

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD (BOARD)

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STATE & LOCAL POLICY SUBCOMMITTEE MEETING MINUTES

June 13, 2022, 11:00 a.m. - 12:45 p.m.

Subcommittee Members Present: Chair Andrea Guerrero, Steven Raphael, Melanie Ochoa, Commissioner Amanda Ray, Lily Khadjavi

Subcommittee Members Absent: Ammar Campa-Najjar, Manju Kulkarni

1. Introductions

Chair Guerrero called the meeting to order at 11:00 a.m. Each subcommittee member introduced themselves. There were members of the public attending remotely via BlueJeans and no additional members of the public at in-person host sites. Chair Guerrero requested all members to review the minutes prior to voting on the approval of the minutes.

2. Approval of November 10, 2021 Subcommittee Meeting Minutes

Member Raphael motioned to approve the minutes. Member Ochoa seconded the motion. All members voted “Yes,” there were no “no” votes, and no abstentions.

3. Overview by the Department of Justice of Accountability Oversight Systems

Deputy Attorney General (DAG) Jennifer Soliman with the Civil Rights Enforcement Section (CRES) provided an overview on accountability systems. She noted that there were three main mechanisms of accountability; 1) criminal, 2) administrative, and 3) additional oversight such as agencies or boards outside of police departments, such as the District Attorney (DA). She stated that her research discovered a unique department in the City of San Francisco called the Department of Police Accountability. She explained that the oversight unit is a government department outside and independent of the San Francisco Police Department (SFPD) with authority to investigate the SFPD and independently audit the SFPD every two years for use of force (UOF), and the manner misconduct is handled within the department. Further, she noted that the oversight authority of the Department of Police Accountability is mandated by the City of San Francisco charter. She stated that additional powers of the Department includes mediation authority between SFPD and the community, making policy recommendations to the San Francisco Police Commission, as well as engaging in outreach to the community in order to receive community feedback useful for making policy recommendations. She stated that one policy recommendation of note is one that the Police Commission adopted allowing the Department of Police Accountability a seat at the table at the concurrence meetings within the Police Commission, which, as DAG Soliman noted, is a meeting with the command staff of the SFPD. She explained that in these meetings final decisions are made of what is and is not included in a policy before it’s submitted to the Police Commission. She further explained that this particular policy is worthy of noting because this meeting was previously a closed door meeting without civilian oversight or any collaboration with the community. Lastly, she stated that the Policies Subcommittee is interested in looking further into this Department and have set up a meeting to learn more about the Department of Police Accountability, including its successes, outcomes, and lessons learned along the way.

She stated that she briefly looked at risk management forums in certain municipalities, including Oakland, and are making efforts to reach out to Oakland risk management experts. DAG Soliman stated that she has also reached out to experts in New York City (NYC), who noted that NYC is also creating a risk forum modeled after Oakland's risk management forum.

DAG Soliman stated that in addition to risk management, an additional oversight system is an Inspector General's office. She noted the existence of the office in Los Angeles (LA) and at the Federal level, explaining that the Inspector General (IG) at the federal level is an independent agency that reports directly to Congress and oversees federal law enforcement agencies such as the FBI and the CIA. DAG Soliman stated that she reviewed a study that evaluated IG's offices for their oversight mechanism, utilizing success factors such as credibility, including independence from the department under oversight, access not just to documents and information, but if necessary, to people for interview purposes, and support from government agencies, including financial support.

DAG Soliman stated that she lastly reviewed civilian oversight boards and spoke with an expert in New York City regarding their Civilian Complaint Review Board (CCRB). She stated that the expert discussed how they are creating a system in which the public is confident that their complaints are taken seriously. She stated that she also looked into studies that were attempting to track the effectiveness of civilian oversight boards. She noted that one study showed the difficulty in tracking the effectiveness of civilian oversight boards, explaining that they are common across the country and all have different varying resources and powers making it difficult to generalize the effectiveness of civilian oversight systems when there is ambiguity in the complaint data. She noted the example of increased complaint numbers which can take on a multitude of meanings; including an increase in police misconduct within a particular community, or that the community served is confident in the system and therefore confident in reporting, or perhaps it's a well-designed system effective in gathering complaints from the community. DAG Soliman stated that she did find one study that examined civilian oversight boards and in essence found that it was not very effective. She stated that the study found that the perception of police misconduct within the community changed very little and that there remained existing racial patterns within policing in that community which suggested racially disparate policing continues to exist.

DAG Soliman stated that she also looked into criminal mechanisms of oversight; specifically looking at certain complaints at the local law enforcement agency level where if a crime or criminal misconduct is detected those cases are then elevated to the local DA's office who then assumes investigatory authority of the case. Further, she stated that regardless of a complaint, the DA's office will investigate officer involved shootings (OIS), and death custodies. She noted that when local mechanisms are exhausted the DOJ has authority to investigate and redress if necessary and that under Assembly Bill 1506, the California DOJ is now required to investigate all incidents of an OIS resulting in the death of an unarmed civilian in the State of California. She stated that a final mechanism of oversight is the administrative side of accountability. She stated that this covers noncriminal misconduct and perhaps violations of policy along with other misbehavior and misconduct with a police department. DAG Soliman stated that she talked to experts in this area as well and looked at studies and various articles and indicated that it seems

the efficacy of the administrative investigation mechanisms are very much affected by the culture within a police department. She stated that one expert indicated that culture can be an impediment to accountability within a unit and that often officers may view supervision oversight as punishment or discipline rather than a means of enabling them to carry out their duties in a more effective way that supports communities. She stated that the research shows that a cultural shift may be needed in order to increase the efficacy of internal police accountability. She noted that one expert indicated that one method that could increase efficacy is by standardizing certain oversight systems within the department and employing these processes as part of standard operating procedure so that feedback given to officers, or involvement with an early intervention system (EIS) is not uncommon and removes the punitive tint to oversight processes. She indicated that the expert also recognized the importance of internal investigations within the department along with the need to set benchmarks in their investigations in order to effectively investigate internal misconduct and that agencies should be given responsibility as well.

DAG Soliman stated that studies have shown that officers are highly responsive to internal oversight mechanisms at the supervisory level even if they do not carry incentive shifts or heightened negative consequences. She noted the example of the stop and frisk era in New York City which was a problematic policy for many people and there were many agencies lobbying to have the practice changed within the city, but what proved most effective in actually changing the police practice was a memorandum issued by the Police Commissioner which ultimately changed the stop the frisk procedure. She stated that this procedural, managerial directive within the Department by the Police Commissioner was more effective than the collective lobbying effort of outside agencies. DAG Soliman commented on the work of one expert who stated that the supervisors should change metrics of evaluation such that they are more aligned with constitutional policing and that supervisors really play an integral role in changing culture within a department. She noted a New York City example where they created a lieutenant level supervisor referred to as an integrity control officer, who is specifically tasked with the integrity check at each precinct. She explained that this officer looks at integrity and misconduct along with other issues and was implemented in the hope of creating internal related to internal accountability. She stated that research showed that these integrity control officers had responsibilities in addition to the integrity related responsibilities such that they were unable to perform either of their responsibilities well. DAG Soliman stated that she also looked into early intervention systems and that there was a study done that cautioned that EIS's should look at officers holistically because EIS's may be seen as penalizing more productive officers, specifically officers who are making more arrests, or those who work in more active areas and may be more open to complaints. She stated in viewing the officer more holistically in light of EIS's, we should examine the officer in light of the beats and tasks within their particular job so that officers can feel that they are being supported and not penalized.

4. Discussion regarding various Accountability Oversight Systems

Member Ochoa thanked the Department staff for the update. She stated that she had concerns about emphasizing discussions on how to make police feel better about being made to follow the rules and believes that some of the studies referenced suggest drawing a line between police accountability and public accountability. She stated that in keeping with the RIPA mandate

emphasis should be placed on scenarios where there are multiple laws in place that provide direction on how police should be carrying out their duties and the consequence if they don't abide those laws. She then followed by commenting that it would be great to know whether there is an existing policy where an individual may bring a claim of action that ultimately serves as an added way to enforce the rules that have been created to guide peace officers conduct. She then inquired whether there was anything suggesting inaccuracy with the EIS research. Member Ochoa explained that certain types of officers are often drawn to certain beats or a certain type of policing is often cultivated in certain areas which might lead to more stops or more violent policing or more complaints in certain areas.

DAG Soliman responded by stating that the EIS study that focused on looking at officers holistically, did not look at the personality or individual details of the officer, rather it traced overarching characteristics, such as years in office, where and what type of unit of the officer. Further, she stated that one study did touch on individual personalities and the difficulties presented with change, and noted that managerial directives really can overcome individual personalities. She stated that the study stressed the importance for officers to have a relationship with their supervisors where they are reporting back and supervisors are discussing misconduct and providing feedback, noting that the study indicated that these are the things that can overcome personality differences.

Member Ochoa commented that she also wanted to make sure that the Board did not sanction the idea that it's okay if people in different beats are having drastically different police numbers. She stated, lastly, one level of accountability we should be thinking about is RIPA completion. She stated that there is an issue with data inaccuracy within the RIPA data, including undercounting on use of force. She noted that the Los Angeles Sheriff's Department (LASD) had twenty or thirty shootings in 2021, yet only three were reported. Further, Member Ochoa stated that the focus should be on those existing accountability mechanisms when discussing improper reporting within an agency, or specifically looking at next steps within the vein of recommendations, whether DOJ intervention or legislation to bring about agency compliance with the law. Lastly, she inquired into what other mechanism exist when the IG has flagged an issue but the agency does not take action.

Board Member Raphael stated that he appreciated Member Ochoa's question about what it means for beats to have different levels of police activity and commented that this particular issue needs to be scrutinized when some beats have more arrests versus others. He stated that there is value if a locality is looking for problematic behavior by looking for outliers and noted that in all matters of research it's never going to be the case of entirely clean answers. He noted that there is value and has been innovation in that research by some of the same researchers that pioneered ways that people detect racial profiling, whether by "hit rate" or the "veil of darkness" test. He explained that these same researchers are looking at internal benchmarking methods and trying to make sense of when someone's outcomes are really an outlier, and to the extent it can flag problematic behavior as well as behaviors reflecting sound practices. Further, he stated that it is incumbent upon the Board to use our data to try to understand what's happening.

Co-Chair Guerrero stated that the accountability portion of the report is a very important issue of great concern to members of the public. She stated that what was shared by DOJ staff addresses

the ramp up to accountability, but can be addressed more squarely. She stated that DOJ staff presented studies on supervision and consultation inside the agency which falls under setting up expectations for accountability and training and supervising to those expectations. She noted that greater focus is necessary on the issue of investigating any potential misconduct and that the Board should be looking at meaningful ways to do so with respect to the RIPA data. Additionally, she stated that the Board should be looking at timely and consistent discipline that attaches to that misconduct, whether profiling itself or the failure to participate in the appropriate data collection. Lastly, she stated that it would be good to understand the full array of investigative bodies to help understand who does what, whose doing it well, and identifying those gaps.

Member Khadjavi inquired whether there was a way to gauge how well supported these oversight bodies are, not only financially, but also looking at the power afforded by these oversight committees, because if the oversight work is not well supported, you immediately have a gap in the framework. Co-Chair Guerrero added, that by gauging their support you are looking at their authority, their access to information, their staffing, resources, all of which goes toward the effectiveness of these oversight bodies. She also stated that it would be good to understand the context of an office, to understand where authority starts and stops with the IG's, or the Mayor's office.

Member Raphael inquired whether it would be worthwhile to get the Director out of the San Francisco office to present to learn what works in terms of accountability, what does not, the challenges and the experiences within the City of San Francisco. DAG Soliman responded that the staff has set up two meetings, one with the Department of Police Accountability and separately with the SFPD, so the inquiry can be raised at the time of the meeting. Member Guerrero recommended taking a case study approach, by selecting three to five locations in California and review how oversight operates, determining what works, what does not, what gaps exist, and what lessons do we derive from those studies.

5. Overview of Youth Interactions with Law Enforcement

SDAG Nancy A. Beninati with CRES presented on Youth Interactions with Law Enforcement the portion of the report that Anna Rick, Associate Governmental Program Analyst, CRES has been researching and working. First, Ms. Rick intends to begin the section with the history of school police. SDAG Beninati explained that school police in California began with the Oakland Unified School District Police Department and that it came together due to integration in the mid-1950's following the *Brown vs. Board of Education* decision. She explained further that the community did not want or was afraid of having African-American children in the school and began that police department as a result of these biases and prejudices. She stated that the research showed that there are currently sixteen total school police departments, two in Northern California, three in Central California and eleven in Southern California. She stated that given the varied regionality of these departments, the Board had an interest in looking to see whether there were regional approaches to having school police and recommended identifying those locations in a California graphic discussing those impacts of those school police departments. She noted that the Board was also interested in examining the current context of schools and that within this context there seems to exist higher rates of suspensions and expulsions among those

youth who come into contact with school law enforcement. She further stated that these suspensions and expulsions disproportionately impacts students of color, students with disabilities, and LGBTQ+ students. She noted how exclusionary discipline is associated with poor academics, socio-emotional outcomes, low grades, absences, and being pushed out of school and the importance in looking at these systems and how they impact students. SDAG Beninati stated that Ms. Rick next looked at how safe school police make our schools. She stated that she specifically looked at whether school police makes students and parents feel safe, and whether they are effective. She stated that researchers across twelve different studies found that crime incidents and self-reported information about victimization did not demonstrate a positive impact for schools with school-based police. She noted that the studies included staff and student perceptions of safety, but researchers found students and staff did not perceive the schools with school-based police to be safer. She stated that additional research shows that students are feeling alienated and afraid to come to school because of the school police. She stated that the Board had interest in looking at the effectiveness of School Resource Officers (SRO's) particularly in light of mass shooting incidents, namely how effective have SRO's been in stemming these sort of incidents, given that these incidents often serve as the rationale for SRO's. She noted that the Board is interested in looking at levels of discipline being meted out by SRO's and provided an example of note where a student who causes an explosion due to a science experiment is then arrested for possessing an explosive device. She stated that these are the sort of incidents the Board wants to examine including how these actions disproportionately impact Black and Brown students, and students with disabilities. SDAG Beninati next stated that the Board is also looking at data considerations, specifically youth and student demographics. She stated that the issues the Board is interested in is whether students are being stopped on school grounds, and are students being stopped and it not being reported as being on school grounds. She noted that children and youth of color are being stopped in extremely larger numbers than you would expect to be stopped within the population. Additionally, she stated that the Board will be examining how youth numbers are broken down and how we should be looking at these groups within the data and how should we be talking about them. In addition, SDAG Beninati stated the following research questions the Board is interested in looking at under youth interactions with law enforcement, they are the following:

1. What are the safety risks that youth and students face with regard to school police?
2. How does policing relate to those risks?
 - a.) Do the risks increase or decrease because of their presence?
 - b.) For whom does policing increase or decrease these risks?
3. Are there other practices that are known to reduce any kind of risks for safety?
4. What policing practices have increased the risk for youth and students?

Lastly, SDAG Beninati shared the research concept that the Board is interested in exploring by stating that when schools have alternative resources to student safety needs they tend to use them. She explained that the Board is interested in looking at those outcomes.

6. Discussion regarding Youth Interactions with Law Enforcement

Member Ochoa inquired about school level data for the current reporting year, commenting that she was unclear whether there would be enough data on youth and schools for the current reporting year. SDAG Beninati responded that the Sheriff's offices and other agencies that have contracted with schools collected data on school engagement, arrests, and citations and noted that there is enough data to get an idea about what is going on, though not as broad as it will be next year. Member Raphael commented that there may be some police departments that actually do have separate policing efforts towards K-12 but they might not be listed as a separate department and that it would be worth thinking through on how to identify those school police and what stops are occurring on a school versus somewhere else. SDAG Beninati responded by stating that RIPA collects type of assignment and "school resource officer" is one of them, so there are school police that will be added to the data, noting that if those agencies are the larger ones that we are already collecting, we will have that data, however if there are smaller units that just came on board this year we will not have that data as of yet. Co-chair Guerrero applauded the effort on youth interactions with law enforcement stating that the work gives the Board some baseline understanding of what goes on with school based policy.

7. Overview of Pretextual Stops

DAG Kendal Micklethwaite with CRES provided a presentation on pretext stops. She stated that of importance to the Board is President Biden's Executive Order issued on May 25, 2022 which emphasizes ending pre-textual stops. She noted that the order explains that building trust between law enforcement agencies and the communities they are sworn to protect and serve requires accountability for misconduct and transparency through data collection and public reporting. She posed the question to the subcommittee inquiring how do go about ending pretext stops and inquired further, what policies can be implemented at the agency, municipal and state levels to end pre-textual stops. She stated that the Board first looked at pre-textual policies, specifically some of the law enforcement policies. She explained that a majority of the law enforcement policies have a tiered traffic enforcement model, meaning there is a primary and secondary offense system. She further explained that primary events are those considered to be a risk to the public safety, including things like speeding or DUI as examples, secondary offenses are non-public safety stops and depending on the agency, they either list these out by code section, left more generally, or left to the discretion of the officer to determine as to what is and is not a public safety stop. DAG Micklethwaite stated that there is a wide array of different policies and found the Los Angeles Police Department (LAPD) interesting in part due to a public comment by Push LA Coalition who wrote in opposition to the department's pre-textual policy. She stated that the advocacy agency opposed the policy believing that it did not go far enough and that it left a lot of discretion with police officers as to what a public safety stop is and did not actually eliminate pre-textual stops. She stated that the next area the Board is interested in exploring are DA policies on charging. She stated that there are two contrasting policies of note, the San Francisco DA and the Los Angeles County DA policy. Further, she explained that in LA they prevent filing on specific charges, as an example, a resisting arrest charge without other accompanying charges, San Francisco is different in that it bans filing on charges of contraband when they are the result of a pre-textual stop. DAG Micklethwaite stated that the last pre-textual category is with the state legislatures. She stated that most of the state legislatures are targeting

specific statutes in the attempt to eliminate pre-textual stops. Some of those statutes include window obstruction, registration, licensing, loitering offenses and pedestrian offenses, such as not crossing the proper crosswalk. She stated that one of the newer models designed to reduce or eliminate pre-textual stops are civilian enforcement models and there are several jurisdictions looking into this including Berkeley, Oakland, Minneapolis and Brooklyn Center, which notably was where Dante Wright was shot and killed during a pre-textual stop. She concluded that these are the areas the Board is looking at, those existing policies but also the newer approaches to traffic, which uses civilians, instead of armed police to conduct those stops.

8. Discussion regarding Pre-textual stops

Member Ochoa inquired as to what was discovered legislatively in state law policies. DAG Micklethwaite responded by stating that largely the state law policies are focused on individual violations, with window obstructions as the most popular statutory reform example. She stated that she has not found specific statutory reforms regarding civilian traffic enforcement. She explained that as far as statutes, legislatures seem to be targeting particular criminal codes that have high rates of disparities of those who are stopped.

Member Ray inquired whether the Board has landed on a working definition for pretext stops. She stated that the rationale for her question is the concern for traffic safety and ensuring traffic safety is not compromised by doing away with some equipment violations. DAG Micklethwaite responded by stating that for the Report the Board will be using the legal definition of pretext stops found in the *Whren v. United States* decision. The various violations are dependent on the local municipality or agency with most structured as primary and secondary violations. She stated that those primary violations are those public safety violations and as an example, the City of Berkeley allows stops for not wearing a seat belt. She explained that local agencies have been able to identify what they would determine to be public safety stops, with the universal approach being to carve out that exception to these policies.

Member Ochoa stated that the policies cannot be viewed in a bubble and that perhaps you need all of them to effectuate change along with external checks working toward reform, whether through the DA's policies or legislation. Lastly, she stated that a profiling definition would be helpful in effectuating pretext reforms.

Co-Chair Guerrero stated that reforms are more likely to take place when we can point to clear best practices and that practices' model language. Further, she stated where best practices are still being determined because innovation is taking place in real time, such as civilian enforcement models, then maybe the Board would point to case studies or examples which lays the groundwork for a deeper dive in future reports.

Member Ochoa followed up by stating that by emphasizing the harms eliminated by newer policies may be a way of framing these newer models to the point of elevating them for discussion as best practice methods.

Co-Chair Guerrero stated that the pretext presentation is really helpful and important. She stated that what is perhaps coming down the pike policy-wise is how we define public safety and we

don't know whether that definition is one size fits all, whether by defining parameters or possibly through the use of a rubric when defining public safety.

9. Public Comment

Chair Guerrero opened the public comment agenda item with Ms. Aisha Martin-Walton, CRES, cueing BlueJeans participants for comment as the Subcommittee noted no members of the public were present in physical meeting locations.

LaToya Thomas wanted to provide comment regarding the attempts to provide more equitable enforcement in traffic stops and moving toward alternatives noted in the last RIPA report. Ms. Thomas understood the concerns some may have and urged that the Subcommittee review the topic from a more holistic standpoint. As an individual who participates in a diversity equity and inclusion project in her region she encouraged the Subcommittee to understand the feasibility of having an alternative response to law enforcement for traffic stops and the potential harms that could occur.

Karen Glover opened her comment by thanking all participating for enriching the discussion. Ms. Glover commented that she would like the Subcommittee to expand their review of police and children interaction outside of the school environment. She is not only concerned with the potential self-selection officers may have in terms of assignment, but that law enforcement agencies should be held accountable; the data unequivocally presents issues to which warrant such measures. Ms. Glover proposed annual checks on agencies and if issues arise the agency is given time to rectify. A failure to sufficiently rectify the issues would lead to punitive measures such as a reduction in subsequent non-critical funding and potential leadership changes if necessary. However, she closed by noting that should the agency successfully change that they would be lauded and have an increase in funding.

Maraky wanted to note that community based organizations should be included in every aspect of alternatives to policing responses. Additionally she requested the Subcommittee include demographic categories (e.g., race, gender, ethnic background, etc.) in any stop data that is shared as it is crucial for community to see how they are being affected by police stops. Lastly, she noted that language accessibility for the Black diaspora languages is important.

Craig Ali referenced that through workshops and interfaith groups, students have shared their concern of hostile educational environments. Particularly, students felt that teachers may use resource officers to further their agenda. He is concerned that in an already hostile environment, students of color may feel even less safe in schools as a result of mass shootings. He hoped that the Subcommittee can do something in order to make schools safer in general.

C. Benson provided comment in regards to the expiration on the eviction moratorium and the role police officers play in the eviction process. Benson noted that there are no clear outlines and procedures on how law enforcement should ethically proceed in eviction. Therefore she urged

the Subcommittee to develop recommendations to establish particular procedures that must be followed.

Ms. Martin-Walton and Co-Chair Guerrero closed the agenda item by thanking those who have participated in public comment. In closing, Co-Chair Guerrero mentioned the Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety noted several practices which the RIPA Board had advocated for in the 2022 Report (e.g., cessation of pretext stops, etc.). She also noted it was pleasant to see what the Executive Order considers as best practices already implemented in California. In closing, she encouraged review of the Executive Order as it provides a standard for the nation.

10. Discussion of Next Steps

Co-Chair Guerrero opened noting feedback and suggestions have already been given to sections related to the policy report (i.e., pretext stops and accountability) and opened the floor for DOJ to respond. SDAG Beninati confirmed that the DOJ was in receipt of the Subcommittee's instructions and would proceed accordingly. In terms of next steps, she mentioned they are developing content that is to be presented to the RIPA Board and thanked members of the public and the Subcommittee for their input.

Member Ochoa asked Co-Chair Guerrero whether the RIPA Report should be submitted appropriately to the US Department of Justice to supplement the Executive Order as the RIPA Reports largely complement and mirror the content found in the Executive Order. Co-Chair Guerrero noted that United States DOJ and the Biden administration are keenly aware of the RIPA report and noted that similarities in the language found in the Executive Order with the RIPA Report.

11. Adjourn

Chair Guerrero then adjourned the meeting and thanked everyone.