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

CIVILIAN COMPLAINTS SUBCOMMITTEE MEETING MINUTES

March 30, 2021 – 2 p.m. – 3:54 p.m .

Subcommittee Members Present: Chief David Swing, Andrea Guerrero, Brian Kennedy, Cha Vang, LaWanda Hawkins
Subcommittee Members Absent: Rev. Nancy Frausto

1. Introductions
In the absence of any co-chair, Deputy Attorney General (DAG) Allison Elgart called the Civilian Complaint Subcommittee to order at 2 pm. The meeting was held with a quorum of members present.

Approval of Subcommittee Meeting Minutes

MOTION: Member Hawkins made a motion to approve the March 30, 2021 subcommittee meeting minutes. Member Kennedy 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
Deputy Attorney General (DAG) Domonique Alcaraz provided an overview of the Civilian Complaint analysis during the lifespan of the RIPA project. She explained that the work first began with the surveying of 114 LEA's throughout the state and reviewing those responses to better understand the Civilian Complaint policies and procedures that exist within law enforcement agencies (LEA) throughout the state. She noted that following the 2018 and 2019 RIPA reports provided recommendations and best practices for agencies on:

- Accessibility to file complaints
- Translation & interpretation services
- Complaint procedures & investigations

Ms. Alcaraz noted that the 2020 RIPA report reviewed Wave 1 Civilian Complaint forms, provided best practices for Civilian Complaint forms and discussed barriers to data collection and barriers to the Civilian Complaint process overall. Specifically, she noted that California Penal Code section148.6 is an additional barrier to submitting Civilian Complaints due to

potentially chilling language requiring individuals to read an admonition and sign the complaint without the option to submit the complaint anonymously or by third party. She indicated that the 2021 report reviewed Wave 2 Civilian Complaint forms, which surveyed the responses of 25 LEA's relative to their Civilian Complaint policies and procedures. She noted that this included whether there existed some type of civilian oversight, whether civilian board or commission oversight. Ms. Alcaraz also noted that the 2021 Report provided a foundational discussion on Early Intervention Systems (EIS), including how they are used, the need for supervisory engagement, and those common indicators identified in flagging officers for EIS. Lastly, she indicated that the 2021 report also provided USDOJ recommendations for early intervention systems.

Ms. Alcaraz stated that the historical review of civilian complaints was to show where the state is currently, relative to civilian complaint policy. She then noted that Penal Code section 832.5, the statute which governs civilian complaint policy, requires that California agencies have a civilian complaint procedure and that there should be a written description of the procedure. She explained that the challenge relative to consistency and clarity is that the statute does not detail how the civilian complaint procedure should work in practice. She indicated that it leaves a great deal of discretion in the hands of LEA's, including how to label a civilian complaint when submitted to an agency. Relative to Penal Code section 13012, Ms. Alcaraz stated that the statute requires submission of disposition information for each civilian complaint and has a number of disposition options (i.e., exonerated, sustained, not sustained) but does not require each agency to have same disposition options. She noted that Section 13012 does require agencies to submit the data with those disposition options however, reflecting a lack of consistency and clarity with civilian complaint policy among LEA's throughout the state.

Ms. Alcaraz noted in the 2020 report, the Board highlighted RIPA's goal of obtaining more granular data on civilian complaints alleging racial or identity profiling because it allows for better analysis of civilian complaints and recommended that agencies use similar methods to define and track civilian complaints discussions. Additionally, she stated that in 2018 the Board recommended changing the way civilian complaints are reported. She stated that DOJ took the recommendation and changed their civilian complaint data collection form. The changes included:

- Disaggregating complaints reported and resolved in the same year from those that are resolved in a separate year.

- Disaggregating complaints made in a local detention center from those outside a

detention center.

- Disaggregating by offense level, i.e., misdemeanors, felonies, for each disposition

Ms. Alcaraz next reviewed the civilian complaint form through the matrices. Specifically the review consisted of an analysis of the content of Wave 1 and 2 civilian complaint forms. She indicated that the review looked at the following best practices the subcommittee included in the RIPA report: online accessibility, access to online submission, multiple methods of submission, form availability in multiple languages, third party complaint submission, inclusion of narrative field, whether there is presence of chilling language from Penal Code section 148.6, and details of civilian complaint process attached to form explaining the complaint process. Ms. Alcaraz inquired to the subcommittee, that with the preceding complaint form best practices in mind, did the subcommittee want to do this same matrix analysis for Wave 3 and Wave 3.5 early adopters.

Ms. Alcaraz pointed out the existing statewide discrepancies with the definition of a civilian complaint and its processes. She noted that the 2020 RIPA report, following a review of Wave 1 complaint policies, it was revealed that the term "civilian complaints" is not defined in agency policy nor state law. The impact of this lack of consistency raises issues of whether an agency will actually investigate a complaint and whether it would be reported to the DOJ. These issues resulted in the subcommittee's decision at the end of 2020 to find a definition for civilian complaint to recommend in the report. She also noted that the 2020 Board report included two definitions for civilian complaints in the report.

- LA County Grand Jury suggested that "a complaint is an allegation by any person that a sworn officer or custodial employee of an agency, or the agency itself, has behaved inappropriately as defined by the person making the allegation. The person making the allegation is the complainant."

- National Association for Civilian Oversight of Law Enforcement (NACOLE) suggested "types of complaints that should be investigated include allegations that, if proven true, would represent misconduct under the police department's policies and procedures."

Ms. Alcaraz suggested that the subcommittee could use the definitions as a base to work from and provide feedback or recommend language for the definition that may lead to a recommendation by letter to the legislature. She noted that the subcommittee could also provide a civilian complaints definition to be included in the report and included in a letter to the legislature. She stated that the letter to the legislature could request a change of law to

include the definition of civilian complaints along with other recognized best practices to consider raising to the legislature.

Ms. Alcaraz noted the civilian complaint procedures and processes best practices raised previously by the subcommittee and possible next action steps, including:

- Review agency procedures in relation to best practices

- Recommend standard investigative procedures for state LEA's to follow

- Providing a presentation from different LEA's on their investigative procedures

- Review of civilian participation in the investigation or oversight process

- Recommend how civilian review boards should be incorporated with law enforcement with respect to civilian complaints

Ms. Alcaraz noted that last year's report included a foundational discussion on Early Intervention Systems (EIS), which provided greater understanding of the EIS field. She reminded the subcommittee of its expressed interest in looking at the effectiveness of EIS systems, specifically whether these systems are performing by design, reviewing what components of the EIS system are effective and what is not and whether civilian complaints are included with EIS and how that process works.

She highlighted one particular EIS designed by the Center for Data Science & Public Policy, as the first data driven; machine learning-based EIS for police officers. She pointed out that the system was designed to cover and improve upon adverse interactions between individuals and police. By looking at those interventions, including training, counseling, and support, departments can get ahead of the curve by reducing risk of use of force. Ms. Alcaraz stated that agencies tend to have threshold EIS systems, either; 1) providing for a minimum count of particular incident within a set number of days or 2) using outlier systems, which flag officers for high risk due to an unusual number of incidents relative to the number of incidents of other officers. She noted that the Center for Data Science & Public Policy found that these systems tend not to be accurate, either over identifying or under identifying individuals for flagged behavior. The result is that officers can fudge the system by way of documentation to prevent from being flagged. She explained that the machine learning data science mechanism takes information from agencies to then rank officers. She noted that the information factored in includes where they patrol, duration on the force, type of training, payroll, civilian complaints, internal affairs investigations, along with other demographic

information and details reflecting the way an officer carries out their duties. She stated that this system processes the data and ranks officers to determine who would likely have an adverse action in a particular time setting and who needs most immediately, those interventions that reduce adverse interactions.

Ms. Alcaraz inquired whether the Board would be interested in learning more about the machine learning data science mechanism created by the Center for Data Science & Public Policy. She indicated this could be achieved by way of presentation from the Center for Data Science & Public Policy team or by speaking with the San Francisco PD, who worked with this group in coming up with an EIS model, to determine EIS impact with SFPD officers.

3. **Discussion of Proposed Subcommittee Report Contents**

Member Kennedy inquired how an individual complainant would know that their complaint is investigated and adjudicated. Ms. Alcaraz responded by stating that it depends on the agency and that some agencies provide a letter, however she noted that in her experience, there are generally no details of the outcome of the investigation provided to the complainant. Further, she stated that processes are dependent upon the agency, and that there is no requirement by law to provide complainant with any information once the complainant has submitted the complaint. Member Kennedy followed up by stating that due to this lack of LEA consistency with civilian complaint processes, the subcommittee could take up the charge to push for uniformity among LEA's to respond to complaints. Member Guerrero noted that it speaks to visibility and transparency in the process and that it would be good to know whether a requirement of providing complaint information exists within the penal code and if not, that the subcommittee consider this matter along with other recommendations raised in the presentation. Member Kennedy stressed the importance of uniformity in the process including looking at how much information should be in the civilian complaint report, defining what needs to be reported and providing time frame expectations for reporting back to the complainant. Member Hawkins commented on the importance of establishing expectations for the public, noting that individuals want to be heard and want to know whether someone reviewed their complaints.

Member Swing noted that in Penal Code section 832.7, subdivision (f)(1), the statutory language provides for an agency to provide written notification to the complainant party of the disposition of the complaint within 30 days of the disposition. Ms. Alcaraz commented that currently there is nothing in the law that provides tracking mechanisms for the complainant and ultimately the law does not detail anything other than providing the disposition. Member Guerrero reminded the subcommittee that the mission is to identify those topics we would like to see covered in the report such as the recommendation

provided by Member Kennedy to simplify and bring uniformity to LEA responses to the civilian complaint process.

Member Guerrero inquired whether the RIPA Board had heard back from the legislature regarding a letter sent requesting changes to PC §148.6, to clean up the chilling effect it has on complainants. Ms. Alcaraz replied, stating that the RIPA Board has not heard back from the legislature on this matter. Member Guerrero inquired whether there is a legislator willing to take up the PC §148.6 matter. DOJ Supervising Deputy Attorney General (SDAG) Nancy Beninati responded by stating that Dr. Shirley Webber brought this up before the legislature prior to the Covid pandemic, it has sense been placed on hold.

Member Swing offered two perspectives in analyzing a high number of complaints within an agency. One perspective is that the high numbers could be a red flag within an agency, requiring the need to examine the reason behind the high numbers. A second perspective is that the high number of complaints could be perceived as an indicator of trust from the community. The community submits complaints knowing that a complaint is going to be investigated. Member Kennedy offered that high numbers within an agency could present an opportunity to incorporate EIS within department procedures and suggested that if Member Swing's two perspectives are reality, the RIPA report could potentially highlight those agencies that have a high level of trust.

Ms. Alcaraz inquired whether the subcommittee had an interest in having a presentation by community members or an agency related to civilian complaint procedures or EIS, given the subcommittee's heavy focus on two large topics, EIS and civilian complaints. Member Swing wanted to examine how smaller agencies are using EIS, given that the smaller agencies in California represent the majority among all state agencies. Ms. Alcaraz also inquired whether the subcommittee is interested in going forward with the Civilian Complaint matrices for Wave 3 and 3.5 agencies, who will be reporting this year. Member Guerrero offered a recommendation to RIPA to automate the survey so that generation of data is straightforward computation. Further, she noted that, though this information may not be in the report, it could be added as an addendum to the report. This type of automation could be helpful for those smaller agencies and community advocates allowing access to the same data that the Wave 1 agencies provided.

Member Guerrero raised a concern about those agencies who rely upon Lexipol for their internal policies, inability to afford the Lexipol system update on a regular basis. Further, she noted the challenges that precede from failure to update including a lack of access to adverse interaction reduction best practices.

Member Swing indicated an interest in hearing a presentation on civilian complaints and EIS to better inform the conversation and expanding the matrices beyond Wave 1 – 3.5 given that many of the Wave 4 members are smaller agencies that make up the bulk of law enforcement throughout the state. Member Guerrero inquired whether the report included model or best practices around civilian complaint procedures and complaint forms. Ms. Alcaraz provided background that the in the past the subcommittee would give broad recommendations and provide model language for agencies to adopt, which is what took place with the complaint form. She noted that there are no model procedures or investigative practices and that what resides within the RIPA report are best recommendations. Member Guerrero stated that she would like to see a model civil complaint procedure that might draw from LEA's in California or professional experts such as the Police Executive Review Forum or the Vera Institute or 21st Century Policing recommendations. DAG Allison Elgart stated that the idea for model procedures has been raised before by the Board and that the subcommittee may be able to come up with a way to include model language or model categories. Further, she noted that the main reason why RIPA has not done a model form is due to Penal Code section 148.6, which has not been resolved. She stated that in the past there has been hesitation by the Board about having a model form with the concern that Section 148.6 language would have to be included. Once Section 148.6 has been resolved, the next step would be to develop a model civilian complaint form.

Public Comment

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

4. **Discussion of Next Steps**
   - DOJ will provide a presentation representing LEA's throughout the state to discuss EIS, specifically looking at 1) what they use for an EIS, and 2) how they use their systems

   - The subcommittee will examine ways to shore up the civilian complaint investigative process, including looking at what is required by law

   - The subcommittee will write a letter to the legislature and include in the report best practices relating to the investigative process and the complaint tracking system

   - The subcommittee will review the Wave 3 and 3.5 civilian complaint form matrices

   - DOJ will provide civilian complaint definitions, in addition to what has been

provided in the report, as a baseline to assist the subcommittee in developing language for a civilian complaint definition.

5. Adjourn

In the absence of any co-chair, DAG Allison Elgart thanked everyone for their participation, thanked the members of the public for attending and providing comments and adjourned the meeting at 3:54 p.m.