CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD

STATE AND LOCAL RACIAL AND IDENTITY PROFILING POLICIES AND ACCOUNTABILITY SUBCOMMITTEE MEETING MINUTES

November 9, 2021 – 1:00 pm. – 2:45 p.m.

Subcommittee Members Present: Andrea Guerrero, Melanie Ochoa, Manju Kulkarni, Lily Khadjavi, Ammar Campa-Najjar

Subcommittee Members Absent: Steven Raphael, Commissioner Amanda Ray

1. Introductions
Co-chair, Andrea Guerrero called the State and Local Racial and Profiling Policies and Accountability Subcommittee meeting to order at 1:00 pm. The meeting was held with a quorum of members present.

Approval of Subcommittee Meeting Minutes

MOTION: Member Ochoa made a motion to approve the August 19, 2021 subcommittee meeting minutes. Member Kulkarni seconded the motion.

APPROVAL: All subcommittee members present voted "yes;" there were no abstentions.

Nomination of Subcommittee Co-Chairs

Co-Chair Guerrero nominated Member Campa-Najjar as Co-Chair of the State & Local Policies Subcommittee. Member Campa-Najjar accepted the nomination and was unanimously approved by all subcommittee members present as the new Co-Chair.

2. Overview of Proposed Subcommittee Work by Department of Justice
DOJ Associate Governmental Program Analyst (AGPA) Anna Rick provided highlights on the Gender Analysis section for the 2022 RIPA Report. In her overview she noted that the Gender Analysis section of the report contained: (1) gender data analysis; (2) best practices aimed at reducing disparities for transgender individuals; and (3) a summary of relevant legislation. Ms. Rick indicated interest in subcommittee comments on how the data was presented, specifically regarding content clarity and that she welcomed comments on best practice recommendations provided in the section.

Member Ochoa commented on how well written the Gender Analysis section was in terms of the data presented, not just RIPA based data, but data from other jurisdictions as well. Further, she noted the value in identifying the implementation of California jurisdictional Gender-based policies indicating that the research lands on strong, actionable recommendations and hoped that it would lead to the statewide implementation of the changes proposed in the transgender section. Specifically, Member Ochoa appreciated the call-outs and narrative discussion. She felt those were so impactful because they illustrated how the issues raised are felt by people on the streets, which is an element that can be missing at times from this type of data analysis. She noted that while this type of analysis generally provides only a law enforcement perspective, the transgender analysis illustrates how law enforcement stops, which officers may view as routine, can lead to a host of consequences for the transgender individual who is stopped. Member Ochoa also inquired about the cause of the CHP data error.

Ms. Rick invited Kevin Walker from the DOJ Research Center to provide an explanation of the CHP data error. Mr. Walker explained that the error was a technical issue with CHP's software that they use to translate the data from the format they store their data into the file used to transmit their data to the DOJ. Further, he explained that an error was introduced that specifically affected those cases where individuals whom officers indicated as "perceiving as transgender," which is why the note discussing the error was placed specifically in the Gender Analysis section. Mr. Walker noted the Research Center's interest here was transparency relative to this year's data as well as some previous data that had data errors introduced through the technical data translation software. He stated that the Research Center has taken measures to reduce the effects of this error, and that data submitted by the CHP was excluded from analyses in this section of the report.

Member Khadjavi inquired about the data error contained within the Gender Analysis section, noting that with over one thousand records, which were all officer perceived transgender cases, whether there was any effort made to extract any meaningful information from those records. Member Khadjavi added, for the record, an interest in the subcommittee further examining the data set of the over one thousand cases believing that the data set may prove informative and shed greater light on those interactions between the transgender community and law enforcement.

In response, Mr. Walker explained that the entire record of transgender individuals in CHP's data stops for 2020 were impacted by the data error issue and that the error was discovered while working to correct a prior and similar data error that affected gender non-conforming individuals. He stated that during the September RIPA Board Regulation meeting, the Research Center commented on discovery of the CHP data error affecting the entire record of

transgender individuals and that they were in the process of correcting the error. He indicated that their team ultimately worked with CHP to correct the data so that we could include them in our analyses. Further, he noted the challenge of attempting to go back and incorporate eleven hundred records following discovery of the error and rerun those records not just for this section but for the entire report and satisfy the statutorily mandated date of completion and publication by January 1, 2022.

DOJ Deputy Attorney General (DAG) Kendal Micklethwaite provided an overview of the Disability Policy Analysis section and described the statistical disparities for those with disabilities who interact with law enforcement. She noted that those with mental health disabilities were 4.8 times more likely to have been stopped and searched, and those perceived with other types of disabilities were 2.7 times more likely to be stopped and searched. She noted that this represents a sliver of the experiences shared by those with disabilities who interact with law enforcement. Further, she explained that in interactions with individuals experiencing mental health disabilities, officers are 5.2 times more likely to apply use of force and 3.3 times more likely to apply force on individuals with other types of disabilities.

DAG Micklethwaite turned next to community caretaking stops noting that mental health individuals are stopped for community caretaking at exponentially higher rates than those without disabilities. Further, she explained that despite these stops not being related to criminal activity, stopping, or searching, law enforcement officials are 5 times more likely to use force against those perceived to have mental health disabilities. She stated that from those statistics and research from the past year informed the best practice recommendations contained in the report. She highlighted a few best practices under the use of force category, including: (1) policies addressing the Americans with Disabilities Act (ADA) and use of force; (2) "least police-involved response", specifically in community care and community based scenarios; (3) specific recommendations on policing tactics, i.e., eliminating the practice of sweeps of unhoused communities and instead prioritizing housing; and (4) training recommendations that related to the best practice recommendations contained in this section.

Member Ochoa commented that prioritizing policies and practices supporting alternative community based responses should not fall solely on the shoulders of agencies and advocacy groups but also municipalities who have the authority and power to create these alternatives. She also recommended that as a general matter, going forward when drafting the report that Members use "explicit" language when drafting recommendation language. Member Guerrero recommended highlighting the disability policy best practice recommendations by emphasizing that those with disabilities often lack access to law enforcement when they need

it. She noted that this very dilemma, the lack of access to law enforcement, and the need for alternatives to calling law enforcement, highlights the importance of developing best practice recommendations.

DAG Allison Elgart, standing in for DAG Micklethwaite, informed the Board that the consent section was revised to incorporate data the Research Center had corrected and make the Board's voted-upon recommendation language more explicit.

Member Ochoa commented that the language in the call out box on page 95 did not reflect the intent behind prior discussions regarding reducing disparities related to supervision inquiries, specifically noting that the intent was not to convey that everyone should be subjected to a records check to determine supervision status. Member Guerrero agreed with Member Ochoa, stating that the call out box needed to be rewritten to address the unnecessary detention of harassment of individuals not suspected of a crime or language to that effect.

DAG Micklethwaite next discussed pretext stops, commenting that the traffic violation analysis was categorized by moving and non-moving violations. She stated that those perceived by law enforcement to be Asian who were stopped at far greater rates than those perceived by law enforcement to be Black. Conversely, those perceived to be Black are stopped for non-moving or equipment violations much more than any other perceived race or ethnicity. She added that there are a few stop disparities that could be interpreted as pretext, including stop disparities between those perceived as Black or Hispanic for obstructed window violations and bike light stops. Lastly, she noted that some jurisdictions have taken action in developing policies prohibiting certain types of pretext stops, including police departments in Berkeley, Philadelphia, Minneapolis and Virginia, which have developed pretext policies prohibiting stops of individuals with tinted windows or presence of odor of marijuana.

Acknowledging the severity of pretext stop outcomes and high profile examples of pretext stops that have resulted in death, Member Ochoa and Member Guerrero, called for a subcommittee recommendation to end pretext stops. Member Ochoa had the following recommendations for the pretext section: (1) further clarifying whether bike stops are included within traffic stops; (2) clarifying cell-phone violation codes to specify whether violations are moving or non-moving; (3) cleaning up the graphs under top offenses for each ethnic group; (4) in its discussion of *Whren v. United States*, including language noting that pretext stops are expressly illegal in the state of California; and (5) specifying ways to eliminate pretextual stops, include examples of how municipalities can reduce and eliminate pretextual stops.

Ms. Rick noted that the accountability section has progressed from the last review and focused her discussion on three elements contained within this section: (1) auditing practices to enhance integrity of the stop data; (2) using stop data for policy changes and staff supervision within agencies; and (3) community-based accountability. She stated that community-based objectives from the San Francisco Police Department Community Policing Strategic Plan has been added to the report from the last review. Ms. Rick added that the report includes examples of audits of stop data conducted by the Los Angeles Police Commissioners Office of the Inspector General, Oakland Police Department's Office of the Inspector General, and Independent Monitor for the Oakland Police Department.

Ms. Rick identified multiple emerging practices and best practice recommendations to enhance the integrity of RIPA stop data. Specifically, the Board recommends that law enforcement agencies:

- systematically audit stop data records to minimize the possibility of recording inaccurate or incomplete information;

- conduct cross-reviews of other records that agencies collect, such as daily logs, arrest reports, field interview cards, dispatch logs, body-worn camera logs, use of force reports, civilian complaints, or a combination of these, as a cross-compliance measure;

- incorporate video analysis as a component of stop data auditing.

- develop policies regarding how the agency will respond to recurring data reporting issues;

- assess outlier patterns in their stop data for validation purposes and follow up with focused audits to determine the causes for the patterns;

- include the comparison of certain fields to check for inconsistencies such as a search incident to arrest and no arrest;

- share data auditing findings with the public as a component of their accountability systems.

Additionally, Ms. Rick explained that the Board reviewed efforts in the Los Angeles, San Diego, and Oakland Police Departments where agencies and their oversight bodies are using

analysis of RIPA stop data and body-worn camera footage data to identify how the agencies' policies and practices lead to disparities in policing and to develop targeted interventions. Ms. Rick stated that the Board issued best practice recommendations regarding the use of stop data, policy changes, and staff supervision. Specifically, the Board recommends that law enforcement agencies:

- provide the public with access to their stop data, which will assist community members to engage in decision-making and policy development with agencies;

- analyze stop data, including body-worn camera footage, to evaluate policies, identify performance issues, and inform both individual and department-wide training;

- analyze their stop data longitudinally and in relation to the introduction and implementation of reform measures, which will necessitate time stamping new directives, policies, and trainings, and then evaluate those reform measures for effectiveness;

- partner with an academic or research institution to support analysis of patterns and trends in their stop data;

- have command staff routinely review service area data with agency leadership, such as the captain dedicated to the area, and compare stop data for the area to agency-wide stop data and data for other service areas;

- require supervisors annually review information about officer's individualized stop data with each officer along with benchmarks regardless of how they perform;

- identify officers with outlier trends in data regarding stops and searches and review this in conjunction with other performance metrics for the officer.

Ms. Rick indicated that the final portion of the section addresses community based accountability where the Board reviews several examples of community participatory and oversight advisory and disciplinary boards.

Member Ochoa commented on auditing and underreporting that goes along with that inquiring what DOJ's role is, if any, in identifying inconsistencies in the data within the auditing process. She also commented that when looking at auditing trends greater attention should be given to undercounting trends, particularly among Black and Latinx individuals.

3. Public Comment

Jeff Bell expressed concerns about why the issue of consent is such a significant issue given that it is the lowest interaction between individuals and law enforcement in the report and questioned the necessity to attempt to eliminate consent searches given such a low interaction rate compared to other interactions.

Eryn Wilson-Nieves Civic Engagement Manager with Alliance San Diego, noted that Alliance San Diego is an organization working to ensure all residents can thrive in an environment of safety, harmony, justice and equality. She commented how racial profiling and racial bias are detrimental and damaging to any cities ability to create equitable treatment and respect for all of its community members. Several studies validate that Black, Brown and Pacific Islander people experience racial bias, profiling, and policing. BIPOC communities should feel safe and respected especially from the very people charged with protecting them, which includes the police. Our communities deserve our collective best efforts to prevent harassment and abuse by our local law enforcement. Today's discussion in discontinuing pretext stops is a practical and necessary next step in achieving the best for our communities. She noted that internal self-reported documents, from the San Diego Police Department, proves that there is a different standard of policing for BIPOC ("Black, Indigenous, and people of color") communities and that is extremely troubling. Alliance San Diego is working to improve racial bias in policing but a state policy on pretext stops could go a long way to raise the standard of policing and encourage equitable community treatment from all law enforcement agencies.

Tasha Williamson, a community advocate in the City and County of San Diego, stated that her position holds police accountable every day. She stated that they have videotaped police officers during pretext stops where they have intimidated passengers who are not a part of the nexus of the stop. In addition, she noted, police have forced individuals out of the vehicle, handcuffed as well as mistreated them. In addition, a San Diego State University report shows that San Diego law enforcement conduct pretext stops, particularly stops of Black people at a higher rate than any other race. We have officers participating in this meeting now that will not tell the truth. They have not been transparent in San Diego. They continue to not be transparent to boards and commissions and have been reckless. It is corrupt. Pretext stops are not just being used for legal resources but rather being used to identify and place people in a FI status in a computer system, which is wrong. People have a right to be free. San Diego residents have a right to walk around and go around our communities without being identified by police when we are not committing a crime nor a subject about to commit a crime with reasonable suspicion. We have officers on here that do not know their jobs. They are harming our community members. We are asking you to take a stand because we have been asking for this to stop for decades. It is time that the next generation not have to live with the absolute corruption and disrespect that is happening to BIPOC of southeast San

Diego and others from lower socioeconomic communities. They do not treat their white people like this; thus, stop them from treating us in this manner.

4. Board Discussion

Andrea Guerrero discussed the last remaining items on the agenda. Ms. Guerrero noted that there is a potential vote on pretext stops. Additional items for inclusion for future reports include addressing the CHP data error and whether meaningful information can be extracted from those 1000 plus affected records in which officers perceived individuals as transgender. She noted that future agenda items should include: (1) continuing to track disparate application of law and policy, and (2) taking a deeper dive into the intersectionality of transgender data with race. Under the stop and searches section Member Guerrero noted that for future reports the subcommittee will look at: (1) what more can be done with recommendations surrounding consent searches and supervision inquiries; (2) giving the bike-stop topic a deeper examination; and (3) looking at what policies can provide municipalities and local governments guidance in ways to eliminate pretext stops. Member Guerrero noted the actions for future reports under the accountability section included looking at auditing reporting and inconsistency in reporting. She indicated that the subcommittee going forward will want to look at accountability systems, identifying violations and reviewing them to determine what is exacerbating disparities within interactions.

Member Khadjavi made a motion recommending California agencies, municipalities and the legislature to pursue policies and legislation that would limit or eliminate pretextual stops. Member Kulkarni seconded the motion with all members approving the motion. Member Guerrero stated that for future reports under the transgender policy analysis that the subcommittee would look at the CHP pool of over a thousand transgender stop records, isolating those stops and provide an intersectional analysis of the pool of records. She noted that under the stops section the subcommittee would look at specific violations to understand disparities in bike stops and make policy recommendations that will eliminate these stops. Member Ochoa inquired whether the policy definition in the agency policies section accurately reflects state law. Ms. Elgart responded by stating that the process to date has been to determine whether there are any existing definitions for any of these policy topics and not whether or not the definitions matched the Penal Code. She noted that prior to AB 953 and data collection many agencies did not have definitions for many of these topics covered in the report, so DOJ used definitions consistent with the Penal Code and found in literature. Further, she stated that it would be difficult at this time of the year to make the adjustment to add an accuracy metric when looking at next year because DOJ will not do a matrix due to over 400 agencies reporting but worth a discussion with the subcommittee on how to address this matter going forward. DOJ Supervising Deputy Attorney General Nancy Beninati

commented that such analysis is not appropriate for DOJ and not within the purview of the RIPA Board.

5. Discussion of Next Steps

Member Guerrero explained that this is the subcommittee's last meeting of the year. She also commented that the public can email CalDOJ or you can join us at the next meeting. The RIPA Board may be reached by email at ab953@doj.ca.gov. We welcome your comments.

6. Adjourn

Member Guerrero thanked everyone for their participation, thanked the members of the public for attending and providing comments and adjourned the meeting at 2:45 p.m.