

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD

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

CIVILIAN COMPLAINTS SUBCOMMITTEE MEETING MINUTES

August 30, 2021, 12 p.m. - 2:14 p.m.

Subcommittee Members Present: Chief David Swing, Brian Kennedy, Cha Vang, LaWanda Hawkins, William Armaline

Subcommittee Members Absent: Andrea Guerrero

1. Introductions

In the absence of any co-chair, Deputy Attorney General (DAG) Allison Elgart called the Civilian Complaints Subcommittee to order at 12 pm. The meeting was held with a quorum of members present.

Approval of Subcommittee Meeting Minutes

MOTION: Member Swing 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.

Nomination of Subcommittee Co-Chairs

Member Swing nominated Member Kennedy as Co-Chair of the Civilian Complaints Subcommittee. Member Kennedy accepted the nomination and was unanimously approved by all subcommittee members present as the new Co-Chair.

Member Swing then nominated Member Hawkins as Co-Chair of the Civilian Complaints Subcommittee. Member Hawkins accepted the nomination and was unanimously approved by all subcommittee members present as the new Co-Chair.

2. Overview of Proposed Subcommittee Work by Department of Justice

DOJ Deputy Attorney General (DAG) Domanique Alcaraz provided a recap on the prior work of Civilian Complaints section for the 2022 RIPA Report. She noted that prior Civilian Complaints Subcommittee meeting discussions covered recommendations for the creation of a statutory definition of civilian complaints to ensure procedural uniformity of the civilian complaint process. Further, DAG Alcaraz explained that given the Subcommittee’s role in providing best practice recommendations for civilian complaint procedures and forms, the

next step could be for the Subcommittee to provide direct recommendations to the legislature on how to improve the civilian complaint intake process.

In DAG Alcaraz’s overview of the most recent work of the Subcommittee, she discussed the subjects of the report section, including: (1) an analysis of the latest waves of agencies reporting and their complaint forms; (2) state law language concerning civilian complaint processes and procedures; (3) Wave 3 Civilian Complaint – Early Intervention System (EIS) outreach and (4) the creation of a civilian complaints definition. DAG Alcaraz explained that with guidance from DOJ experts along with research on best practices, the Board took elements of best practice policies to develop a proposed civilian complaint definition available for evaluation by this subcommittee.

Member Hawkins asked about how COVID-19 could potentially impact the 2020 and 2021 data given that many of the current alternative civilian complaint access options, whether calling in to an agency or going online, were inaccessible in part because many stations have closed, specifically in Los Angeles County. In response, DAG Alcaraz stated that the RIPA data analysis of the number of complaints received by law enforcement agencies (LEAs) is separated from the issue of individual access to file a complaint. Additionally, she noted that the analysis did not entail looking at COVID-19 and its effects, but that it could be a topic worthy of future exploration within the Subcommittee.

Following a review of the proposed civilian complaint definition, Member Swing commented that the “illegal acts of conduct” language within Part A could be omitted given that all acts specified within the proposed definition constitute violations of law, departmental policy, rules or regulations, rendering the language as redundant. He added that the specified illegal acts of officer conduct should not be explicitly called out in the definition of a civilian complaint. Further, he noted redundancy concerns with Part B of the proposed definition, which calls for an officer who becomes aware of officer misconduct in the course of a civilian complaints investigation to then file a complaint. Member Swing noted that Part B addresses internal investigations. Further, noting redundancies, he explained that an officer aware of another officer’s misconduct has a duty to intercede under department policy and questioned whether filing another complaints claim on an officer involved in misconduct accomplishes more than the current process. Lastly, Member Swing commented on the challenges of lumping internal administrative complaints with external, citizen- and community-generated complaints expressing his belief that they should be bifurcated.

In response, DAG Alcaraz explained that the definition was written to encompass both those external and internal complaints. Further, she explained that Section B encompasses situations where some agencies will mark a particular complaint as an inquiry or a general investigative complaint.

Member Vang inquired on what the goal of the Subcommittee is with respect to the civilian complaint definition; whether it is to be added to the report or to develop a recommendation to be sent to the legislature. DAG Alcaraz responded by stating the goal of the Subcommittee is to both add the definition to the RIPA report and develop a recommendation to ultimately be sent to the legislature to codify the definition of civilian complaint.

Both Members Armaline and Swing raised questions on how an agency would handle civilian complaints about policy that are codified as part of the overall complaint process. DAG Alcaraz explained that there are particular outcomes listed in the Penal Code regarding civilian complaints and there are certain outcomes that need to be reported to DOJ under AB 953. Further she noted, that in addition to the standard outcomes of complaint procedures of sustained, not sustained, unfounded and exonerated, agencies will add and can designate outcomes as part of their own procedure.

Next, DAG Alcaraz pointed to the list of best practices for civilian complaints for Board review that are currently being incorporated by state agencies. She explained that the practices under review were recommended by the Board to law enforcement through prior RIPA reports and that the subcommittee could review these recommendations with the intention of drafting a letter to the legislature regarding civilian complaints processes and procedures.

Member Swing expressed appreciation for best practices requiring forms in multiple languages and a timeline process. He added, however, that the on-line portal best practice may be burdensome for some of the smaller state agencies who may not have the resources to create a separate portal to track complaints. Additionally, he favored replacing the “require” language within the list of best practices with “recommend,” noting that the use of require is too strong in a letter of recommendation to the legislature. Member Vang stated that use of “require” language is appropriate when reaching out to the legislature so that the voices of those who have exercised a formal complaint process will be heard. Member Hawkins expressed access concerns to the complaint process, noting that people may have a complaint related issue and either lack information to access complaint resources or simply may avoid the process due to a level of discomfort. In response, DAG Alcaraz identified that there were recommendations on the best practices list that address complainant issues of trust and discomfort with the complaint process, including recommendations that community-centered areas collect civilian complaints in order to bridge that gap of trust between individuals and the complaint process. Member Vang inquired about the follow-up process for civilian complaints. DAG Alcaraz responded that state law requires that the complainant be informed of the status of their complaint within 30 days. DAG Alcaraz pointed to best practices where

complainants are provided a tracking number and the contact information of the investigating officer.

DAG Alcaraz explained that the section also includes a recommendation to follow-up with the legislature regarding penal code Penal Code §148.6. She also noted that in this round of agency review, there was an increase in civil advisories on agency websites and on their civilian complaint forms. Further, she stated that a best practice that has been discussed for several years by the Board is ensuring that the civilian complaint process does not employ language that will deter a complainant from filing a complaint. DAG Alcaraz added that the Subcommittee can either work to either resolve the Penal Code §148.6 legislatively or generally recommend prohibiting the use of deterrent language on civilian complaint forms in its entirety.

Pastor Kennedy commented that the Subcommittee is charged with balancing the interests in ensuring individuals are free to access the civilian complaints process without fear of reprisal and ensuring law enforcement are protected from false claims. Member Vang commented that she would want community members to feel safe and that the disclaimer will not deter those who seek to falsify. Members of the community, however, who seek to file legitimate complaints are more likely to be among those who are deterred from filing a complaint. As a point of clarification for the subcommittee, DAG Alcaraz explained that while Penal Code §148.6 requires complaint forms to carry the disclaimer and acknowledgment that knowingly filing a false complaint may be prosecuted as a misdemeanor, no such requirement exists under Cal. Civil Code § 47.5. Civil Code § 47.5 is —a separate provision that allows officers to “bring an action for defamation against an individual who has filed a complaint. The latter code is not required by statute to have the “defamation” language on complaint forms. She added that it is the Subcommittee’s decision regarding how to proceed in resolving Cal. Civil Code § 47.5, Penal Code §148.6, and that Cal. Civil Code § 47.5 could be resolved in the same manner as Penal Code §148.6 or ultimately the subcommittee could recommend that Cal. Civil Code § 47.5 language be prohibited from being listed on complaint forms.

Member Vang commented that she would like to see additional data on Cal. Civil Code § 47.5 and Penal Code §148.6, believing that the data could lead to a more robust conversation and lend to greater feedback around the issue of language on civilian complaint forms. Member Kennedy inquired about conduct-misconduct language provided in the workshop definition of complaint and whether that language would be helpful in better understanding the types of complaints and how they could be categorized. He noted that best practice is to inform community members of what types of behaviors fall into the violations categories that would trigger a potential complaint.

3. Discussion of Proposed Subcommittee Report Contents

DAG Alcaraz provided the following definitional language voted on by the subcommittee:

Proposed Definition of Complaint

(1) Complaint means either of the following:

(A) any issue brought to the department or agency where the complainant perceives that an officer engaged in criminal conduct, abusive or discriminatory behavior, inappropriate or discourteous conduct, or violation of any law or rules and regulations of the department or agency; or

(B) disagreement solely with the policies, procedures or services of the department or agency and not with the performance of any personnel. If during the course of investigating this type of complaint, an officer discovers conduct by another officer that could be the basis of a complaint under subd. (1)(A), shall report this conduct to a supervisor, which should be logged, tracked, and investigated separately from the original complaint.

Member Swing motioned for a vote on the definition presented. Member Kennedy seconded the motion, with all members voting in favor to move the proposed definitional language to the full board for a broader discussion

Member Vang motioned for a vote to send recommendations on the proposed definition and the best practices recommendations to the full Board for discussion and to draft a letter to the legislature. Member Armaline seconded the motion, which was then voted on and approved by all subcommittee members.

Public Comment

Michelle Wittig stated that the Board is tasked with finding language that allows for complaints to be filed by the public or by officers for what is perceived as an act of misconduct. Further she noted that it is not necessary to eliminate all forms of complaint language which would not be judged by a lawyer to be criminal. She explained that would be an extremely high bar for even accepting a complaint. Ms. Wittig further noted that she did not believe the RIPA Board mandate was intended to limit complaints in that way relative to the types of complaints that are currently being accepted.

Richard Hylton commented on the Oakland field interview data removal and noted in that scenario, Part B of the proposed civilian complaints definition would apply, as the complaint would be directed toward the processes and procedures rather than personnel. He also noted that with respect to Penal Code §148.6, the most important element is the deterrent element and not the data.

Karen Glover expressed concern about the amount of time discussing false complaint reports on law enforcement and found the discussion particularly distressing given RIPA's grounding. She noted that the reason why recommendation language can become wordy is because generalized language is often exploited and used to silence those issues around discriminatory practices and misconduct. In addition, she explained that misconduct is a generalized term that we use when discussing police. Further, she noted in reality we are talking about much more serious behavior when referencing law enforcement. We do not use the term misconduct when we are talking about the everyday person but we use that weak, generalized term for the police. Lastly, she expressed that part of the work with the words and language and policy is understanding the power of words.

4. Discussion of Next Steps

- Prepare for Board discussion on voting items, including the definition of civilian complaints, deterrent language, and Penal Code §148.6 and Cal. Civil Code § 47.5.

5. Adjourn

DDAG Allison Elgart thanked everyone for their participation, thanked the members of the public for attending and providing comments, and adjourned the meeting at 2:14 p.m.