

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD (BOARD)

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CIVILIAN COMPLAINTS SUBCOMMITTEE MEETING MINUTES

September 12, 2022 10:00 a.m. - 12:00 p.m.

Subcommittee Members Present: Co-Chair LaWanda Hawkins, Co-Chair DJ Criner, Andrea Guerrero, and William Armaline

Subcommittee Members Absent: Cha Vang

1. Introductions

Co-Chair Criner called the meeting to order at 10:08 a.m. Each Civilian Complaints Subcommittee member (herein Subcommittee) introduced themselves. Co-Chair Criner concluded introductions with a welcome to all attending the meeting.

2. Approval of June 27, 2022 Subcommittee Meeting Minutes

Co-Chair Criner opened asking if any members would like to discuss the draft meeting minutes. Co-Chair Criner moved to adopt the minutes which Member Armaline seconded. Co-Chair Hawkins was absent from voting due to technical difficulties. Member Guerrero abstained. There were no “No” votes.

3. Board Discussion Regarding Civilian Complaints Chapter in the 2023 Board Report

DOJ DAG Yasmin Manners provided a presentation on the Civilian Complaints chapter of the 2023 Board Report. Yasmin first discussed the statutory definition of “civilian complaint” and the Board’s recommendation from the 2022 Annual Report that the legislature add the Board’s definition of complaint to Penal Code section 832.5.

DAG Manners then discussed the draft of the chapter discussing civilian complaint procedures from beginning to end. The civilian complaint process should be accessible, fair, and transparent, so that complainants feel heard and the process is seen as a legitimate tool for police accountability.

DAG Manners presented on the first section, “Intake and Access to the Complaint Process.” She discussed the Board recommendations from past report for the complaint forms, as well as ensuring that the forms are widely and permanently available in a variety of forms, locations, and languages. Complaints should be accepted from everyone, including minors, and that practices that could discourage complainants should be prohibited. DAG Manners also discussed prohibiting retaliation against complainants by establishing clear anti-retaliation policies. The Board renewed its recommendation that the legislature amend Penal Code section 148.6 (that requires agencies to obtain signed acknowledgments from every complainant that false complaints could be subject to prosecution), and DAG Manners explained that the constitutionality of section 148.6 is now pending in litigation before the California Supreme Court.

Member Guerrero asked for language that clarifies that what California is currently doing is not a best practice given the lack of statutory clarity. DAG Manners thanked Member Guerrero for their recommendation.

DAG Manners continued her presentation on to the next section, “Timeline of Complaint Process.” She stated that this section encourages agencies to set clearly defined deadlines for each step of the complaint process and to make them publicly available to increase transparency and public confidence in the complaint process. DAG Manners stated the specific recommendations of deadlines to acknowledge the complaint, providing tracking information, contacting witnesses, conducting the investigation, and notifying the complainant of the outcome.

Continuing to the next section, “Tracking Complaints,” DAG Manners stated that this section encourages agencies to use a uniform tracking system, preferably one that is automated. She stated that a uniform tracking system would allow agencies to easily track complaints, track information coming in, and evaluate the efficiency of the process. DAG Manners stated that the draft report also encourages agencies to use an automated tracking system to alert investigators when deadlines are approaching or have expired. She stated that an automated tracking system would allow agencies to report more complete complaints data and streamline the complaints process. Co-Chair Criner expressed gratitude for including language that the complainants should be notified of delays immediately since delays may cause complainants to feel their complaints are not important. Co-Chair Criner asked about the timeframe for notifying complainants of delays. DAG Manners shared that a timeline can be clarified for the next report and asked if the Board prefers a specific recommendation or giving agencies discretion. Member Armaline expressed preference for a specific recommendation so that agencies have an expectation or framework.

DAG Manners continued her presentation on to the next section, “Communications throughout the Complaint Process.” DAG Manners stated that this section emphasizes the importance of respectful communication, communication that makes all parties feel comfortable throughout the process and communication that shares thorough and accurate information. She stated that draft section encourages agencies to communicate with complainants every 28 days by letter, phone, or email and that communications through mediators be accepted. She also stated that complainants should be provided a tracking number, the investigator’s name and contact information, an opportunity to review complaint and statements for accuracy, a timeline for the investigation and procedures to be followed during this timeline, routine updates on the status of the investigation, and the complaint disposition.

Continuing on to the next section, “Investigating Complaints,” DAG Manners stated that this section discusses the different means for conducting an investigation and some of the main criteria that should be addressed in every investigation. DAG Manners shared that this section highlights the merits of both an internal or independent investigation but ultimately gives agencies and governing law discretion to determine what is feasible. As for the content of an investigation, DAG Manners stated that the section recommends background information relevant to the reason for contact, information given to the officer from the dispatcher, perceived characteristics of the officer during contact, comparison of how the complaint is treated relative

to other individuals in the same circumstances without a protected characteristic, and recent national/international events that may have impacted police-community relations. Additionally, DAG Manners stated that investigation should include an ask to the complainant of what happened from their perspective and what their preferred outcome would be – to ensure that a complainant feels heard even if the actual outcome is not in their favor. Member Armaline asked if there has been any conversation with independent police auditor offices about the content of the investigation sections. DAG Manners stated that they have worked with experts and this is a process they will continue to build out. Member Armaline recommended that the Civilian Complaint draft section be aligned with existing and upcoming bills such as Assembly Bill 655 to maintain consistency.

DAG Manners continued her presentation on to the next sections, “Complaint Disposition.” DAG Manners shared that this section aims to provide complainants with the most information possible by law so that the complainants understands the reason for the final decision. As for specific recommendations, DAG Manners recommended a summary of the investigation steps taken, specific findings of the investigation and the reasons for them, copies of evidence and documents relied on, and whether any disciplinary actions, or trainings, were taken as a result of the complaint. Co-Chair Hawkins expressed support for the recommendations and asked if there was a way for complainants to know if the officer in question has other complaints filed against them. DAG Manners stated that there might be issues of information privacy but that this is something they can include as a recommendation.

DAG Manners moved on to the last two sections, “Auditing the Complaints Process” and “Use of Complaints in Early Intervention Systems, Discipline, and Training.” DAG Manners shared that the auditing section is continuing to be developed but currently has a few examples of different types of auditing that ensure that a process is working and to weed out any problematic processes along the way. For early intervention systems, DAG Manners stated that the draft section summarizes the importance of complaint data and its impact and role to reduce future misconduct.

Co-Chair Criner and Member Guerrero thanked DAG Manners and the DOJ for their work on the draft section.

Co-Chair Hawkins thanked DAG Manners for the presentation. Co-Chair Hawkins praised the recommendations, in particular the recommendations for tracking and auditing for all law enforcement agencies to follow. She also raised the issue of auditing for smaller agencies, who may not have the manpower, and asked the Board to take that into consideration.

Co-Chair Hawkins also brought up the relevant bills and whether they would be signed before the final draft of the report so they could be discussed in the report. DOJ DAG Allison Elgart told the Board that the next full Board meeting is October 12 and the date for final approval of the Board report would be the November 29 meeting. DAG Elgart said that the DOJ was tracking the police-related legislation and that any bills that are passed will be discussed in a section of the report on Recent Legislation, as well as the relevant Policies sections of the report. SDAG Nancy Beninati stated that the Governor has until the end of September to sign any bills, so we would know by the next Board meeting. Co-Chair Hawkins asked whether the Board

needed to vote on including the legislation; DAG Elgart said the Board did not need to vote on including the legislation in the report, and DOJ could incorporate suggestions and feedback into the draft without a formal vote unless the Board wanted to set forth a formal recommendation.

DAG Elgart also said DOJ could follow up with San Diego Police Department and San Diego Sheriffs to see if they could identify any changes in their practices or policies that could influence their data disparities that were brought up by Member Guerrero earlier in the meeting. Member Guerrero wanted to confirm that the data was correct because San Diego went from a handful of complaints to hundreds, and if that data was accurate, it is worth noting it in the report. DAG Elgart brought up that Sacramento PD had a similar jump several years ago and it was when they changed from characterizing inquiries vs. complaints, and said DOJ could follow up with San Diego to see if there was any change in how they were reporting complaints. Member Guerrero said it would be worth it to follow up with them and include any information we receive in the report.

4. Public Comment

Co-Chair Hawkins then opened the meeting for public comment. Michele Wittig expressed support for the draft section and shared a series of recommendations to ensure accessibility and transparency for the public, including a distinction between internal and external complaints and a tree diagram to visually display the complaints process. Ms. Wittig also brought up having physical forms in the lobby and training the desk officer to be welcoming of complaints. She also brought up differential treatment of people who are the target of a particular behavior by a police officer vs. a witness, and that the witness complaints need to be taken seriously as well. She also brought up the categorization of the complaint process and whether it is about a policy or procedure or about a person, so the state reporting is consistent from one agency to another in what they are counting as complaints. She raised the issue of retaliation against complainants, and that communications to complainants should take that into account and allow them to bring someone to the interview with them or develop other ways to make them feel at ease. Ms. Wittig also discussed opportunities for restorative justice in the complaint process. Ms. Wittig expressed her appreciation for the draft as a great step forward.

Co-Chair Hawkins thanked Ms. Wittig for her suggestions.

5. Discussion of Next Steps

Co-Chair Hawkins discussed next steps, including incorporating any new legislation that is passed and incorporating the public comment and Board feedback from the meeting. Member Armaline expressed his gratitude for the work that has been done on the report and said he supported adding in the suggestions that were made.

Co-Chair Criner and Member Armaline expressed support for a tree diagram visual aid. Co-Chair Criner also stated that the report is well-written and easy to understand and applauded the work that had been done.

DAG Manners told the Board that DOJ would work to incorporate the Board's feedback and the suggestions from the public comment.

Co-Chair Hawkins raised the issue about wanting to know whether a complaint was made about a policy or procedure or behavior and ensuring that they are all categorized as complaints. DAG Manners responded and shared that a distinction between categories and complaints as policy driven or individual can be made in the next report.

6. Adjourn

Co-Chair Hawkins thanks everyone for attending and adjourned the meeting at 11:21 a.m.