

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD (BOARD)

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POLICIES SUBCOMMITTEE MEETING MINUTES

September 16, 2022 11:30 a.m. - 1:30 p.m.

Subcommittee Members Present: Co-Chair Andrea Guerrero, Steven Raphael, Melanie Ochoa, Lily Khadjavi, Manju Kulkarni

Subcommittee Members Absent: Amanda Ray, Ammar Campa-Najjar

1. Introductions

Co-Chair Guerrero called the meeting to order at 11:35 a.m. Each Policies Subcommittee member (herein Subcommittee) introduced themselves. Co-Chair Guerrero concluded introductions with a welcome to all attending the meeting.

2. Approval of June 13, 2022 Subcommittee Meeting Minutes

Co-Chair Guerrero opened asking if any members would like to discuss the draft meeting minutes. Co-Chair Guerrero moved to adopt the minutes, which Member Raphael seconded. Member Khadjavi recommended an amendment to the minutes to document that there were remote members of the public at the June 13, 2022 subcommittee meeting. Member Raphael accepted the amendment. All members voted “Yes,” there were no “no” votes, and no abstentions.

3. DOJ Update

Nancy Beninati, Supervising Deputy Attorney General (SDAG) with the California Department of Justice (DOJ), provided an update on law enforcement agencies (LEAs) submission of data and compliance with the RIPA requirements. SDAG Beninati shared that the DOJ Research Center is continuing to examine the data comparison issues such as issues of comparing the RIPA Use of Force incident reporting and will have an update during the next RIPA Stop Data subcommittee meeting on October 4, 2022. She mentioned that LEA submissions of data goes through a series of checks within DOJ’s system and that she can share information regarding these checks if the Board is interested. As for compliance with the RIPA requirements, SDAG Beninati said that the DOJ has been in discussion about this and contacted by LEAs on how best to conduct audits. She shared that the DOJ could develop an auditing framework for law enforcement agencies to use in future reports. SDAG Beninati suggested that this might be an effective way to reach more agencies. She stated that the DOJ could begin researching best practices and speaking with Inspector General Offices, LEAs, and policing experts who are conducting their own internal audits to learn about their processes. She also mentioned that the DOJ would create simple frameworks that agencies could use to run different data analyses instead of just collecting data.

Member Raphael shared feedback on how best to monitor agencies to ensure data quality across several dimensions. His recommendations were to ensure all fields be filled out, cross validate if there is a second source of information, and utilize ideas presented to the Board already like comparing body cam footage to the result of the stop.

Member Ochoa mentioned that the San Diego Sheriff's Department conducted an analysis comparing arrests referred to the court with arrest in pre-RIPA stop data. She recommended the DOJ to use this report as a source to see how to validate with external sources. Member Ochoa stated that they would like to know the steps the DOJ can take on accountability to ensure compliance among LEAs, especially given the Los Angeles Sheriff Department's (LASD) recent fabrication of data and information. SDAG Beninati stated that the Attorney General is in an active, open investigation of the LASD and is unable to speak on anything related to an open investigation. She also stated that the DOJ's enforcement efforts about any open investigation are confidential. Member Ochoa asked if SDAG Beninati could speak more generally about the DOJ's enforcement efforts. SDAG Beninati stated that there are no specific enforcement options in AB 953 and thus the regulations could not include any penalties in the regulations beyond the statutory framework. She stated that the DOJ has put what they could in the regulations, including the data standards and protection of personally identifiable information. Co-Chair Guerrero stated that it would be helpful to understand the role the DOJ plays in accountability and that the report currently has very little about what the DOJ can do or the statutes that can be applied.

Co-Chair Guerrero asked if there were any comments or thoughts around creating a framework for LEAs to perform their own internal audits. Member Ochoa responded by asking if there were any built-in consequences for LEA noncompliance or LEAs certifying false information. SDAG Beninati stated there were no built-in consequences within AB 953. Co-Chair Guerrero asked if the DOJ has statutory authority outside of AB 953 that the DOJ can apply. SDAG Beninati stated the DOJ has constitutional and statutory authority to investigate law enforcement agencies and could potentially file a writ of mandate as another option. Co-Chair Guerrero stated that SDAG Beninati's comments would be well fit for the draft accountability systems section.

SDAG Beninati shared that there are two effective dates for the new regulations. She said that the Office of Administrative Law approved the set of regulations on August 5, 2022 and that the data collection piece will go in effect on January 1, 2024. However, she mentioned that the regulations on data submission, technical specifications, and uniform reporting went into effect immediately on August 5, 2022. She said this includes regulations on the certification by law enforcement that they have not submitted personally identifiable information to the DOJ, new requirements for LEAs to report zero stops if they conducted no stops in a given year, a new process for researchers to obtain confidential RIPA data, and clarifying LEAs responsibilities for public records act requests.

Next, Allison Elgart, Deputy Attorney General (DAG) with the California Department of Justice, provided an update on the DOJ legislative briefing held in July 2022. DAG Elgart shared that during the briefing the DOJ provided a presentation on the main topic areas of the 2022 Report, topics of 2023 report, data disparities seen in last year's data, and the Board's recommendations to the legislature. She stated that the next legislative briefing would be December 2022 or January 2023. Member Ochoa expressed support for the legislative briefings and asked if it would be possible to have Board Members involved. DAG Elgart stated that she would need to look into Bagley-Keene rules to see how and if Board Member can participate. DAG Elgart said they would have an update by the next full board meeting on October 12, 2022.

4. Overview of Subcommittee Work by Department of Justice and Discussion of Subcommittee Section in Report

Jennifer Soliman, Deputy Attorney General (DAG) with the California Department of Justice, provided a presentation on the accountability systems draft section.

Under accountability systems, DAG Soliman stated that the draft looks at both internal and external accountability systems. She shared that the draft section discusses internal accountability systems as mechanisms within a LEA such as agency culture, how a healthy versus negative culture can affect accountability, the role of supervisors and internal affairs departments in shaping agency culture. She also stated that the related data and policy section is still under development. For external accountability, DAG Soliman shared that the draft section reviewed criminal oversight from District Attorney Offices, the effectiveness and structure of civilian review boards, the success of Inspector General Offices and the report of the Los Angeles County Inspector General's Office on LASD RIPA noncompliance, police commissions in California, and the San Francisco Department of Police Accountability. She mentioned that Member Ochoa submitted written comments about this section.

Member Raphael asked if there are any rules that require LEAs to have an Inspector General Office or civilian oversight board or if these evolved within the local context of Oakland and San Francisco. He also asked if DAG Soliman could speak to which model is more prevalent nationally. DAG Soliman stated that most mechanisms developed in reaction to accountability issues observed in LEAs across the state.

Member Kulkarni mentioned that there could be limitations or impediments to civilian oversight commissions if LEAs respond with retaliation, increased policing, or other inappropriate behavior. Co-Chair Guerrero agreed and asked that the DOJ provide information on the tools they have to address this behavior in the draft report. Member Kulkarni also mentioned that there is a growing body of evidence of white supremacy groups infiltrating LEAs across the nation and highlighted a report from the Anti-Defamation League that identified certain California law enforcement officials as known members of white supremacy groups. Member Kulkarni asked if it was possible for the report to include a way to hold LEAs accountable for this type of involvement or activity.

Member Ochoa asked that this year's report include a recommendation to create a uniform and stringent policy by which LEAs adjudicate bias claims, since last year's bill stalled in appropriations. Member Ochoa also stated that the accountability systems section, as written, does not indicate clear directions to draw any recommendations and asked how to move forward with that. Co-Chair Guerrero concurred that there were no recommendations in the draft section and mentioned how in the past the annual report surveyed the landscape and the subsequent year pursued policy recommendations. She stated that this fluid approach might be appropriate for this section given limitations on time. Member Raphael and Member Khadjavi agreed with this observation and direction for future reports. Member Kulkarni asked if it was possible to expedite Member Ochoa's recommendation. Co-Chair Guerrero recommended that the subcommittee not rush to make new recommendations to ensure that the subcommittee can

approach the issues of concern highlighted by members of the subcommittee with enough care and attention.

Member Ochoa recommended having comparative efficacy from one RIPA report to the next, which may include looking at yearly reduction of complaints, implicit bias in stops, and use of force incidents. DAG Soliman stated that this was something that she considered but noticed a lack of similar characteristics among civilian review boards and others. Member Raphael and Member Khadjavi agreed on the importance of a comparative efficacy model, but acknowledged that it would take time to deliberate on what they consider effective and what is not. Member Kulkarni asked that in the future the subcommittee invite individuals from oversight boards and committees to speak about efficacy and that the subcommittee speak to why they do not have recommendations in the draft report and their plans for future recommendations. DAG Soliman supported implementing this recommendation for next year's report. Co-Chair Guerrero stated that the "What's Next" section of the report could include Member Kulkarni's recommendation about looking at models of efficacy and planning for future recommendations

Kendal Micklethwaite, Deputy Attorney General (DAG) with the California Department of Justice, provided a presentation on the Pretext Stops draft section. DAG Micklethwaite shared that traffic stops are the greatest source of Black-White disparities and individuals perceived to be Black are searched three times the rate of those perceived to be White. They highlighted three studies on pretext stops. One in Washington D.C. that found that of 63,000 stops, only 1% resulted in the seizure of drugs. A second in New York City that found that of nearly 300,000 people searched weapons were only recovered 2% of the time. A third study that found that reprioritizing traffic stops to be focused on public safety resulted in positive effects on reducing motor vehicle injuries and racial disparities and also did not increase non-traffic crimes. DAG Micklethwaite shared that these studies are located in the draft section.

DAG Micklethwaite stated that the DOJ identified four potential approaches for the Board to consider on how to eliminate pretextual stops. The first approach is to identify and eliminate enforcement of certain charges or vehicle codes that pose a low risk to public safety and show significant disparities in the rate of enforcement. The second approach is limiting law enforcement's role in traffic enforcement by allowing for stops only if there is a concern for public safety. The third approach is prohibiting certain searches, such as consent searches or supervision searches, during traffic stops. The fourth approach is eliminating all pretextual stops and searches.

DAG Micklethwaite presented a graph showing LEAs across the nation that have taken action on pretextual stops. They stated that a number of LEAs have established a primary and secondary enforcement system where a person can only be stopped for a primary charge and not secondary offenses. They also stated that a few LEAs prohibit searches and questioning during traffic stops. DAG Micklethwaite asked that the subcommittee review the graph and draft section and let them know if they agree with the DOJ's classification of LEAs and the descriptions of the policies.

DAG Micklethwaite shared three considerations of eliminating pretextual stops through LEA policies. The first consideration, the Board recommend that agencies' policies prescribe the specific types of stops that are prohibited and, thus, limit the discretion officers have to

determine what can be characterized as a public safety stop. The second consideration, the Board require that LEAs have probable cause of certain offenses, which the Board would decide, prior to conducting any stop, search, or questioning. The third consideration, the Board prohibit specific types of enforcement actions that do not require a suspicion of wrongdoing, which would include consent searches and supervision inquiries and searches unless there is probably cause that a crime has been committed.

DAG Micklethwaite shared that they also looked at district attorney approaches to eliminating pretextual stops and presented a graph showing district attorney offices across the nation. They stated that a number of district attorney offices prohibit filing charges on possession of contraband if stemming from an infraction related stop, prohibit charges surrounding certain searches, apply a heightened scrutiny of any case arising from an infraction related stop, and/or will outright not file specific charges.

DAG Micklethwaite shared three considerations of eliminating pretextual stops through district attorney policies. The first consideration, district attorneys should decline to file charges that stem from a pretextual stop and instead require that stops and further investigative actions be based on probable cause. The second consideration, policies should direct deputies to decline to file possessory charges based on a search that occurred during a traffic encounter or misdemeanor offense, such as a consent or probation search. The third consideration, directives should clearly prescribe the types of stops that are unacceptable, such as obstructed window or expired registration.

DAG Micklethwaite shared that they also looked at state legislative approaches to eliminating pretextual stops and presented a graph showing state limits across the nation. They provided three considerations through a legislative approach. The first consideration, consider various measures, including prohibiting consent searches of vehicles or creating primary and secondary traffic systems, and how they might reduce significant disparities and inequitable enforcement of traffic laws. The second consideration, consider addressing pretextual stops beyond just traffic violations, such as pedestrian related stops. The third consideration, consider creating a package of reforms to address and end pretextual stops that include decriminalization as a core component in these reforms.

DAG Micklethwaite stated that among the LEA, district attorney, and state legislature considerations there is a common theme of trying to look beyond our traditional understanding of how LEAs conduct traffic enforcement. They stated that fines and fees entangle with traffic enforcement issues and so the Board could give a recommendation to eliminate fines and fees associated with traffic violations and instead provide individuals with a voucher or means to complete a repair/correction. DAG Micklethwaite also stated that developing civilian traffic enforcement models is a new, emerging approach to reimagining traffic enforcement. They said there are a few models in our state, including Berkeley who employs unarmed traffic units, crossing guard, parking enforcement, collision investigations, and traffic control. They stated that Oakland is similarly developing a policy focused on high collision locations and transferring certain duties of crossing guards, towing, and special events traffic support to a traffic enforcement model. They stated that Los Angeles is also conducting a study on alternative models that do not rely on armed officers to conduct traffic enforcement.

Member Raphael recommended using RIPA data to evaluate the impact of LAPD's policy change on pretextual stops. He also asked for clarification on including probable cause versus reasonable suspicion. Lastly, he asked for clarification on what the exact recommendation was for fines and fees and expressed concern around public safety if the elimination of fines and fees were too broad. DAG Micklethwaite acknowledged Member Raphael's concerns regarding fines and fees and welcomed other Members' feedback. DAG Micklethwaite and SDAG Beninati also provided clarification on the terms reasonable suspicion and probable cause and mentioned that new definitions are included in the new regulations.

Co-Chair Guerrero requested having new definitions from the regulation cited and adding a paragraph on 4th Amendment protections to the pretextual stops introduction.

Member Ochoa recommended removing "all" from the "elimination of all fines and fees," prioritizing eliminating administrative fees, and having the DOJ research and document municipalities across the nation that have already made policy changes on the elimination of fines and fees. Member Khadjavi agreed with Member Ochoa's recommendation to look at municipalities that have already implemented fines and fee changes. Member Kulkarni agreed with Member Ochoa's recommendations and asked that the report indicate that the subcommittee is considering this information and will plan for future recommendations. Co-Chair Guerrero restated that the subcommittee not rush to make new recommendations but asked that DAG Micklethwaite come back with a proposal that builds upon the analysis of fees and fines at the September 30, 2022 Policies Subcommittee meeting.

5. Public Comment

Co-Chair Guerrero opened the meeting for public comment. Jean Lyon stated that there was a citation discrepancy in the draft pretext section regarding deaths related to pretext stops and that obstructed windshields are a traffic/safety violation and not comparable to expired registrations. There were no other public comments. Co-Chair Guerrero ended public comment.

6. Discussion of Next Steps

Co-Chair Guerrero and DAG Elgart shared that there will be a Policies Subcommittee meeting on September 30, 2022 at 11:00 AM, focused on the Youth and Law Enforcement draft section and updates to the Pretext and Accountability sections of the report. DAG Elgart also shared that there will be a RIPA Full Board Meeting on October 12, 2022.

7. Adjourn

Co-Chair Guerrero thanks everyone for attending and adjourned the meeting at 1:27 p.m.