

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD
<https://oag.ca.gov/ab953/board>

**STATE AND LOCAL RACIAL AND IDENTITY PROFILING
POLICIES AND ACCOUNTABILITY SUBCOMMITTEE MEETING
MINUTES**

Wednesday, February 26, 2021 – 10:03 a.m. – 11:56 a.m.

Subcommittee Members Present: Steve Raphael, Lily Khadjavi, Felicia Espinosa, Melanie Ochoa, Commissioner Amanda Ray

Subcommittee Members Absent: Andrea Guerrero

Introductions

In the absence of any co-chair, Deputy Attorney General (DAG) Allison Elgart called the State and Local Racial and Identity Profiling Policies Subcommittee to order at 10:03 a.m. The meeting was held with a quorum of members present.

1. Approval of the Subcommittee Meeting Minutes

MOTION: Member Ochoa made a motion to approve the September 30, 2020 subcommittee meeting minutes. Member Ray seconded the motion.

APPROVAL: Five subcommittee members in attendance voted “yes” (**Steve Raphael, Lily Khadjavi, Felicia Espinosa, Melanie Ochoa, Commissioner Amanda Ray**); there were no “no” votes and no abstentions

2. Election of Subcommittee Co-Chairs

Member Ochoa nominated Member Espinosa, Member Raphael seconded the nomination. Five subcommittee members in attendance voted “yes” (**Steve Raphael, Lily Khadjavi, Felicia Espinosa, Melanie Ochoa, Commissioner Amanda Ray**) in unanimous support of Member Ochoa’s nomination. There were no other nominations.

3. Discussion of Proposed Subcommittee Work

A. Bias-Free Policing Matrix & Future Approach

Department of Justice (DOJ) DAG Dominique Alcaraz provided an overview of model policies surrounding accountability systems for LEA’s. She noted the subcommittee’s prior stated interest in researching model LEA accountability systems and pointed out that the research shows that there is not one single policy that encompasses all accountability systems designed to ensure accountability with LEA’s. Ms. Alcaraz stated

that the Board came up with a few categories that make up different accountability systems. They are the following: (1) data tracking and transparency, (2) early intervention systems (EIS), (3) video technology, (4) supervisory oversight, (5) clear policies and pathways, (6) misconduct complaints, (7) discipline, (8) community-based accountability, (9) recruitment, hiring, and promotions, and (10) performance evaluations.

Ms. Alcaraz stated that the Board provided an overview of the accountability systems in the 2021 RIPA report, the details of which serve as the discussion portion of the presentation below. She also noted that DOJ State & Local Policies staff did not focus on EIS as an accountability system. She stated that the Civilian Complaints subcommittee has taken on review of EIS as a topic of interest. She indicated that Civilian Complaints will examine how civilian complaints are used in early intervention warning systems and generally the effectiveness of Early Intervention Warning Systems. Ms. Alcaraz stated to the subcommittee that the other nine accountability systems are open and available for discussion and review for this year's Board work. She noted to the subcommittee to factor in time and resources in selecting an accountability intervention but that it really is up to the subcommittee to determine the direction for the 2022 RIPA Report.

Data Tracking & Transparency

Ms. Alcaraz specified that the Board will explore how data can be used for oversight of individual officers, first-line supervisors, and entire precincts or units. It is essential that this data be accessible to the public, which has a vested interest in ensuring non-biased based policing. In addition, Ms. Alcaraz, proposed the usefulness of the RIPA stop data on transparency and accountability as a data tracking tool.

Video Technology

Ms. Alcaraz indicated that the subcommittee's prior focus was on body worn cameras and other types of video technology that police use in interactions with individuals. She noted that the subcommittee also reviewed the OIG/LAPD report about RIPA stop data. She offered that next steps for this section should entail the subcommittee reviewing the effectiveness of body worn cameras in illegal use of force scenarios or generally how law enforcement should be utilizing the videos that come from these technologies in their accountability of day to day officer interactions.

Supervisory Oversight

Ms. Alcaraz noted that supervisory oversight is a broad intervention in part because it includes recommendations on the oversight of first-line officers as well as command staff to better ensure there is supervision at every level. Ms. Alcaraz stated the importance of looking at supervisor training and reviewing whether policies detail how supervisors should conduct their oversight, reviewing supervisor responsiveness and ability to proactive within their supervision. Ms. Alcaraz also noted that the section – Supervisory Oversight, is covered to a degree by EIS, referencing the Discussion section of the 2021 RIPA Report where the report discusses how these systems require robust or proactive supervision and it discusses the type of supervision required. Lastly, she indicated how the Civilian Complaints Subcommittee may also want to discuss review EIS given interest in looking at the use of civilian complaints as a measure of accountability within an EIS.

Clear Policies & Pathways

Ms. Alcaraz pointed out that this intervention model is broader than others, but specifically, clear policies is in reference to internal, agency policies prohibiting racial and identity profiling. She indicated that many agencies have this policy as an explicit statement in their bias-free policy manuals and as seen in the Board’s matrix review. Ms. Alcaraz explained that the Pathways portion of the prong really focuses on overcoming and encouraging those faced against the “Blue Code of Silence” which are the challenges associated with identifying another officer that has engaged in some discriminatory action.

Misconduct Complaints

Ms. Alcaraz explained that misconduct complaints typically are complaints from folks in the community about officer misconduct and is an accountability measure the Board has shown previous interest for further review. She noted that misconduct complaints could have some relationship to civilian complaints and that this is a topic area that potentially could be covered by the Civilian Complaint Subcommittee. The Civilian Complaints Subcommittee has reviewed the civilian complaint forms, but have not yet reviewed the procedures for a civilian complaint investigation, though this review could take place in the future. Ms. Alcaraz noted that because this is a topic area that could be potentially covered by the Civilian Complaint Subcommittee, this is something for State & Local Policies Subcommittee may wish to keep in mind when deciding upon a course of action for review in preparation for the RIPA 2022 Report.

Discipline Policies

Ms. Alcaraz described the focus behind discipline policies is tied to how memorandum of understand's (MOU) with police unions affect an agency's ability to discipline, or how they discipline and how to ensure policies have built-in discipline expectations based upon engaged misconduct. Additionally, she commented on the subcommittee's interest into looking into best practices for discipline policies seeking congruency between misconduct and discipline. Ms. Alcaraz recalled Member Ochoa's example of incompatible conduct-discipline of a police officer who was more harshly disciplined for the inappropriate use of sick day than for the illegal use of force against an individual.

Community Based Accountability

Under community-based accountability, Ms. Alcaraz explained that the subcommittee's focus of review is on civilian review boards or civilian oversight commissions. She also notes the use of community surveys as used by the USDOJ in consent decrees are useful interventions designed to get the community's input of treatment by law enforcement in their community, including finding out what the community wants to see and the community's perception of local law enforcement.

Recruitment, Hiring & Promotions

Ms. Alcaraz explained that this measure covers a broad variety of strategies for thoughtful and diverse recruitment within law enforcement. She noted that the Board will research best practices, including establishing a strategic hiring and recruitment plan; identifying specific recruiting targets (such as increasing female officer retention); seeking community input; creating a diverse central recruitment team or unit to ensure consistency and cohesion; training for recruiters and background investigators in procedural justice and implicit bias focused on specific issues or strategies relevant to the hiring process; developing and reviewing recruitment materials to reflect the agency's values and mission; and compliance with the strategic recruitment and hiring plan through data. The POST subcommittee will also provide analysis in recruiting and hiring in law enforcement in this year's report, examining bias reduction measures in recruiting and hiring. POST subcommittee's work on hiring is an extension from the development of an examination of diverse hiring practices within policing.

Performance Evaluations

Ms. Alcaraz noted that the subcommittee's focus under this measure is to look at those best practices examining the assessment of an officer in the field, including what

performance qualifications to consider. She provided the example of prior valued peace officer qualifications such as arrests, getting criminals off the streets compared to the number of commendations or valuing the officer's effectiveness at deescalating situations.

Ms. Alcaraz indicated that these are the categories of interest that the Board has carried over from last year's report and sought direction to the subcommittee, as to what should be the Board's focus for the 2022 RIPA report.

Matrix Review

Ms. Alcaraz provided an update of reporting agencies by stating that there are 11 reporting Wave Three Agencies and that there are four other agencies (early adapters) who have decided to report earlier than scheduled. She raised the question to the subcommittee of whether we want to continue with the matrices work for the Wave 3 and early adapter agencies and secondly should we revise the LEA paragraph stop data content to make it more engaging to the reader.

B. Consent and Supervision Stops & Searches

DAG Kendal Micklethwaite provided an overview of probation and parole searches and consent searches. She indicated that research showed that 1.6% of stops in California are those where someone is being asked to consent to a search, this is the sole basis of the stop. Though 1.6% is a narrow window of stops, for those 62,000 individuals who have experienced that type of stop, it is a significant impact on their lives. Further Ms. Micklethwaite noted, for those that are stopped and asked to consent to a search, the rates are significantly higher for those perceived by an officer to be Black or Hispanic. And even when looking at the disparity of consent searches among Black or Hispanic individuals the data shows that the search/discovery rates among Black and Hispanic individuals to be the lowest. She stated to the subcommittee that the data is important but that the real focus when looking at this data is to make policy reform that may reduce or eliminate these disparities.

The Board reviewed statewide and national policies that had a restrictive rule on consent searches, including Minnesota, Connecticut, Rhode Island and New Jersey which initiated in the NJ legislature as a recommendation to prohibit consent searches. In addition, locally the California Highway Patrol (CHP) from 2001-2006 had policies in place restricting the officer from asking for consent to search. Ms. Micklethwaite noted how stop data can inform positive change in policing pointing to the Hamden, Ct. PD who worked with researchers on a Stop Data Project, in identifying significant stop

disparities, and low discovery rates among these disparate stops which perhaps evidenced ineffective police practices. The Hamden PD addressed the stop disparities and the search yield rate increased dramatically, jumping from 7% within ineffective and disparate stops, to 80% among legitimate, suspicion based stops. This subsequently led to passage of Connecticut legislation requiring restrictive rules on consent searches.

Ms. Micklethwaite stated that in 2019, for 0.7% of the stops in California, the primary reason for those stops was that the person stopped was known to be on probation/parole. The .7% represents 96,000 individuals who were searched due to their supervision status. This is a smaller area of policing, but viewed within the context of mass incarceration and a judicial system which has produced inequities becomes much bigger and that much more critical. She stated that there are several agencies with restrictions on inquiring about an individual's probation or parole status including San Diego and Oakland, where in Oakland the policy for the supervised release of an individual to a non-violent offense is that absent a connection to criminal activity or threat to an officer, a warrantless search may not be invoked. Lastly, she raised to the subcommittee, that given the inequities and the data reflecting the disparities among Black and Hispanic individuals with consent searches and probation/parole searches, what is it that the Board wanted to do going forward in terms of model policy reform or recommendations or the adoption of best practices that would go toward reducing and eliminating racial and identity profiling in policing.

C. Gender Analysis

DOJ Anna Rick provided an overview of policy recommendations geared to address gender disparities in stop data through the lens of the 2021 RIPA stop data and the 2015 Transgender Survey, the largest survey examining experiences of transgender people in the US, including those experiences and interactions with police and law enforcement. Ms. Rick noted that the most recent 2021 RIPA report reflected disparities across gender with its stop data, particularly for those perceived by law enforcement to be transgender. She noted that the 2015 Transgender Survey showed that 72% of American Indians and 70% of Black respondents reported that within the past year (prior to the survey) to never or only sometimes being treated with respect by law enforcement. She noted that the RIPA staff and Board have been encouraged to see recent policy changes out of the State of NY aimed at eliminating the profiling of transgender women. She indicated there are existing model policies on gender equality policing including USDOJ's Office of Community Oriented Policing Services 2017 Report on Gender Sexuality and 21st Century Policing. Additionally, Ms. Rick offered that the 2019 National Center for Transgender Equality published model languages for police departments. These policies were developed by the National LGBTQ HIV Criminal Justice Working Group along

with other cooperating organizations by reviewing policies of the 25 largest PD's in the country and grading them on 17 criteria reflecting areas of interaction between law enforcement and transgender people. The review included the LAPD, SDPD and SFPD. From this work, model policies were developed including the following:

- Profiling
- Searches & Harassment
- Best Practices for Non-Binary Recognition
- Search Procedures
- Officer Sexual Misconduct
- Use of Condoms As Evidence
- Best Practices for Search & Seizure training, Immigration enforcement cooperation and Civilian Oversight

4. Discussion

Member Ochoa inquired about the DOJ's capacity to further investigate into agency accountability systems to see what is really going on at the agency level. She specifically indicated the interest to pursue further investigation/research into the agency use of "canned language" in reporting as justifications for stops, searches to reduce and eliminate this practice and that officers should be observing particularized conduct that justifies suspicion.

Additionally, Ms. Ochoa expressed an interest in seeing body cam audits along with other officer self-reporting data to be included in supervisory reviews, including the validation of RIPA data. This includes the number of agencies that have body cams and how many are using them as part of their routine for determining police practice in the field and how many agencies are incorporating them into their disciplinary practices. Member Ochoa cited the LAPD OIG report as an example of a lack of agency accountability, noting the discrepancies between what officers reported on paper and what actually took place evidenced by the body cam footage, and how despite the discrepancies in reporting with some officers, appropriate discipline was not enforced, meaning that no real next steps toward effective policing was established following the report.

Relative to recruitment and hiring and comments related to screening social media for hate group ties Member Ochoa expressed an interest in reviewing how law enforcement has responded in adopting actual anti-bias practices and policies following the passage of AB 846 anti-bias legislation. Specifically, she expressed interest in reviewing agency practices geared to address explicit bias, to weed it out along the way, this includes at the initial hiring stage as well as throughout to include performance reviews as an accountability measure in assessing explicit bias performance.

Additionally, Member Ochoa indicated an interest in reviewing internally generated agency complaints because the research shows that these complaints are more likely to be sustained and result in discipline. She indicated that a focus on internal complaints provides important information to the public, brings a greater public view to smaller organizations that are less likely to have IG reports, provides greater transparency to those smaller organizations, including recruiting and hiring records further shedding light on how an agency addresses explicit bias and could lead to greater overall access of smaller agency records. Member Ochoa liked the idea of looking at performance evaluations and gauging performance that validates the kind of behavior we want to see in interactions between individuals and law enforcement. In addition, Member Ochoa shared Member Espinosa's concerns with Lexipol stating that it would be helpful for advocates to know the impact Lexipol is having with a focus on the disparity between their assertion of state law and what many others believe is the law. Regarding consent and probation/parole searches, Member Ochoa indicated an interest in recommending policies and practices that will result in lessening the negative impacts of disparate policing within this context to communities. She noted that it's key to follow-up and investigate post policy implementation in these areas to gauge its effectiveness in reducing disparate practices.

Member Raphael indicated that similar sentiments in support of the use of body worn camera (BWC) in supervisory reviews were expressed in the Stop Data subcommittee meeting and that he likewise supported its use as an audit tool. He stated support for use of BWC for the purpose of the information it will reveal, and that it's important to know which departments have them, how they are using them and use of them as a comparison for what we can learn from them relative to what is in the RIPA data. He also suggested the use of a tool developed by the "veil of darkness" statistician which provides internal benchmarking officer specific outcomes. The tool could benchmark a set of outcomes for any officer, then determine outliers based upon assignment, shift which could lead to officer outcome interested recommendations. He indicated that this is the type of tool that dovetails nicely into early warning systems, internally generated complaints, it would serve as a statistical management tool. His thought was that RIPA data cannot be used to do this but internal data that agencies have, can be used for this purpose. Relative to the matrix work, Member Raphael stated that he would be interested in adding the Wave 3 plus early adapters to the matrices and having strong LEA stop data content in paragraph form due to the public value it brings.

Member Espinosa expressed interest in reviewing recruiting and promotions with specific interest in looking at people of color (POC) at decision-making leadership levels. She recommended we examine internal promotions and look at those agencies, if any, that have background investigators for the internal promotions process, specifically with regard to assignments, task-force assignments, and what community the officer is assigned. In addition, she expressed an interest in community based accountability and exploring which agencies meaningfully utilize community oversight for discipline, recruitment, and promotions. It was her

recommendation that the Board and DOJ staff go further than research in our examination of this measure but rather perform investigations to determine what is really taking place within agencies. She also expressed concern for Lexipol and other private sector companies who write policing practices policies and would like to know how Lexipol interacts with RIPA recommendations and its impact on policing.

Member Khadjavi recommended, to the extent possible, for the intersection of the Stop Data team and the Policies team, which may be most relevant when reviewing Use of Consent in Searches. She also commented that in the interest of practical progress it may be beneficial to develop narrower questions within the framework of today's subcommittee feedback and generally to develop narrower within a few of the sub-categories.

Member Ray agreed with the recommendation of narrowing the scope within the EIS sub-categories to ensure a greater exploration into accountability measures by the subcommittee. Additionally, Member Ray indicated that in her review of the 2019 National Center for Transgender Equality model language she could see it as a valuable tool for agencies, particularly relative to cultural diversity training and that policy language in this guide is incorporated in CHP's EEO policy.

5. Public Comment

Northern California

Sacramento County Public Defender John Stoller inquired on how to intersect stop data with the recently passed Racial Justice Act. He also asked whether RIPA would make the actual raw data available and lastly whether there was a tool in the works that would create a county by county database of this information.

Southern California

San Diego resident Ernest Davis provided a recommendation to assist with the problem of racial profiling by recommending that Black law enforcement officers serve as senior officers at a random traffic or jay-walking stops. Further, he stated that if a black officer is not there, the engaging officer should be required to call a Black officer. Additionally, Black officers in this role should have monthly training in de-escalation.

Karen Glover had a number of comments including on misconduct complaints, noting that 75% of racial and identity profiling complaints are unfounded, meaning clearly found allegation, found not to be true. This is saying that three out of four folks who get the courage to file a complaint are found to have their complaint not to be true, not even investigated but not true. She also noted that the hiring and recruiting discussion is also about retainment, about who feels most comfortable about staying and who self-selects out and recommended cluster hires as a way to bring in officers of color and provide them with a group of folks who are supported with them so

that there is no single officer, or one of a few officers of color. She also commented on Lexipol as template policies that run counter to what RIPA was born to do. Lastly, she cautioned on using the terms utility and efficiency when discussing consent searches because it opens the door for 14th amendment violations and when using that language tied to finding contraband with a particular group it could suggest that law enforcement is justified to go after these folks, although the RIPA data shows the reverse with search discovery rates.

Anne Barron from San Diego commented that certain groups and youth are disproportionately stopped by police, does RIPA separate youth data from the general population data. Secondly, she noted that police are being called on to enforce “so called” public health requirements and wanted to know whether there has been any consideration to develop policing pandemic or health crisis policies in a similar fashion to mental health policing policies.

DAG Allison Elgart responded to the Racial Justice Act public comment by stating that the data collected under this act is separate from the data collected under RIPA. Regarding the question of separating youth from general population data, Ms. Elgart indicated that data can be separated by age in the RIPA dashboard. The use of the tabs within the dashboard allow you to sort data by age.

NEXT STEPS

The subcommittee has provided great feedback for DOJ staff to enrich this policy section of the report. The staff will take the feedback and follow up with research, talk to experts and determine measures necessary to develop policies looking to reduce disparities in these key policies areas.

6. Adjourn

Subcommittee Co-Chair Espinosa adjourned the meeting at 11:56 a.m.