

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD

MEETING MINUTES

Second Meeting of the Racial and Identity Profiling Advisory (RIPA) Board

Monday, October 24, 2016, 10:00 a.m.

California Department of Justice

1300 “I” Street

Sacramento, CA 95814

The second meeting of the California Racial and Identity Profiling Advisory (RIPA) Board was held on Monday, October 24, 2016 at 10:00 a.m. at the California Department of Justice, 1300 “I” Street, Sacramento, CA 95814

Members Present: Honorable Micah Ali, Oscar Bobrow, Pastor J. Edgar Boyd, Sahar Durali, Michael Durant, Kelli Evans, Commissioner Joe Farrow, Andrea Guerrero, Alex Johnson, Honorable Alice Lytle, Reverend Ben McBride, Chief Edward Medrano, Douglas Oden, Sheriff David Robinson, Angela Sierra, Tim Silard, Timothy Walker

Members Not Present: Jennifer Eberhardt, Mariana Marroquin

California Department of Justice Staff Present: Daniel Suvor, Chief of Policy; Nancy A. Beninati, Supervising Deputy Attorney General, Civil Rights Enforcement Section (CRES); Kathleen Vermazen Radez, Deputy Attorney General, CRES; Shannon Hovis, Senior Policy Advisor, Executive Office; Joe Dominic, Director, California Justice Information Services Division (CJIS); Jenny Reich, Chief of the Bureau of Criminal Identification and Investigation Services, Jerry Szymanski, Special Assistant, Division of Law Enforcement

1. Call to Order and Welcoming Remarks

The meeting was called to order at 10:10 a.m. by Daniel Suvor, Chief of Policy for California Attorney General Kamala Harris. Mr. Suvor acknowledged recent deaths in the California law enforcement community and emphasized the importance of the Board’s work and that it is more relevant than ever that we come together in the midst of the national conversation about policing and the community. He then provided a brief update on criminal justice reform efforts at the California Department of Justice, including the OpenJustice initiative and new streamlined reporting standards on use of force.

2. Approval of the Minutes of the July 8, 2016 Meeting

Motion: A motion was made by Member Durant and seconded by Member Johnson to approve the minutes of the July 8, 2016 meeting of the RIPA Board. The motion passed by a voice vote of all members present, Members Evans, Boyd, and Oden (who were not present at the July 8, 2016 meeting) abstaining.

3. Presentations by Law Enforcement on Current Data Collection Methods

Captain Kevin Davis of the California Highway Patrol (CHP) gave a presentation on the agency's current demographic data collection practice, including the CHP's shift from paper to electronic records, the specific data fields collected on each stop, and an overview of the CHP's analysis of its stop data. In response to questions from the Board, Captain Davis explained that the CHP's analysis over the last few years showed that stops are in proportion to California demographics, that data is collected on both officer-initiated stops and calls for service, and that the annual report analysis is broken down geographically into the eight CHP divisions.

Captain Armstrong and Sergeant Tam Dinh of the Oakland Police Department (OPD) gave a presentation on the OPD's current data collection practice, which collects data on all officer-initiated stops. The OPD representatives explained that the agency's practices have been refined over the years based on learnings from within the department and other agencies (including the New York Police Department) and based on their partnership with Stanford University. In response to Board questions, the representatives from OPD explained that its stop data is not released to the public but is subject to discovery, and that the data has been very helpful to OPD to understand its officers' activities, assess risk, improve community engagement, and provide early intervention through better training.

In response to a question from Member Silard, Nancy Beninati, DOJ, confirmed that the DOJ regulations to implement AB 953 would not prevent agencies from collecting more data than the minimum required and that the DOJ would, in fact, encourage agencies to do so.

4. Selection of Co-Chairs

Ms. Beninati reviewed the requirements for co-chairs, who will be elected to serve one-year terms, and reviewed the names of those Board members who had volunteered or been nominated to serve as co-chairs, including Members Ali, Bobrow, Durali, Evans, Lytle, McBride, and Medrano. Several of the nominees provided brief statements about their interest. Following additional discussion among the Board, Members Ali, Bobrow, Durali, Lytle, and McBride withdrew their names from consideration.

Motion: A motion was made by Member Silard and seconded by Member Johnson to elect Members Evans and Medrano to serve as co-chairs for a one-year term. The motion was unanimously adopted by a voice vote of all members present.

5. Subcommittee Reports

a. Definitions Subcommittee

Motion: A motion was made by Member Evans and seconded by Member Boyd to approve the minutes of the September 26, 2016 subcommittee meeting. The motion was passed by a voice vote of the subcommittee members present, with Member Johnson abstaining.

Subcommittee Chair Oscar Bobrow reviewed the subcommittee's minutes and recommendations to the RIPA Board. Member Bobrow presented the following proposed definition of peace officer, which was approved by the Definitions subcommittee:

The term "peace officer," although currently defined in the RIPA, should be interpreted to include any state or local law enforcement officer in California whose primary duties include the stop, detention, and arrest of people who violate the law, including any law enforcement agency that operates in a school district.

Motion: A motion was made by Member Oden and seconded by Member Evans to recommend that the DOJ incorporate this definition of "peace officer" into the proposed regulations. The motion passed by a voice vote of the members present, with Member Sierra abstaining.

Member Bobrow presented the following proposed definition of peace officer:

A "detention" is any time a peace officer initiates the intentional preclusion of the free movement of an individual by the show of authority, regardless of the consent of the individual. A detention also includes any time an officer initiates contact with an individual that would cause a reasonable person to believe he is not free to leave the encounter with the officer. A detention does not include situations where the officer is responding to a call for service and when he or she is responding to or documenting a traffic accident, where the officer's primary purpose in those encounters is obtaining routine witness information given to the officer consensually by individual witnesses or involved parties.

Member Bobrow explained that this definitions was not approved by the Definitions Subcommittee but rather was drafted by himself upon a motion by the subcommittee that he attempt to synthesize the subcommittee's discussions of this topic.

➤ **Comments from Board Members**

Member Medrano expressed concern that the phrase "consent of the individual" was not necessary. Member Evans expressed concern that the data collection requirements would not apply to traffic accidents or calls for service, and suggested the CHP's practice of collecting data on all interactions was preferable. Member Farrow expressed a concern that traffic collisions require special treatment as drivers are not free to leave until they exchange information.

➤ **Comments from the Public**

Peter Bibring/ACLU referred the Board to page 3 of the letter from co-sponsors regarding the definition of detention and urged the Board to rely on the legal definition of "detention" which is reflected in the first two paragraphs of the proposed definition. He emphasized that the exclusions set forth in the third paragraph could implicate racial profiling.

Rosa Aqeel/PolicyLink and the Alliance for Boys and Men Color urged the Board not to exclude contacts with law enforcement. She referred to an example shared during a listening session in Bakersfield, in which a young man reported his car had been stolen; he later found it and relayed

that fact to the police, at which time the police arrested him—a scenario that would be excluded by paragraph 3. She expressed concern that people of color may be victimized after a call for law enforcement service.

Stu Greenberg/Orange County Sheriff's Department commented that there are already accepted legal definitions of both detention and consensual encounter and that it will be confusing for officers if the definitions are changed for purposes of this legislation.

Motion: A motion was made by Member Silard and seconded by Member Johnson to recommend to the DOJ that it apply the current legal definition of detention or stop as broadly as possible to avoid exclusions of the type that have come up today. The motion passed by a unanimous voice vote of the members present, with Members Lytle and Sierra abstaining.

b. Additional Data Elements Subcommittee

Motion: A motion was made by Member Silard and seconded by Member Lytle to approve the minutes of the October 14, 2016 subcommittee meeting. The motion passed by a unanimous voice vote of the subcommittee members present.

Subcommittee Chair Medrano reviewed the subcommittee's recommendations, as reflected in its meeting minutes and in the "RIPA Board Sample Data Collection Survey," which was distributed to the Board and members of the public in attendance. He noted the subcommittee's recommendation that the DOJ coordinate to the extent possible with additional data reporting requirements by state law (including AB 71) and federal law in order to avoid duplicative reporting.

Chair Medrano also reviewed the subcommittee's recommendations with respect to officer identification numbers and officer characteristics, noting these were the most controversial items handled by the subcommittee. The subcommittee decided that every officer who submits data would have a unique identifier, which would be submitted to the DOJ and would include additional officer characteristics: year of birth, gender, race, length of service, and assignment of the particular officer. The cipher for that random number would be held by the agency and not provided to the DOJ. The subcommittee also discussed particular re-identification concerns for smaller agencies. Rather than eliminating the requirement for smaller agencies, the subcommittee recommends the DOJ regulations specify that any agency that presents re-identification concerns should not be reported. He noted that, while the vote was not unanimous, the recommendation regarding officer demographics was adopted by a majority of the subcommittee.

➤ Comments from Board Members

In response to a question from Member Oden regarding the rationale for prohibiting the disclosure of officer identity in the event of racial profiling, Member Medrano explained that Government Code section 12525.5(d) makes clear that individual officer identity should not be disclosed. He explained that the subcommittee's proposal would still allow the DOJ to report outliers to the agencies who could, in turn, confirm the identity of individual officers.

Member Boyd expressed a concern that racial profiling is injurious to the general public, which cannot be healed if the public cannot identify the officer responsible for that injury. Member Guerrero explained that the proposal was made in response to the legislation, which requires anonymity of officers.

Member Bobrow asked whether there would be a mechanism that will enable the Board to report or notify agencies that, for example, there are X number of departments with X number of officers committing the majority of apparent racial profiling.

Member Robinson explained that he voted against the subcommittee's proposal to collect officer demographics out of concern that it will be easy to identify officers within small agencies. Though recognizing that it is important for agencies to collect and analyze data, he could not agree that the information should be provided to the DOJ without further clarification on how the information would be redacted to maintain confidentiality. According to Member Robinson, ultimate responsibility lies with the individual departments and boards of supervisors to hold individual officers accountable.

Member Medrano clarified that the purpose of this information is for the Board to get information for research as to why this is occurring and to provide recommendations to POST about how to train police officers better to eliminate these issues—the Board does not have authority to deal with individual disciplinary issues within a law enforcement agency. It is up to agency officials, the community, and elected officials to ensure they look at the data and hold their executives accountable. Member Evans countered that, while anonymity is required, the RIPA Board's reports are to be made public, including disaggregated data, and should include observations and recommendations—including concerns about individual agencies.

Member Sierra confirmed the DOJ is very sensitive to the need to keep officer identifying information confidential and explained that, if information about officer demographics is collected, the DOJ would put protocols in place to prevent re-identification. Her understanding from the committee is that the purpose of this data is not to identify individual officers, but rather to look for trends.

Member Medrano clarified that individual agencies will know this information and can act on it; the compromise that was made was intended to address the need for additional demographic information for research and to establish policies and training to eliminate racial and identity profiling while staying within the anonymity requirements of the legislation.

Member Silard raised a concern as to how the data will be analyzed in order to identify instances or practices of racial profiling; Member Farrow expressed a related concern that the Board needs to be careful as the information collected, standing alone, is not conclusive as to profiling. He commented that most agencies have robust practices in place already to root out and address racial profiling.

In response to Board questions about the process for data analysis, Shannon Hovis, DOJ, explained that the DOJ will be working with the Board and with its AB 953-funded staff to set a research agenda and to engage with experts and the academic community on data analysis.

➤ **Comments from the Public**

Anthony DeCecio/San Bernardino County Sheriff's Department expressed a concern that this is garbage data because the recommendations are to collect perceived not factual data and would prohibit the officer from asking about race. He further commented that OPD officers spend up to 30 minutes per detention to fill out form, and expressed concern that his station would be required to be among the early reporters because it is part of the larger San Bernardino department.

Tho Vinh Banh/Disability Rights California commented that public accountability and transparency are important. She suggested the Board add a data element under "perceived disability" for blind/sight impaired, and asked whether reporting on the officer's use of body cameras would be merged with this data set.

Jo Michael/Equality California referred the Board to the letter dated September 30, 2016, and recommended that the Board address training and privacy protection, include the descriptors provided in letter, and add a catchall data category for "perceived LGBT."

Danielle Boldt/ San Bernardino County Sheriff's Department expressed a concern that the data subcommittee has gone too far beyond the requirements of the statute and will impose significant time costs on officers.

Peter Bibring/ACLU referred the Board to the letters from co-sponsors and generally endorsed the recommendations of the Subcommittee in the main, including the compromise regarding officer demographics plus redaction.

Brian Thomas/Orange County Sheriff's Department emphasized that it will be important to analyze the data relative to the demographics of the area in which the stop occurred.

Rosa Aqeel/PolicyLink and the Alliance for Boys and Men of Color expressed a concern that the Board is hearing too much about privacy protections for officers—which is already addressed by the legislation—and not enough of about excluding bad apples from the police departments or that officers are killing black and brown lives without accountability.

Bridget Claycomb/Disability Rights California asked the Board to consider adding a data value for whether the person is perceived to be homeless.

➤ **Comments from Board Members**

Member Medrano acknowledged the concern about the time requirement and explained that the subcommittee tried to limit data, adding only 5-6 questions beyond the statutory minimum and recommending drop downs menus and checkboxes wherever possible. Member Guerrero concurred.

Member Farrow expressed a concern that location will be difficult to report on rural roads and freeways, and noted that the location of the stop often differs from the location of the offense

based on officer training to execute stops in well-lit areas. Ms. Beninati confirmed that the DOJ understands these concerns.

Member Walker emphasized that it is important that all sides exercise a selfless mentality, explaining that whether or not we make a conscious decision to see race/gender, these things are happening every day. He commented that it took a lot to get our society to this point of acknowledging the problem, and recognized that it will take sacrifices on both ends to address it.

Member McBride stated that many of the people living in the communities affected by these issues are not able to attend these meetings, and emphasized that we need data to move our communities toward healing.

Member Silard suggested the Board recommend that the DOJ collect data on whether an officer had a body camera, was the camera on, and did it remain on throughout encounter.

In response to a suggestion from Member Silard that the Board's recommendation address body cameras, Member Durant explained that agencies are still waiting for statewide guidance regarding body camera use, and Chief Medrano noted that less than 10 percent of agencies are currently using body cameras.

In response to a question from Member Silard, Ms. Beninati explained that the DOJ will continue to assess the regulations and data collection program once agencies start to report.

Motion: A motion was made by Member Johnson and seconded by Member Bobrow to recommend that the DOJ incorporate the subcommittee's recommendations into its proposed regulations. The motion was passed by a unanimous voice vote of the members present, with Member Sierra abstaining.

6. Break

The Board recessed at approximately 12:15 p.m. and reconvened at approximately 12:45 p.m. with a quorum of members present.

7. Subcommittee Reports (continued)

c. Searches and Seizures Subcommittee

Motion: A motion was made by Member Oden and seconded by Member Lytle to approve the minutes of the August 8, 2016 subcommittee meeting. The motion passed by unanimous voice vote of the subcommittee members present.

Subcommittee Chair Bobrow explained that the handout of proposed data values for searches and seizures was the result of a unanimous recommendation from the subcommittee.

➤ Comments from Board Members

None.

➤ **Comments from the Public**

Peter Bibring/ACLU referred the Board to the co-sponsor letter dated September 15, 2016. He strongly endorsed the use of a narrative field to explain the basis to stop and search.

Motion: A motion was made by Member Bobrow and seconded by Member Oden to recommend that the DOJ incorporate these data elements into its proposed regulations. The motion was passed by a unanimous voice vote of the members present, with Members Lytle and Sierra abstaining.

d. Outreach Subcommittee

Motion: A motion was made by Member Sierra and seconded by Member Farrow to approve the minutes of the September 27, 2016 subcommittee meeting. The motion passed by unanimous voice vote of the subcommittee members present.

Subcommittee Chair Guerrero explained that the subcommittee's goal was to engage members of the public throughout this process by using the networks and expertise among the board and stakeholders. The subcommittee recommends the DOJ provide materials in multiple languages, using plain language to describe the RIPA board, the rulemaking process, and how to get involved. The subcommittee suggested the DOJ use previously-approved materials to create a flyer, which was included in the materials distributed to the Board for review in advance of this meeting. The subcommittee recommends Board members distribute the flyer and other materials to be developed in the future to their networks, provide additional contacts to the DOJ to be added to it listserve, and provide a one-sentence statement to the DOJ by Wednesday to help the public understand the importance of successfully implementing AB 953.

➤ **Comments from Board Members**

Member Johnson expressed a concern that the time and location of these meetings preclude interested individuals from attending, and recommended that future meetings include evening options and locations in non-government buildings. Member Silard agreed, and suggested that schools might be a good location. Member Oden suggest the DOJ use local and minority newspapers for outreach.

➤ **Comments from the Public**

Rosa Aqeel/PolicyLink and the Alliance for Boys and Men of Color underscored the need to have these meetings be accessible to the community. Peter Bibring/ACLU agreed. A representative from Disability Rights California emphasized that meeting locations should be accessible to those with disabilities.

Another member of the public suggested the DOJ partner with community groups who have relationships in the community. Andrew Medina/Asian Americans Advancing Justice – California suggested his organization would be happy to partner with the board.

➤ **Comments from the DOJ**

Ms. Beninati noted that the next meeting would be held in Fresno at the Downtown Business Hub (Fresno Area Hispanic Foundation). She explained that the DOJ has been listening to recommendations from the Board and feedback from the public and will submit draft regulations to Office of Administrative Law (OAL) soon. Once the form of the proposals is approved by OAL, the regulations will be posted and noticed for public comment and hearing; at least one public hearings will be held in the evening. During the public comment period, members of the public can attend meetings and provide oral comment or in writing through email (ab953@doj.ca.gov). Ms. Hovis noted there is a subscription button on the website (<https://oag.ca.gov/AB953>) to be added to the distribution list for AB 953 notifications.

Motion: A motion was made by Member Guerrero and seconded by Member Medrano to forward these recommendations the DOJ. The motion was passed by a voice vote of the member present, with Member Sierra abstaining.

e. Special Settings Subcommittee

Motion: A motion was made by Member Silard and seconded by Member Durali to approve the minutes of the September 30, 2016 subcommittee meeting. The motion passed by unanimous voice vote of the subcommittee members present.

Subcommittee Chair Robinson summarized the issues considered by the subcommittee, as reflected in the subcommittee meeting minutes. Member Silard summarized the recommendations moved and passed by the subcommittee, as reflected in the subcommittee meeting minutes. Member Durali noted that the DOJ look carefully at the school setting with respect to the reasons for the stop and ensure that the options for officers include school-specific data values (dress code violation, willful defiance, etc.). Member Walker commented that when students are stopped, consent is not black and white, as students often assume an interaction is not consensual anytime an officer is part of the interaction—a concern that is reflected in the subcommittee’s proposed definition of “detention” in a school setting.

➤ Comments from the Public

Tho Vinh Banh/Disability Rights California expressed hope that AB 953 and the regulations will help identify those interactions that may require additional scrutiny with respect to individuals with disabilities, as some disabilities may result in behavior that leads to a stop.

Peter Bibring/ACLU endorsed the subcommittee’s recommendations, including the exclusion for larger meetings in which an officer participates in a bailiff capacity.

➤ Comments from Member of the Board

In response to questions from Member Ali, Member Medrano clarified that the 1000 feet limitations is a reflection of the education code with respect to school zones, and that stops outside of 1000 feet would be reported as standard stops. Member Sierra noted the recommendation from the Definitions Subcommittee that the DOJ clarify that AB 953 applies to school police departments.

In response to a question from Member Ali, Members Silard and Medrano suggested that the regulations should reach specialized police (port, housing, etc.), and Member Sierra confirmed that the DOJ will review this recommendation to ensure the regulations are consistent with the statute.

Motion: A motion was made by Member Ali and seconded by Member Silard to forward these recommendations to the DOJ. The motion was passed by a unanimous voice vote of the members present, with Member Sierra abstaining.

f. Technology Subcommittee Chair Micah Ali

Motion: A motion was made by Member Ali and seconded by Member Medrano to approve the minutes of the September 27, 2016 subcommittee meeting. The motion passed by unanimous voice vote of the subcommittee members present.

Subcommittee Chair Ali reviewed the recommendations from the subcommittee that the DOJ provide a menu of options for agencies to report stop data, including browser-based input, batch uploads, and system-to-system upload. All data should be uniform and standardized. Subcommittee Chair Ali reported the CJIS division is developing a web portal and an open-source data application that will be made available to law enforcement agencies at no cost. He further reported that CJIS is developing a prototype that will be ready to demonstrate in December or January and will convene a working group with law enforcement to solicit feedback before actual system development.

Member Medrano expressed a concern that agencies should have an opportunity to validate data before it is submitted to the DOJ. Member Oden asked whether there would be an explanation for changes to the raw data.

➤ Comments from the DOJ

Joe Dominic, CJIS, clarified that there would be an opportunity for data verification at the agency level to make sure data is approved before it is submitted to the DOJ, and a second validation process by which data that does not conform to DOJ standards would be returned to agencies as an error. He reported that CJIS has already met with the first tier of agencies subject to AB 953 reporting and will also meet their vendors to discuss incorporating these requirements into existing support/maintenance plans. The DOJ's platform will be designed as open-source.

In response to a question from Member McBride, Ms. Hovis clarified that the opportunity for agencies to review the data before it is submitted to the DOJ, including the time frame that they have to review it, is one of the questions for the Board.

➤ Comments from Board Members

Member Lytle agreed with the concerns expressed by Members Oden and McBride that there should be a mechanism to know the details of the agency verification process if the DOJ will not also receive raw data. Member Medrano noted a concern that, without internal audits and controls, the data submitted to the DOJ will be worthless. Member Guerrero commented that

there were competing concerns for data integrity as well as the potential for data doctoring by agencies, and suggested a double submission process might make sense.

➤ **Comments from the Public**

None.

Motion: A motion was made by Member Silard and seconded by Member Johnson to forward these recommendations to the DOJ. The motion was passed by a voice vote of the members present, with Members Lytle, McBride, and Sierra abstaining.

7. Closing Remarks and Adjournment

The meeting was adjourned at 2:45 p.m. by Co-Chairs Medrano and Evans.