for example, if the data were to show that uses of force were frequently occurring in stops where there was a vehicular pursuit, use of force policies could be reformed to address this context. She stated that some of this information was more objective and some of it would be reported perception. She stated that the purpose of the data would not be to identify culpability in a particular incident, but would be helpful to understand patterns. Co-Chair Raphael recommended adding some data values that would be simply factual, such as whether the use of force followed a foot or vehicle pursuit, in addition to other values such as whether the use of force followed an assault, whether the individual was resisting arrest. He stated that the Department is proposing to collect officer demographics information and it would be interesting to know if there are patterns in officers perceptions related to uses of force across officer demographic groups. Member Ochoa stated that collecting information on the occurrence of pursuits or other actions during stops may be useful, but collecting officer attitudinal perceptions about stopped individuals would not be consistent with the purpose of RIPA. Members Ochoa and Khadjavi cautioned about using check boxes for reporting actions taken by stopped individuals during stops. Member Khadjavi stated that providing check boxes for actions taken by person stopped may invite justifications that do not exist.

Member Guerrero suggested that the Board consider recommending the addition of a data element for Actions Taken by Person Stopped, which would include both a list of data values for officers to select and a narrative field to provide additional context. She stated that collecting this data would not require an assumption that the reported perception was well informed or truthful. She asked if collecting this data would be duplicative of other data collection regarding uses of force. Co-Chair Swing stated that use of force data is not reported in other data collection except in instances involving death, serious bodily injury, or discharge of a firearm; the RIPA data collection includes additional types of uses of force. Member Ray stated that including a narrative field for this data element would make it too difficult to analyze the information.

Member Khadjavi asked if including the case name in the data value "*Terry v. Ohio* frisk/pat search of the person's outer clothing" implied that the pat down was justified or if it would be more appropriate to describe the action of frisk or pat search without labeling the data value with the case name. Co-Chair Swing stated that the Stop Data subcommittee discussed this data value and felt that including the case name helped to distinguish this type of pat down search from searches that included a search of a person's pockets. Member Hampton stated that officers receive training regarding *Terry* searches in the field officer training academy. Member Ochoa stated that she was concerned that one example for this data value seemed to

describe an illegal search because no reason was identified for the further search beyond the pat search.

Member Ayub stated that the existing regulations anonymize officer data by requiring agencies to assign Officer Identification Numbers to officers. He stated that he was concerned that data regarding officers' race/ethnicity and gender may, in some cases, identify individual officers, particularly in smaller agencies. Member Ochoa stated that diversifying law enforcement officers is frequently proposed as a potential solution to address biased policing. She stated that collecting data on officer's racial and gender identity would assist in evaluating patterns in outcomes across identities. Member Woods stated that collecting data about the people involved in law enforcement interactions is critical.

Member Ochoa stated that releasing this data could be considered separately from the collection of officer's demographic data. Member Raphael stated that it would be possible to require that the values for officer race/ethnicity and officer gender be excluded from public releases of data whenever there are the specific race/ethnicity and gender combinations occurring fewer than five or ten times within an agency. Member Khadjavi stated that it is critical that officer race/ethnicity and gender are included in the data collection and attention should be given to the way that data is released. Co-Chair Swing requested that the DOJ provide guidance about how agencies would be required to provide this data in response to Public Records Act requests.

Member Ochoa stated that the proposed regulations include a requirement that agencies attest that agencies have not transmitted any personally identifiable information nor any other information that is exempt from disclosure to the DOJ in stop data reports. She stated that the proposed regulations do not address what will happen if personally identifiable information or other information that is exempt from disclosure is transmitted to the DOJ. She stated that Gov. Code sec. 6254 (f)(3) acknowledges that specific personally identifiable information can be released if it is for a scholarly, journalistic, political, or government purpose and incorporating this exception in the regulations would be a way to resolve how the DOJ should handle information that it received that agencies shouldn't have provided.

Co-Chair Swing stated that because American Community Survey data is used as one of the benchmarking methods in analysis of stop data, he recommended adding a data element to collect information about whether the person stopped was a resident of the agency's jurisdiction. Member Ochoa stated that all of the stop data currently collected is provided by officers without requiring them to ask stopped individuals to provide information for the stop data report. She asked how the information about a stopped person's residence would be collected. Co-Chair Swing stated that this information would likely be found on the person's

driver's license or other form of identification. Member Kulkarni asked how the residency of the stopped individuals was relevant to the RIPA data collection. Co-Chair Swing stated that this information would assist in comparing local stop data with local demographic data. Member Ray stated that CHP would need to be exempt from collecting this data element. Member Kulkarni asked what could be learned from the data if, for instance it showed a higher proportion of stops of non-residents versus residents or a lower proportion of stops of non-residents versus residents. Member Guerrero stated that it would be better to address the demographics of non-resident populations, such as tourist or working populations, in the aggregate by incorporating demographic information about these populations in the development of benchmarks. Member Kulkarni stated that the Asian Pacific Policy and Planning Council has had long standing concerns about the accuracy of the American Community Survey because it does not accurately count subgroups within the Asian-American and Pacific Islander rubric.

6. Public Comment

Ms. Beninati stated that this public comment period would provide an opportunity to make recommendations to the RIPA Board and it would not be considered public comment for purposes of the DOJ's proposed regulations. She stated that the public could provide comments to the Department regarding the proposed regulations at the hearing that would begin at 6:00 pm.

Richard Hylton recommended that the Department reconsider exempting transit sweeps that did not result in an officer taking additional action from stop data reporting. He stated that during transit sweeps in San Diego Black and Latino people are stopped and White people are not stopped. He stated the key element to consider is whether the person who is being questioned about paying their fare is free to walk away from the officer. He stated that he supported the proposed addition of the "Stop Made during the Course of Performing a Welfare Check or an Officer's Community Caretaking Function" data element.

Naomi Waters, representative of the Student Association at UC Riverside recommended that the Board include the UC Office of the President in the Board's discussions or include students as active observers of the Board's work. She stated that the UC system was working on its safety initiatives including RIPA implementation and that she had concerns regarding this work.

Mike Morper stated that he works for an organization that provides an application for RIPA data collection to LEAs in California. He stated that his organization has found that approximately 85% of stop data reports will be recorded using mobile devices. He recommended that the Board consider the specific language that should appear in the mobile device interface for officers when they select data values. He recommended that law

enforcement representatives on the Board reach out to the police chiefs at California’s public universities who have concerns about implementing stop data collection in the university environment. Mr. Morper suggested that the Board recommend dividing the data values listed under Actions Taken by Officers during Stops into two data elements, so that officers can focus on one topic at a time. He stated that this would help to expedite accurate data entry.

Lou Vitek stated that he works for a vendor that provides an application for agencies to collect RIPA data. He stated that if there were a recommendation for officers to keep the same Officer I.D. when they begin working at a different agency, the DOJ would need to assign the Officer I.D.s. He asked if a “no” response to the current perceived LGBT identity data value meant that the person was perceived as straight/heterosexual. He stated that grouping the data values that are included under Actions Taken by Officers during Stops would not reduce the list of reportable actions.

There were no other public comments.

7. Voting on Any Recommendations regarding the 2021 Amendments to the Stop Data Regulations

Member Ochoa recommended to the Board that the Department not adopt the proposed change to the definition of Duration of Stop, which would define the end of the stop as the time at which the individual is free to leave or when the person is taken into physical custody and booked. She stated that this revised definition could skew the data based on distances between places where stops would be made initially and the stations where bookings would occur or the number of other individuals that need to be booked ahead of the individual. She suggested that the Board recommend the end of stop time be defined as the time when the individual is removed from the location, which would allow for more uniform data reporting in different scenarios, for instance, when individuals are transported to a hospital.

Member Ochoa recommended to the Board that the Department not adopt the proposed revision to the regulations that would exempt transit sweeps in which the officer did not take additional actions from data reporting. She stated that the proposal would exclude important information from the data collection because the decisions to conduct transit sweeps can be significantly determined by identity and there are significant disparities in transit stops. Co-Chair Raphael stated that he imagined that transit sweeps may comprise the majority of the stops conducted by some agencies and the Board may want to ask that the Department reconsider this proposal. Member Guerrero stated that there is a need for the legislature to address the definition of public safety officers to include transit police, but it would be important for the Department to require reporting of transit sweep stops, to the extent this is possible, through the RIPA regulations. Member Ochoa stated that in Los Angeles County, for

example, police departments perform transit sweeps, and the proposed regulation would only prevent agencies that are required to collect RIPA data from collecting data on these stops. Co-Chair Swing asked the rationale for the proposed exclusion of transit sweeps from the RIPA reporting requirements. Ms. Beninati stated that RIPA has excluded data collection when there are generalized blanket searches and no individualized suspicion exists, such as asking for everyone's ticket, or going through a metal detector. Ms. Koshy stated that rather than requiring officers to report stop data every time they checked a person's fare, the Department proposed to require officers to report stops made during sweeps to determine if passengers have paid transit fare only if the person was detained based on individualized suspicion or personal characteristics or when the officer took any of the actions listed in the Actions Taken by Officers during Stop data element. She stated that the Department had concerns that when an agency has a blanket policy about checking everyone's fare, collecting data on these stops would not support the purpose of RIPA.

Ms. Koshy summarized the potential Board recommendations to affirm several proposals, to add new data elements, to revise data elements and data values, and to remove proposed data elements.

MOTION 2: Co-Chair Raphael made a motion for the Board to recommend that the Department adopt the proposed revisions to the Perceived Gender of Person Stopped data element, the proposed addition of a Type of Stop data element and a Person Stopped Perceived to be Unhoused data value, and the proposed addition of types of force and Whether Officer Asked about a Person's Supervision Status as values regarding Actions Taken by Officers during Stop. Member Khadjavi seconded the motion.

VOTE ON MOTION 2: All Board members present voted "yes;" there were zero "no" votes and no abstentions. The motion passed.

MOTION 3: Member Hampton made a motion for the Board to recommend that the Department take the following actions to revise data elements and data values:

- In the Stop Made in Response to a Call for Service data element, clarify that the call for service was not the reason for stopping the individual(s) but that the officer was present at the location because a call for service was received;
- Add a narrative field to the Stop Made during the course of a Welfare Check data element, rather than requiring officers to provide this information in the Reason for Stop narrative field;
- Revise the proposed value under Actions taken by Officers during Stop "Peace officer's canine deployed for purposes of apprehending stopped person" to make clear that this encompasses displaying the canine as a show of force;

- Consider removing the case name from the data value “*Terry v. Ohio* frisk/pat search of a person’s outer clothing was conducted” and revise the example for this data value to be consistent with *Terry v. Ohio*;
- Revise the Duration of Stop data value so that the stop ends when the stopped individual is removed from the location, rather than at the time of booking.

Co-Chair Raphael seconded this motion and the floor was opened for discussion. Member Ray stated that she opposed recommending the addition of a narrative field to the Stop Made in the course of a Welfare Check data element. Member Ochoa stated that the Board may consider recommending that the Department not require narrative for this data element or create an optional narrative field for the data element and not require this information to be reported in the Reason for Stop narrative field.

AMENDED MOTION 3: Member Hampton and Co-Chair Raphael approved amending the motion to reflect a recommendation to add an optional narrative field for the Stop Made during the Course of a Welfare Check data element.

VOTE ON AMENDED MOTION 3: All Board members present voted “yes;” there were zero “no” votes and no abstentions. The motion passed.

Ms. Beninati confirmed that Co-Chairs Swing and Raphael, members Khadjavi, Woods, Kulkarni, Vang, Guerrero, Kennedy, Ray, Hampton, Ochoa, and Ayub were present and voting.

MOTION 4: Co-Chair Swing made a motion for the Department add a Stopped Person’s Actions Prior to Use of Force or Basis for Force data element with data values such as following foot pursuit, following vehicle pursuit, following assault, resisting arrest, and no action by stopped person prior to use of force, and a narrative field. Member Hampton seconded the motion and the floor was opened for discussion.

Member Woods stated that he was concerned that, as proposed, this recommendation would imply that the person who was the victim of force has done something wrong and while he saw value in understanding officer’s perceptions about the actions of stopped individuals, he would like to Board to consider the issue further before making a recommendation as this would need to be done more carefully. Member Ochoa stated that the Board should consider further whether data about vehicular pursuits or other occurrences during stops need to be collected in RIPA data.

AMENDED MOTION 4: Co-Chair Raphael proposed amending the motion to eliminate the examples of data values that might be included under this data element. Member Hampton seconded the amendment to the motion.

Member Ochoa stated that it was unclear what information would be obtained by the addition of a data value as described in the motion because asking the officer to record the actions taken by stopped person is such an expansive category as it forms the entire basis for the stop. Member Kulkarni stated she agreed with Member Ochoa. Co-Chair Raphael asked if amending the data element proposed in the motion to Elements of Stop that Precipitated and Led to a Use of Force would be helpful. Member Kulkarni stated that she would be more strongly opposed to this because the term “precipitated” suggested that the use of force was necessary.

VOTE ON AMENDED MOTION 4: Co-Chair Swing requested that the members proceed with the vote on the amended motion. A roll call vote was taken. Members Hampton, Raphael, Ayub, and Swing voted “yes.” Members Ochoa, Woods, Kulkarni, Khadjavi, Guerrero, Vang voted “no.” Member Ray stated that she would support the motion without the inclusion of the narrative field.¹ The motion did not carry for lack of a majority.

MOTION 5: Member Woods made a motion for the Board to recommend that the Department separate the use of force data values under the Actions Taken by Officers during Stop into a separate data element. Co-Chair Swing seconded the motion.

VOTE ON MOTION 5: Members Hampton, Ayub, Swing, Woods, Kulkarni, Khadjavi, Guerrero, Vang, and Kennedy voted “yes.” Member Ochoa abstained. The motion passed.

MOTION 6: Member Hampton made a motion for the Board to recommend that the Department add a data element to indicate if the person stopped is a resident of the jurisdiction. Member Ayub seconded the motion and the floor was open for discussion.

AMENDED MOTION 6: Member Ray stated that she was opposed to the motion if it did not include an exemption for the California Highway Patrol. Members Hampton and Ayub approved amending the motion to exempt the CHP from reporting this data element.

Member Guerrero stated that she would caution the Board about recommending that the Department establish different reporting requirements for different agencies. Member Woods stated that he was considering how it might be possible to require the CHP to also report this data. Member Ray stated that she had concerns about the value that this data would provide, how accurate the data would be, and the time that officers might have to spend asking questions or to deduce information from driver’s licenses. Co-Chair Swing stated that he believed the benchmark would have different relevance for the CHP and for local municipalities. Member Guerrero stated that if the Board would like to identify better ways to establish benchmarks for data analysis, she did not believe this would be the way to do that.

¹ Member Kennedy did not vote on this motion.

VOTE ON AMENDED MOTION 6: Co-Chair Swing closed debate and requested that members vote on the motion. A roll call vote was taken. Members Guerrero, Raphael, Ochoa, Woods, Khadjavi, Kulkarni, Vang, and Kennedy voted “no.” Members Swing, Hampton, Ayub, and Ray voted “yes.” The motion did not carry.

MOTION 7: Co-Chair Swing made a motion for the Board to recommend that the Department not adopt the proposal to add data values for reporting the race/ethnicity and gender of officer. Member Ray seconded the motion.

VOTE ON MOTION 7: A roll call vote was taken. Members Woods, Ochoa, Guerrero, Raphael, Kulkarni, Vang, and Khadjavi voted “no.” Members Hampton, Swing, Ayub, and Ray voted “yes.” Member Kennedy abstained. The motion did not carry.

Co-Chair Raphael asked about provisions to allow the data to be used for public policy research while protecting officers’ confidentiality. Ms. Beninati stated that the Department has proposed to clarify in the regulations that the regulations do not prohibit an agency from disclosing all stop data to advance public policy or scientific study and that agencies are responsible for ensuring that the publication of any data, analyses, or research would not result in the disclosure of an individual officer’s identity.

MOTION 8: Member Ochoa made a motion that the Board recommend that the Department not adopt the proposal which would exclude transit sweeps from the data reporting unless the officer detained the person because of any individualized suspicion or the officer took an action toward the person. Member Woods seconded the motion.

VOTE ON MOTION 8: A roll call vote was taken. Members Raphael, Hampton, Ayub, Swing, Kennedy, and Ray voted “no.” Members Ochoa, Kulkarni, Vang, Khadjavi, Guerrero, and Woods voted “yes.” The vote resulted in a tie and the motion did not carry.

8. Discussion of Next Steps and Any Additional Action Items

Chief Swing asked DOJ to discuss the data collection issues related to the Stop Data Subcommittee. Ms. Beninati stated that in reviewing some of the data the Department learned that the Oakland Police Department and the CHP had an error in transmitting some of their data to the Department after the data had been correctly collected. She stated that the error did not impact a large amount of the overall data, but it would have a greater impact on the gender analysis because the transmission error for the CHP effected the records for which officers selected the “gender nonconforming” data value. She stated that the transmission error for the Oakland Police Department had an impact on the analyses regarding consent searches. Ms. Beninati stated that the Department would rerun all the analyses and follow up on these at the next meeting of the Stop Data Analysis subcommittee. Erin Choi, Program

Manager (CJIS) with the Department of Justice, stated that both agencies had already resubmitted their data.

Co-Chair Raphael stated that he expected that this type of error may occur again, especially as an additional 400 agencies begin reporting data, and he recommended that the Stop Data Analysis subcommittee discuss processes to enhance the data quality, such as scanning for outlier patterns, and correcting errors when they occur. He stated that bringing the error to the attention of the Board and fixing it was the correct thing to do.

9. Adjourn

Co-Chair Swing thanked all of the Board members and DOJ staff. He adjourned the meeting at 6:07 p.m.