

**CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD (BOARD)**

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**CIVILIAN COMPLAINTS SUBCOMMITTEE MEETING MINUTES**

May 21, 2024, 9:00 a.m. – 11:00 a.m.

**Subcommittee Members Present:** Co-Chair Lawanda Hawkins, Co-Chair D.J. Criner, Member Angela Sierra, Member William Armaline, Member Cha Vang, Member Andrea Guerrero, Member Chauncey Smith

**Subcommittee Members Absent:**

**1. CALL TO ORDER BY BOARD CO-CHAIRS**

Co-Chair Hawkins called the meeting to order. Each Civilian Complaints Subcommittee (herein Subcommittee) member introduced themselves.

**2. WELCOME AND INTRODUCTIONS**

New Subcommittee member Chauncey Smith introduced himself.

**3. APPROVAL OF MARCH 1, 2024, SUBCOMMITTEE MEETING MINUTES**

Co-Chair Hawkins opened asking the members to review the draft meeting minutes from the Subcommittee’s March 1, 2024, meeting.

Member Armaline motioned to approve the meeting minutes and Member Guerrero seconded.

Deputy Attorney General (DAG) Jennifer Gibson of the California Department of Justice (DOJ) proceeded with the roll call vote:

- **YEA:** Co-Chair Hawkins, Co-Chair Criner, Member Vang, Member Armaline, Member Sierra, Member Guerrero
- **NAY:**
- **ABSTAIN:** Member Smith

The meeting minutes were approved with six “yeas” and one abstention.

**4. BOARD DISCUSSION OF DRAFT SECTION OF REPORT**

Draft Report Accountability Section

Co-Chair Hawkins introduced the SB 2 draft section of the 2025 RIPA Report. DAG Rebekah Fretz of the DOJ presented an overview of the SB 2 draft section. The draft report discusses new requirements for law enforcement agencies to report to POST for allegations of serious misconduct, requirements for DOJ, the statute requirements, and the recertification/decertification requirements.

There are also two new entities created by SB 2 involved with the decertification process. The first is the Peace Officer Standards Accountability Division (POSAD), which conducts decertification investigations on behalf of POST.

The other entity is the Peace Officer Standards Accountability Board. It is a nine-member board appointed by the governor and California legislature.

The draft section describes the grounds for decertification, of which there are two major categories: (1) Government Code section 1029, which includes certain criminal convictions, and (2) serious misconduct.

Then it describes the decertification process. It involves reporting allegations of serious misconduct to POST, law enforcement agencies' obligations to report and conduct their own investigations and reporting serious misconduct to POST by the public.

There is a brief discussion of immediate temporary suspension, which can occur during the allegation and investigation. The Executive Director of POST can issue an immediate temporary suspension on a peace officer while they are being investigated.

The report describes the process of how law enforcement agencies generally conduct their investigations and are required to report their findings back to POSAD, which conducts its own review and investigation. Following that, the Accountability Board conducts a non-evidentiary hearing. After that hearing, the Accountability Board makes a recommendation to POST, and POST conducts their own hearing and reviews the findings. If POST decides to decertify a peace officer, a full evidentiary administrative hearing will be held in front of an administrative law judge. After that hearing, POST makes final decision on whether to revoke or suspend a peace officer's certification.

The DOJ gave a systematic review based on information from POST's website and graphs. They are still analyzing the data for conclusions.

The pending section of the draft addresses gaps in the SB 2 process, which includes whether another state can certify a peace officer decertified in California, due to each state's different certification and hiring laws. DAG Fretz opened the discussion up to board members for comment.

Member Armaline asked how far back the SB 2 data reached.

DAG Micklethwaite said it is difficult to identify a concrete date because some of the data refers to conduct before SB 2, as decertification is retroactive. The DOJ is starting with the data they have received so far. March is listed because that is the last time they have updated the data, but the data will be updated throughout the process.

Member Armaline said due to the high quantity of the data, he could judge the severity if given a timespan. The data shows ten thousand allegations of physical abuse and thirty certification actions, so the inferences we can draw from the data depend on the timespan in which those allegations and certification actions occurred.

Member Sierra wanted to highlight in the report that the analysis was retroactive. She also suggested leading this chapter by connecting SB 2 to the RIPA Board's purpose. Complaints investigated and sustained for racial profiling can lead to decertification. They could also give hypothetical examples, such as examples involving youth. If there is time, they should invite POST to run through implementation and the subcommittee can ask POST questions about the investigation process.

Member Guerrero agreed. She asked if the chart in the draft could break down law enforcement agencies that had these allegations. She asked whether the numbers added to 100% or if an allegation could cover two categories. If it does add to 100%, she said the report should include a total row at the bottom with 100%.

Member Armaline responded to Member Sierra and stated that the CLEAR Act could fit into the conversation, since it opens the door for decertification. He also stated that the data demonstrates higher rates of decertification for acts violating the law, which is unavoidable since criminal convictions leave ambiguity out of decertification. However, this can impact the rate that allegations lead to decertification actions. He stated the Board might want to explain that some issues are more clear cut than others.

#### Draft Report Civilian Complaints Section

DAG Yasmin Manners presented on the civilian complaints section of the Draft 2025 Report. She stated that the civilian complaint data and root cause analysis are forthcoming, and that the DOJ would appreciate the Subcommittee's recommendations on how to develop recommendations on root cause analysis.

Most of the draft discusses AB 2923, which the Board previously expressed interest in, as well as the Board's past recommendations to amend Penal Code sections 832.5 and 148.6 to create a universal definition of civilian complaint and remove deterrent language from complaint forms, in light of AB 2923.

AB 2923 was introduced on February 15, 2024, to amend Penal Code sections 832.5 and 148.6, partially in response to the concerns of the RIPA Board. According to the author of the bill, California 57<sup>th</sup> State Assembly Representative Reginald Jones-Sawyer, the purpose of AB 2923 was to ensure a procedurally fair civilian complaints process. The bill defined "civilian complaint," more narrowly than the Board has recommended in the past. AB 2923 defined a civilian complaint as a "written or verbal report that brings to the attention of a department or agency an incident during which the complaint perceives that the agency or department employee engaged in criminal conduct, abusive or discriminatory behavior, inappropriate or discourteous conduct, or a violation of any law, rule, policy, or regulation of the department." This was narrower than the Board's past recommendation, which has an additional provision that complaints should include disagreements with the policies, procedures, or services of the department and not with the performance of any personnel. DAG Manners highlighted this area for discussion by the Board.

Additionally, AB 2923 also suggested amendments to Penal Code section 148.6, which contains an advisory telling complainants they may be prosecuted for filing a false complaint. The Board previously raised concerns about the language AB 2923, as initially drafted, added a requirement that only material statements the complainant knows to be false and made with intent to take action against a peace officer improperly are prosecutable.

On April 2, 2024, AB 2923 was heard by the Assembly on Public Safety. The discussion focused on amendments to Penal Code section 148.6, and not the definition of “civilian complaint” in Penal Code section 832.5. Proponents of the bill stated that Penal Code section 148.6 is very broad, meaning a person can be prosecuted for filing a complaint with an untrue statement that is immaterial to the allegations made. Accordingly, the goal of AB 2923 was to amend the statute to require criminal intent, consistent with other sections of the Penal Code. The bill was supported by the California Public Defenders Association and Center for Police Equity and opposed by the California Police Chiefs Association and a representative from the Insurance Association, Narcotic Officers Association, and Reserve Peace Officers Association. The opposition was concerned that the intent requirement, as drafted, only included intent to punish the officer and not other forms of malintent, such as discrediting the officer in a civil lawsuit. The opposition also expressed concern about the provision in AB 2923 stating that, “Material evidence under dispute can’t be used to prosecute an individual for filing a false complaint.” In response to this concern, members of the committee suggested amending the bill to say, “A statement must be knowingly made and material to the allegation in order to be prosecuted.”

The bill was subsequently amended to say that, under Penal Code section 148.6, “It is against the law to make a complaint that contains false statements material to the allegation of misconduct by the officer. If you know the statements to be false and intentionally make false statements, with the intent that the statements will be used to improperly be used to take action against the peace officer or harass or otherwise harm the peace officer.”

AB 2923, as amended, was scheduled to be re-heard on April 23, 2024, but the re-hearing was canceled on request of the author. The bill is currently stalled in the Legislature.

DAG Manners opened the topic for discussion by the Board.

Member Guerrero stated there may be value in discussing the intent of the bill and language proposed, using the Board’s own recommendations. But, since the bill might come to its end this legislative session, she was not sure how much the Board should discuss the bill. She suggested that the Board acknowledge that there was a legislative attempt and reiterate the value of the Board’s recommendations.

Member Sierra agreed. She reiterated the dangers of the lack of a standard definition and an advisory; however, she was not sure if there was much else that the Board could do. She also stated the Board may want to reiterate that the California Supreme Court is set to review the constitutionality of Penal Code section 148.6, although it may take long before they issue a decision. Once there is a decision, there may be important aspects that the Board may want to consider.

DAG Manners confirmed that the California Supreme Court is still scheduling oral argument regarding Penal Code section 148.6.

Member Armaline agreed with the “knowingly made” and “material to the investigation” language in AB 2923. He thinks this is relatively safe language. He recalled that the Board’s priority was to remove barriers to filing complaints, so wordsmithing is better suited to the Legislature than the Board. He asked if law enforcement agencies provide tracking numbers for complaints, to ensure that law enforcement is properly reporting complaints and to allow others to keep track of complaint data.

DAG Manners clarified that individual agencies could elect to use tracking numbers or not. The Board has made recommendations in the past that complaints be trackable.

Member Sierra wondered if SB 2 would help with tracking of POST complaints. She also agreed it was important.

Member Armaline said that since complaint data is widely used, the fact that there is no tracking does not make it useful from a data organization perspective. He said complaints are used internally for reporting, by POST in some cases, and could be used by the RIPA Board in the future. Outside of law enforcement, people are given tracking numbers when they make complaints. But that’s not the case here. When someone files a complaint, there is no tracking number. He expressed that the Board should consider this with someone who can study how to make it efficient.

Member Sierra stated that, going back to AB 2923, she was hesitant to provide opinions on the bill without seeing the whole bill.

Co-Chair Hawkins agreed that it was premature to comment on a bill that may be dead. She supported Member Armaline’s point on adding a tracking number for complaints because sometimes the complaint may not be filed, and people have no way of knowing whether it’s been filed without a tracking number.

## **5. BREAK**

The Subcommittee adjourned for a break at 9:58 a.m. and re-established quorum at 10:10 a.m.

## **6. BOARD DISCUSSION OF SENATE BILL NO. 2**

Co-Chair Hawkins asked for feedback on SB 2, including whether to look into initiating a public awareness campaign. There was none, she moved onto the next agenda item.

## **7. BOARD DISCUSSION OF ASSEMBLY BILL NO. 2923 AND POTENTIAL ACTIONS WITH RESPECT TO THE LEGISLATURE**

Co-Chair Hawkins reiterated that the Board had decided to not take action on AB 2923. She moved onto the next agenda item.

## **8. PUBLIC COMMENT**

Co-Chair Hawkins opened the floor to public comment.

Richard Hylton from San Diego expressed disappointment in the Board’s discussion of Penal Code section 148.6. He stated that with the abundance of lawyers that they should know that section 148.6 was not enforced, at least not recently. Given that the Ninth Circuit found it to be unconstitutional, there is no possibility that any police department could bring it forward for prosecution. He would prefer not to see section 148.6 be discussed, as it is not worth the time. His opinion of complaints is that they are impossible. They have the possibility to frustrate people. He writes complaints to law enforcement agencies and tries to document what he complains about. He states multiracial categories obscure the race of abused people, resulting in false data. He recalls that the Subcommittee previously stated that if the public knew the quality of the data, they would not stand for it.

There were no further comments, and Co-Chair Hawkins moved to the next agenda item.

## **9. NEXT STEPS**

Co-Chair asked the Subcommittee for any comments on next steps.

Member Sierra raised the idea to have a member of POST talk to the subcommittee about SB 2.

DAG Micklethwaite confirmed that the DOJ could coordinate a presentation from POST.

Member Sierra clarified that it would be helpful if they could talk about racial bias complaints are implemented within SB 2.

Co-Chair Hawkins asked if the complaints presented by POST under SB 2 would include law enforcement complaints against other law enforcement officers. Member Sierra stated that those are sometimes called “internal complaints.” Co-Chair Hawkins stated that those complaints were important.

There were no other comments on next steps.

## **10. ADJOURN**

Co-Chair Hawkins adjourned the meeting.