

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD

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CIVILIAN COMPLAINTS SUBCOMMITTEE MEETING MINUTES

October 1, 2020 – 3 p.m. – 4:10 p.m.

Subcommittee Members Present: Co-Chair Sahar Durali, Co-Chair Angela Sierra, Rev. Nancy Frausto, LaWanda Hawkins

Subcommittee Members Absent: Chief David Swing

1. Introductions

Co-Chair Sierra introduced herself and requested that each board member introduce themselves. Co-Chair Durali inquired whether there was a quorum and DOJ staff confirmed the existence of a quorum. .

Approval of Subcommittee Meeting Minutes

MOTION: Co-Chair Sierra made a motion to approve the June 1, 2020 subcommittee meeting minutes. Co-Chair Durali seconded the motion.

APPROVAL: All subcommittee members present voted “yes;” there were no “no” votes and no abstentions.

2. Overview of Proposed Subcommittee Work by Department of Justice

DAG Domonique Alcaraz from the Department of Justice stated that the DOJ would share a review of Early Intervention Systems (EIS) used by law enforcement agencies (LEA’s). She indicated that the review follows a request by the subcommittee to go more in depth with EIS and create something in the Board Report covering this topic. Additionally, she noted that this review is foundational for the Board to build on in the future and that EIS is a large policy area with a lot of literature. The review is designed to provide a better understanding of how EIS works broadly and individually within agencies. The goal is to look for those best practices with an understanding that there is more in the way of research and literature that can be done on the effectiveness of EIS systems. The background on the EIS systems and the best practices shared come from the US Department of Justice, as well as consent decrees entered into with other agencies seeking to reform their accountability systems along with research groups that serve as experts in research on EIS systems. The overview is provided below.

Ms. Alcaraz stated that the initial EIS content provides context as to why the Board is interested a review of EIS policies. She reminded the Board of Co-Chair Durali’s comments regarding the revelation that officers involved directly in George Floyd’s death had histories of complaints that seemed to go unchecked. Ms. Alcaraz also reviewed the history of EIS noting that the systems came into use in the 1970’s within LEA’s and the key EIS components include:

- The ability to identify at risk behaviors
- An evaluation of “flagged” officer behavior
- Interventions taken by that agency to address that behavior
- Monitoring to ensure long-term change

Ms. Alcaraz further noted that in order to identify certain behaviors, EIS use indicators which are used to identify at risk behavior. She stated that indicators used vary from agency to agency, however she noted that there is a grouping of indicators that are commonly used by most agencies. An example of how it works in practice, she noted, is that individual behavior can be flagged for one category/indicator. Each indicator has a threshold, when an officer meets that threshold, there is a flag on that officer or that event. Further, she noted, other agencies may use a multi-layered approach with their EIS, with successive flags to determine what kind of supervisor response is warranted.

Based upon her review of the literature, Ms. Alcaraz stated that in order for EIS to be effective agencies must have proactive and engaged supervisors and supervising line officers. Additionally, she noted that those supervisors need management oversight to assess the effectiveness of their interventions. She added, that as a best practice it is imperative to have adequate training to spot issues

Ms. Alcaraz noted that the USDOJ includes the following types of indicators in consent decrees with agencies across the nation.

- All misconduct and community complaints against the officer, including disposition of each allegation
- Racial and identity profiling allegations
- All reportable uses of force, broken down by level and type
- Number of shootings or weapons discharges
- All injuries and deaths to persons in the officer’s custody or an officer’s presence at the scene of any deaths
- Vehicle pursuits and traffic collisions involving agency equipment
- All instances in which force is used and a person is charged with Failure to obey, Resisting Arrest, Assault on an Officer, Disorderly Conduct, Trespassing, or similar charges
- All instances in which an officer issues three or more citations during a single encounter
- Violations of the agency’s body-worn and in-car camera policies
- All instances in which an agency learns, that a declination to prosecute any crime or municipal code violation was based upon concerns of the Prosecutor about an

officer's credibility; that a court has made a negative credibility determination regarding an officer, or that a motion to suppress evidence was granted on the grounds of a constitutional violation by an officer

- All criminal proceedings initiated against an officer, as well as all civil or administrative claims filed with or against the agency or its agents that result from the actions of sworn personnel
- All disciplinary action taken against officers
- All non-disciplinary corrective action required of officers
- All awards and commendations received by officers, including those received from civilians
- Officer sick leave usage
- Training record for each officer
- Loss or theft of agency property in custody of the employee, including money, firearms, force instruments, ID cards
- Interviews or interrogations in violation of agency policy and law
- Arrests, especially excessive discretionary arrests
- Off-duty employment
- Traffic Stops
- Warrantless searches and seizures

Ms. Alcaraz stated that interventions should vary to meet the wide range of officers' needs and that the more targeted the intervention the better able to reach improvements. She indicated that the most common interventions include the following:

- Counseling by the immediate supervisor
- Training directed by a supervisor depending upon the flagged behavior.
- Crisis intervention teams that are trained to immediately respond to an incident whereby officers can get immediate peer counseling, can reduce stress, and correct future behavior.

She noted that there are other interventions that are less about the officer skill development and more geared toward personal development. This list includes professional counseling or peer support groups as derived from the research which showed that officers were more open to peer support groups rather than professional counseling due to the stigma that exists. Ms. Alcaraz highlighted the work of experts in their review of the New Orleans based EPIC (Ethical Policing Is Courageous) program. She noted that EPIC is designed to change culture within policing by providing the support for someone willing to intervene when a partnering officer is taking an inappropriate action. Lastly, she commented that Georgetown Law is offering a train the trainer course on the EPIC program via zoom for agencies across the nation.

Ms. Alcaraz next reviewed best practice US DOJ EIS Recommendations. She stated that these recommendations occur when the US DOJ requires agencies to adopt an EIS or improve a system in place. Listed are the some of the following best practices:

- Collect trends for supervisors, precinct, squad, and unit.
- Collect trends for precinct-level activity on use of force, complaints and dispositions, number of officers triggering EIS review, and supervisor EIS reviews with officers.
- EIS policy should include directives setting forth the specific information that the EIS will capture, as well as data storage, data retrieval, reporting, data analysis, pattern identification, supervisory use, supervisory/departmental intervention, documentation, audits, access to the system, and confidentiality of personally identifiable information.
- All data must be entered in a timely, accurate and complete manner.
- Comparisons should be done by peer group between officers of similar assignment and duties to ensure the comparisons are revealing what is taking place in those sections.
- EIS protocol should include data storage, data retrieval, reporting, data analysis, pattern identification, supervisory use, supervisory/departmental intervention, documentation, audits, access to the system, and confidentiality of information protected by law.
- Offer a variety of intervention options like counseling, training, or other supervised, monitored, and documented actions plans and strategies to correct behavior.
- Aggregate statistical information should be kept indefinitely and used to evaluate longitudinal trends

Lastly, Ms. Alcaraz commented that promising EIS practices discussed in the literature focuses on ensuring EIS is a piece of an accountability system within an agency. She noted that it is important for leadership within an agency advocate for acceptance of EIS and to educate line officers, command staff and unions about why EIS is important. She indicated that it is important to convey that it is not a “gotcha” system, but designed not only to improve individual officer skill, and the safety of community members, but the overall agency performance and relationships with the community.

Ms. Alcaraz highlighted a few agency EIS programs, specifically she focused on the Seattle and Phoenix Police Departments, both of which were recommended to the Board for review by our retained experts.. Both systems included key components of EIS including identification, intervention, and follow-up.

She initially detailed the Phoenix system, describing it as having five phases. She explained that it initiated with an EIS coordinator who has responsibility for the initial review of the incident or officer’s behavior and then determining whether or not more should be done. She indicated upon

determination of the need for further steps, the coordinator sends notification of the incident to the officer's supervisor, copying the supervisor's chain of command to ensure the incident is reviewed. She stated that once next steps are determined, there is a meeting with the officer. The employees involved are encouraged to be engaged and provide feedback throughout the process. She noted that once the supervisors meet, an intervention is determined, followed by a subsequent meeting with the officer. Interventions with the Phoenix PD can take three different forms:

- Supervisory – Employee interventions normally in the form of counseling, guidance, conversations
- Training, normally required to be completed as soon as possible
- Wellness-based interventions

Ms. Alcaraz stated that the final part to the system is the follow-up phase which must be completed within 45 days after a supervisor receives an alert. She indicated that documentation with the correct time and date of meeting should be submitted to the second-line supervisor and then coordinator for approval.

Ms. Alcaraz then outlined the Seattle PD EIS system and noted that unlike the Phoenix system there are no specific phases in their policies and protocols. She noted that their timelines of what should happen in their policies and protocols are outlined clearly. Similar to Phoenix, there is an EIS coordinator who sends those notifications to the first line supervisor. She stated that the policies and protocols clearly outline peer groups with indicators that they are following and the thresholds for each of those peer groups so officers know what behaviors would be flagged for review by the system. She explained that when an intervention is needed, the agency created an early intervention plan which follows the incident throughout. She noted that the Seattle PD system clearly delineates the roles ranging from the coordinator to the bureau chief so that it's clear that most in the precinct are participating in the system. Ms. Alcaraz added that they have a specific review committee that looks at precinct level data through the system.

Anna Rick with DOJ provided an update on the survey covering the complaint process itself. She described the survey as consisting of two questions surrounding civilian complaints and the Board's recommendations on how LEA's in Wave 1 and 2 have been implementing those recommendations or taking action based upon them. Ms. Rick noted that one question was yes/no and the other open-ended, prompted to provide actions taken in response to Board recommendations surrounding complaints. Additionally, she shared four data points around civilian complaints from analysis of the agency's responses. She noted that as of September 25, 2020, 13 out of 15 agencies in Wave 1 and 2 had completed the survey. Below are the data points.

- Five agencies reported taking action in response to the Board’s recommendations regarding civilian complaint procedures
- Three agencies reported specifically updating civilian complaint procedures to reflect best practices
- Four agencies reported conducting audits of civilian complaint reports to ensure compliance with the agencies bias-free policing policy
- Nine agencies report having civilian review or community advisory boards

Lastly, Ms. Rick stated that DOJ will soon be preparing an analysis of Wave 3 agencies. There are 12 agencies in Wave 3.

3. Discussion of Proposed Subcommittee Report Contents

Co-Chair Durali inquired whether in the DOJ research were there any agencies that had racial profiling allegations as an indicator and secondly whether any agencies had any independent oversight over these intervention systems? Ms. Alcaraz responded by stating that she is aware of independent oversight role of the inspector general within the EIS of LAPD. She indicated that the research showed that many of the consent decrees contained the request to for permission to use an outside auditing entity over their systems. Co-Chair Durali stated that the EIS overview consisted of robust systems and that she would like to know what implementation of some of those systems looks like in implementation. She also inquired about whether these systems resulted in reform and whether independent audits over EIS have shown their efficacy. Additionally, Co-Chair Durali requested whether we can flag racial and identity profiling as an indicator.

Co-Chair Sierra agreed with the emphasis on ensuring supervisors are following through with intervention. She also stated that it would be helpful to include the subset of indicators used within the EIS systems of Phoenix and Seattle PD. She inquired about the literature on the treatment of complaints, specifically whether there were types of complaints would raise more red flags than other complaints. Lastly, she inquired whether the literature discussed early intervention systems where even when a complaint is not sustained, there is a tracking system that can allow issues to be flagged for review. Ms. Alcaraz responded to the by stating that the Board can look in detail at how indicators of complaints are treated and why are the complaints happening. Co-Chair Sierra also inquired how long the Seattle and Phoenix EIS systems have been in effect.

Co-Chair Durali followed up by asking when the US DOJ enters into the consent decrees have they followed up and audited these systems. Ms. Alcaraz indicated that the monitor report from consent decrees could provide that information and that is something she could research.

Member Frausto commented on issues of EIS effectiveness asking how often Seattle and Phoenix engaged their systems and also noted that identifying those LEA's who do not have intervention systems could provide the board with some interesting information.

Co-Chairs Durali and Sierra both believed the Phoenix and Seattle examples should be included in the report and are helpful to see what kind of systems exist and to imagine what could work if implemented well and supervisors take these issues seriously.

Co-Chair Durali stated that the Board is required to publish the data received on civilian complaints each year and it will be important to include a footnote in this section regarding how differences in the accessibility and categorization of complaints by agencies may account for some of the differences for numbers of complaints reported by agencies.

Co-Chair Sierra commented on the survey stating that she would be in favor of including some of the data surrounding the survey in the report. Member Frausto inquired whether those non-participating agencies should be identified in the report. Co-Chair Durali indicated that it is important to highlight those agencies who participate and who are seeking reform.

Public Comment

After opening the floor for public discussion, there was no public comment.

4. Discussion of Next Steps

- DOJ will review in the literature how civilian complaints specifically are used in EIS
- DOJ will provide more detail on specific indicators in Phoenix & Seattle PD
- Examine the effectiveness of the systems discussed, but also think of the systems as a whole, their effectiveness and future research into the reporting agencies EIS
- DOJ will continue to follow-up with the two outstanding agencies
- DOJ will have the full survey analysis for all 3 Waves for the November draft of the report which should include details from agencies responses around civilian complaint recommendations

5. Adjourn

Co-Chair Sierra thanked everyone for their participation, thanked the members of the public for attending and providing comments and adjourned the meeting at 4:10 p.m.