

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD

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

MEETING MINUTES

October 20 – 10:00 a.m.

Members Present: Co-Chair Steve Raphael, Co-Chair David Swing, LaWanda Hawkins, Lily Khadjavi, Melanie Ochoa, Brendon Woods, Amanda Ray, Ammar Campa-Najjar, Andrea Guerrero, Brian Kennedy, William Armaline, William Ayub

Members Absent: Cha Vang, Ronald Villeda, and Edgar Hampton

1. Call to Order by Board Chairs

Co-Chair Steve Raphael welcomed everyone to the RIPA Board meeting and introduced Co-Chair Chief David Swing.

2. Board Member Introductions

Board members introduced themselves.

3. Approval of Minutes

MOTION: Member Khadjavi made a motion to approve the June 9, 2021 Board Minutes. Member Kennedy seconded the motion.

APPROVAL: The minutes were approved by consensus.

4. Update from the Department of Justice

Supervising Deputy Attorney General (SDAG) Nancy Beninati introduced the Attorney General's new Special Assistant Attorney General for Civil Rights, Damon Brown. Damon Brown was the City Attorney for the City of Compton and worked for 17 years with private law firms on civil cases. He attended UC Berkeley Undergraduate School and Vanderbilt Law School. Mr. Brown expressed appreciation and looks forward to working with the Board.

Deputy Attorney General (DAG) Allison Elgart gave an update on stop data. She advised the DOJ Client Services Program is starting the final phase of Wave 4 agencies who are beginning to collect data. After January 2022, there will be 400 law enforcement agencies reporting stop data.

DAG Tanya Koshy gave an update on the AB 953 Regulations. She advised that the regulations were posted in July and public comments were accepted for two months. DOJ

also held two public hearings and a RIPA Board meeting to discuss the regulations. Twenty six public comments were received and DOJ is now reviewing and considering amendments, and if there are changes, a second 15 day public comment period will follow. If there are no other revisions needed, the final regulations will be sent to the Office of Administrative Law in January or February and should be approved in the Spring 2022, with an effective date of January 2023 to give agencies time to update their programs.

Ms. Elgart provided an update on the 2022 RIPA report. She advised that the draft report has been send to the Board and posted on the website. Board members will discuss the report today and approve it at the December meeting or give authority to the Co-Chairs to make last minute wordsmithing edits to recommendations. The executive summary, the facts sheet, and the appendix are forthcoming. Both the Stop Data and Policies subcommittees will hold meetings in November.

5. Subcommittee Reports

Co-Chair Raphael then moved on to the subcommittee reports. A summary of each report is provided below.

Stop Data Subcommittee – Co-Chair Raphael provided the following summary. The Stop Data Analysis Subcommittee met on July 30, 2021. They discussed population hit rates, veil of darkness tests, impact of the pandemic on human activity, and CHP stops. They also had a few questions about population data.

POST Subcommittee – POST Co-Chair Ochoa discussed the subcommittee’s proposal for the Board to send a public comment letter to POST outlining recommendations for its proposed regulations for AB 846. She explained that AB 846 requires that peace officers be screened for bias during the employment process. The Board’s letter addressed AB 846 and recommended that it be revised to include requirements that: 1) investigators and evaluators assess social media for bias and, 2) they not just make a finding but explain what they reviewed to make the finding. The deadline to submit public comments to POST on the regulation is October 25, 2021.

POST Co-Chair Woods reported on the subcommittee’s proposed written comments of their review of POST’s entry level basic training academy course entitled LD #3 Principled Policing in the Community for inclusion in the 2022 RIPA Report. He stated that the subcommittee found that the course did not include a facilitator’s guide and therefore relied on the instructor’s own knowledge. The principled policing section was not well developed and not the primary focus of the course. The workbook did not contain much historical context about killing Black people, nor did it mention Jim Crow laws, redlining, or segregation. The course did not acknowledge that not all community members feel safe

when they see the police. Some theories in the course like “broken windows” are outdated and encourage officers to treat communities in a disparate way with racist outcomes and should be removed. He stated that the course needs to include alternatives to policing.

Member Woods requested that the Board adopt the subcommittee’s recommendation to the Legislature that the number of members on the POST Commission be increased to a larger body to include more perspectives from community members. Currently 10 members must be law enforcement. This proposed change would be consistent with other Commissions.

Calls for Service Subcommittee – The subcommittee has been reviewing Bias by Proxy. The Co-Chair of Calls for Service, Sheriff Ayub, indicated that the subcommittee recommends that POST add a mandatory course for dispatchers on basic training. Several subcommittee members participated in a Dispatchers Advisory Council to review their training and procedures and learned that there are no uniform procedures to create standards. Some dispatchers have the ability to override the call, while others rely on a computer program to prioritize calls. Some agencies’ policies state that they cannot refuse any call and will always send an officer, and in other agencies dispatchers have more discretion. POST does not mandate training for dispatchers.

Civilian Complaints Subcommittee – Subcommittee Co-Chair LaWanda Hawkins reported that the subcommittee met on August 30, 2021 and reviewed the complaint forms for Wave 3 and 4 law enforcement agencies. The subcommittee recommends that the Board send a letter to the Legislature requesting that 1) civilian complaint be defined; 2) there be improved access and accountability in the civilian complaint process and procedure; and 3) any language that deters the public from completing a complaint form against an officer be removed from that agency’s form. Civil Code 47.5 and Penal Code 148.6 authorize advisory warnings which deter people from filing complaints. The Board previously sent a letter to the Legislature asking them to remove the Penal Code 148.6 advisory. Members Guerrero and Ochoa spoke and suggested that this issue be included in the report and that a second letter be sent to the Legislature with these recommendations and reference to the previous letter. Additional best practices identified by the subcommittee over the past four years include: requiring agencies to assign a tracking number to complaints, requiring a timeline for review or investigation of complaints, and prohibiting law enforcement agencies from stopping an investigation even if it is withdrawn by the individual. The subcommittee recommends that Government Code Sections 47.5 and 148.6 and the conflict between federal and state law of whether it is unconstitutional and the conflict between to include deterring language on the form be resolved.

Policies Subcommittee – Subcommittee Co-Chair Guerrero reported that the subcommittee met on August 19, 2021. The data showed that law enforcement was not statistically successful in locating contraband with respect to consent searches. They discussed consent

searches and how the power imbalance between police and citizen perpetuates mistrust in the community. There is no affirmative response for officers to inform people of their right to refuse the search. CHP has issued a moratorium in the past on consent searches, leaving only those based on suspicion or probable cause supervision based searches. The subcommittee urged agencies to consider limiting consent searches and review policies doing so in the cities of Los Angeles, Humboldt, and Sacramento. The Subcommittee reviewed information and data on pretext stops and planned to review the report drafts on transgender stops, disability and auditing practices at the next meeting.

6. Break - The Board recessed for a short break.

7. Public Comments

Mr. Hylton stated that Members Ray and Ayub should consider resigning from the Board because in his opinion their agencies ignore laws that pertain to them. Audits are not important if not acted upon such as the use of force audits by San Diego.

Julie Traun, Bar Association of San Francisco Criminal Justice Task Force, requested how to make revisions to draft RIPA reports. Regarding bias by proxy, San Francisco provides emergency call center training to teach how to recognize bias by proxy. They would like improvement in the feedback loop by officers to explain what happened and what can be done better. San Francisco updated an order when POST incorrectly stated provisions of Terry v. Ohio case law, and POST should make the correction.

Karen Glover stated that police1.com, an organization that provides law enforcement an online platform of information was purchased by Lexipol. Lexipol provides template policies to law enforcement agencies without community input. Ms. Glover stated she has raised concerns about Lexipol at previous meetings and in correspondence with DOJ.

Officer Bell stated that he has used Lexipol for the past 10 years and was unclear about Ms. Glover's concerns. LEAs must do their own due diligence to make sure the Lexipol policies apply. It outlines state and federal law. Agencies take Lexipol's recommended version of policies and changes it to make it fit their agency. Lexipol is helpful to small LEAs who do not have the resources to continually update policy changes.

8. Board Discussion of 2022 Draft Report

Member Guerrero thanked DOJ for the report and the context in the introduction as well as the transgender policy information and research.

Co-Chair Raphael expressed his appreciation for how the report has evolved. He observed that the report moves between odds ratios and percentage differences and when doing multivariate analyses it looks like results are expressed in odds ratios and this might be problematic. He referenced tables on page 37 and 45 and recommends staff pick one method to use and stay with that model.

Member Khadjavi stated that she was pleased that the sections were more developed and that agencies have made some changes. She suggested for the odd ratio tables have one color that will also be distinguished if printing it in black and white. She asked what are the expected time frames to receive the corrected data. Ms. Elgart advised that the data should be available by the next subcommittee meetings in November.

Member Ochoa made the following comments: Tracking sex work would be useful to include in next year's report. There is a difference in the way young people are searched so next year add a data point for school police. On page 78, supervising officers should not submit charges to prosecuting agencies for crimes on the bases of a mental health crisis and municipalities should adopt policies to reject such charges. On page 81, train officers that time, distance and cover techniques are required by law to be used when feasible to prevent deadly force, and to recognize AB 392. She stated that she liked the section on bias policy. She was not sure whether the analysis captures the full definition of what biased policing is under California law. On page 113, clarify that Lexipol is the name of the company being discussed. Regarding accountability, when determining accuracy of officer data collection for RIPA data, one proposal is to review body cam footage. This is in conflict with best practices to not allow officers to review body cam footage prior to giving a statement on an incident. Regarding community review boards, is the goal the appearance of legitimacy or real outcomes? If outcomes, how is it demonstrated in jurisdictions and is discipline actually imposed? Lastly public access to the RIPA data is important. Are there other ways beyond the published report and the DOJ dashboard for advocates to obtain the RIPA data who don't have the technology resources? This is something to think about for future reports.

Co-Chair Raphael stated that he agreed with Member Ochoa, that one way for the public to have more access to the report is perhaps to create instructional videos on how to download the data and statistical software.

Co-Chair Swing stated that a deeper review of calls for service from officer initiated activity would be useful. Also Co-Chair Swing pointed out that on page 31 of the draft report it refers to factors that are differences in residential population data from the American Community Survey data. The data should also consider retail sectors, tourism locations, employment sectors that reflect members outside of the residential community that affect population demographics and those stopped.

9. Public Comment

Mr. Hylton commended member Ochoa's comments. He expressed that policies related to the pandemic are not included in the report. Disparities increased although the number of stops decreased.

10. Action Items and Discussion of Next Steps

Member Guerrero suggested that the Board send the legislature all of the Board recommendations in a transmittal letter with the report. This letter should include the current and previous recommendations. Chief Swing suggested that the AB 846 letter be sent to POST instead of the Legislature. Member Ochoa stated that the letter would be sent to POST as a public comment letter to the AB 846 proposed regulations.

MOTION: Member Khadjavi moved that the Board send the AB 846 comment letter to POST. Member Woods seconded the motion.

APPROVAL: Ray, Hawkins, Swing, Kulkarni, Woods, Ayub, Khadjavi, Guerrero, Vang, Kennedy, Armaline, Ochoa.

Member Hawkins asked a clarifying question about how to handle the recommendation by the Civilian Complaints subcommittee to ask the Legislature a second time to delete Penal Code Section 146.8?

MOTION: Co-Chair Raphael moved that he and Co-Chair Swing be authorized to work with DOJ to send a transmittal letter to the Legislature that would transmit the current recommendations in the report and past recommendations from prior reports that the Board has made to the Legislature. The motion was seconded by Member Guerrero.

APPROVAL: Guerrero, Kulkarni, Swing, Hawkins, Ayub, Ray, Vang, Khadjavi, Woods, Ochoa, Kennedy, Raphael, Armaline.

Member Guerrero thanked the public for participating in the process by attending meetings and providing valuable comments to the Board.

11. Adjourn

Co-Chair Raphael thanked everyone for their participation, and thanked DOJ staff. He then adjourned the meeting at 12:50 p.m.