

CALIFORNIA RACIAL AND IDENTITY PROFILING BOARD
ADDITIONAL DATA ELEMENTS SUBCOMMITTEE
MEETING MINUTES

Wednesday, September 28, 2016

Teleconference Locations: California Department of Justice Offices

Los Angeles

300 S. Spring Street
5th Floor Conference Room
Los Angeles, CA 90013

Oakland

1515 Clay Street
20th Floor, Suite 2000
Oakland, CA 94612

San Diego

600 West Broadway St.
Suite 1800
San Diego, CA 92101

Sacramento

1300 "I" Street
Conference Rm. 1540
Sacramento, CA 95814

Other Teleconference Locations:

Kings County Sheriff's Office
1444 W. Lacey Blvd., Administration Building
Hanford, CA 93230

Stanford University
Jordan Hall, Room 106
450 Serra Mall
Stanford, CA 94305

Subcommittee Members Present: Chair Edward Medrano, Mike Durant, Jennifer Eberhardt, Andrea Guerrero, Honorable Alice Lytle, David Robinson, Tim Silard

Subcommittee Members Absent: None

California Department of Justice Staff Present: Nancy A. Beninati, Shannon Hovis, Rebekah Fretz, John Applebaum, Kathy Radez, Glenn Coffman, Jerry Szymanski, CJIS

1. Call to Order and Introductions

The meeting was called to order at 1:03 p.m. by Nancy Beninati. RIPA Board members and members of the public were introduced.

2. Approval of Minutes

Motion: Member Silard moved to approve the minutes from the prior subcommittee meeting. The motion was seconded by Member Eberhardt.

Votes: The motion was passed with Chair Medrano and Members Eberhardt, Silard, and Lytle voting “yes”; Member Robinson voted “yes” through item number 14; there were no “no” votes and one abstention by Member Durant.

3. Continued Discussion of Additional Data Elements and Values

Chair Medrano introduced a sample RIPA survey which he developed to guide the conversation. The Chair reviewed two proposed data elements that did not prompt any comment from the Board or public: time of stop (most likely military time, to be determined based on computer process) and data of stop (items 1 and 2).

Later in the meeting, the Chair reviewed additional data elements and related data values that were approved at the prior meeting and did not require further action from this subcommittee: perceived race or ethnicity of person stopped, limited English proficiency, perceived gender of the person stopped, and perceived LGBTQ, and perceived approximate age of the person stopped (items 8, 9, 10, 11, 12).

a. Location

Member Durant expressed concern that officers reporting in rural locations might not know the block number or address.

Public comment: In response to a question from Chair Medrano, an officer from the California Highway Patrol clarified that their current data collection recorded only the office which the call came out of, not the location of the stop.

Motion: Member Lytle moved that the location data element require the officer to enter either the address and city or “other” with a required open field. Seconded by Member Robinson.

Votes: The motion passed, with Chair Medrano and Members Durant, Eberhardt, Lytle, Robinson, and Silard voting “yes”; no “no” votes or abstentions.

b. Environment

Chair Medrano solicited comments from the Board and public about whether officer should be required to record major location categories such as school, park, business, residence, or government facility. Member Robinson suggested this was unnecessary, as the required physical address will allow subsequent queries as to specific location types. Member Silard suggested that, at a minimum, the form require a checkbox for whether the location is a school facility.

Public comment: A representative from the State Sheriff’s Association asked whether the data would differentiate between a stop of a student versus a member of the public who happened to be in front of a school, noting that this issue came up with respect to AB 71. Atasi Uppal/National Center for Youth Law supported inclusion of a data element for environment, particularly for schools, and adding a variable for the stop location within a school

(inside/outside, hallway, classroom, cafeteria, etc.). Peter Bibring/ACLU endorsed adding a checkbox for school property and a second for street/sidewalk outside a school; he also recommended adding data values for park, sidewalk, government, residence, commercial, and public transit environments.

Motion: Member Silard moved to add a required check box indicated whether or not the stop occurred school property. Seconded by Member Lytle.

Votes: The motion passed, with Chair Medrano and Members Durant, Eberhardt, Lytle, Robinson, and Silard voting “yes”; no “no” votes or abstentions.

a. Reason for Stop

Members discussed at length whether there should be a data value to distinguish between officer-initiated stops and those prompted by a call for service, and whether AB 953 would even apply to calls for service.

Member Silard noted that calls for service might include a description of a suspect, which could prompt an officer to stop individuals matching that description. He suggested data values for “matched suspect description” and “observed crime,” and cautioned against options for “reasonable suspicion” and “probable cause” as those conclusions are frequently litigated and may result in ubiquitous checks for “reasonable suspicion” without any additional information.

Member Eberhardt noted that reasonable suspicion and probable cause have frequently been used as reasons for stops in other data collection efforts, as have traffic violations, parole/probation, and consensual encounters; all of these options can include a dropdown or narrative field for additional detail. She strongly encouraged the inclusion of both reasonable suspicion and probable cause with an open field.

Member Lytle suggested it is important to differentiate between stops in response to a potential felony and other stops, as the former invoke different emotions on the part of both citizens and officers compared to minor traffic stops.

Chair Medrano and Member Robinson both cautioned against an open field response for the “reason for stop” data element; Chair Medrano suggested that a drop down menu with preset options might be most effective. Ms. Hovis noted that technology from CJIS would support drop down menus for further detail.

Public Comment: Peter Bibring/ACLU acknowledged that officer efficiency is a reasonable concern, but that “reasons for the stop” is the most important element to understand bias, and suggested that a checkbox for “reasonable suspicion”—if included—should be accompanied by a dropdown of particular crimes or code violations, as well as an open field. Professor Jack Glaser cautioned about distinguishing between a stop based on a contemporaneous ID on the scene versus a BOLO match, and suggested that “reasonable suspicion” and “probable cause” be coupled with additional specifications—perhaps in dropdown menus, as in New York—especially if consensual encounters will also be included. Rosa Aqeel/PolicyLink would prefer no “reasonable suspicion” option unless it is coupled with a

required field for additional explanation of the basis of reasonable suspicion, and cautioned against options for “looked suspicious” or “suspicious behavior,” which are prone to abuse. Atasi Uppal/National Center for Youth Law suggested options for “observed crime” (drop down), “suspected crime” (drop down), and “suspicious behavior” (drop down or narrative).

Following this discussion, Chair Medrano and Member Eberhardt both endorsed a “reasonable suspicion” option. Member Guerrero suggested three options with drop-downs: probable cause, parole/probation, and reasonable suspicion, but expressed concern that reasonable suspicion and probable cause are legal conclusions that may not reflect the facts.

Motion: Chair Medrano moved to accept the data values listed in the sample survey (traffic violation, call for service, observed crime, consensual encounter, citizen arrest [minus other, which was removed], plus victim/witness identification match, matched suspect description, civil violation, parole/probation, and probable cause with dropdown, and further moved to table the discussion of reasonable suspicion pending additional information from DOJ on how other cities/states have captured that data. Seconded by Member Silard.

Votes: The motion passed, with Chair Medrano and Members Durant, Eberhardt, Lytle, Robinson, and Silard voting “yes”; no “no” votes or abstentions.

b. Officer Initiated or Required

There was no further comment from the Board or Public about this data item.

Motion: Member Robinson moved to accept the data element for “Officer initiated or Required” with data values of “self-initiated” or “required.” Seconded by Member Durant.

Votes: The motion passed, with Chair Medrano and Members Durant, Eberhardt, Lytle, Robinson, and Silard voting “yes”; no “no” votes or abstentions.

c. Results of Stop

Member Silard suggested adding a data value for mental health referrals. Member Guerrero agreed and suggested adding calls to Department of Homeland Security agencies (ICE, Border Patrol, etc.), emphasizing that this is a frequent outcome in the immigrant community even in the context of a stop versus a detention. Chair Medrano suggested this be broadened to “other law enforcement agency called” or providing three options for referral to another agency defined as “federal” (specify), “state” (specify), “local” (specify).

Member Silard suggested that, technology permitting, a stop on school property could prompt additional question about school disciplinary outcome, if known, or referral to school administration, mental health/support services, or child welfare. Member Robinson noted that school-specific values and elements on property seizures are being addressed by other subcommittees.

Member Silard noted that separate legislation (AB 71) will gather use of force data but only applies to the most serious incidents, and asked whether that data should be captured here.

Ms. Hovis stated that the Definitions subcommittee also voted to recommend other actions taken by officer, including use of force values, be considered by the Additional Data Elements subcommittee. .

Public Comment: A representative from the State Sheriff's Association suggested officer should be able to check multiple boxes. Atasi Uppal/National Center for Youth Law stated that the Special Settings Subcommittee will discuss school based incidents at its meeting on Friday, and stated that she supports breaking down different outcomes in school, either by requiring those field if the stop occurs on school grounds or by including those fields suggested on page 6 of the recent ACLU letter for all stops. Ms. Hovis noted that this letter was sent to all board members this week. Peter Bibring/ACLU expressed support for that approach.

Motion: A motion was made by Chair Medrano and seconded by Member Eberhardt to accept the data values listed in the sample survey (no action, warning, citation, property seizure, and arrest), plus 5150 mental health hold and other agency referral (with a drop down menu). The subcommittee did not vote on the specific agencies to include in the drop down menu.

Votes: The motion passed, with Chair Medrano and Members Durant, Eberhardt, Lytle, Robinson, and Silard voting "yes"; no "no" votes or abstentions.

d. Charges

Chair Medrano explained the current proposal is to include a required data element of "If arrested, offenses charged with." with data values of "felony" and "misdemeanor." Member Durant suggested the data elements should be for specific offenses rather than category, as those distinctions are subject to change, citing Proposition 47.

Public Comment: John Kuhn/Butte County Sheriff's Office suggested concern that the statutes may not give you the full picture of charges in the case of wobblers. Chief Medrano clarified that the data won't collect charges, as that's a decision made at a later point by the District Attorney. Jim Epperson/California Highway Patrol asked about a request to be taken forthwith for an infraction. Ms. Beninati clarified that AB 953 requires that if a warning or citation is issued that the specific warning or citation must be recorded. A representative from CJIS offered that dropdown menus could be provided in a way that is not too onerous for officers.

Motion: A motion was made by Member Durant and seconded by Member Lytle to include prompts for warning, citation, and arrest with dropdown options for the specific code provision.

Votes: The motion passed, with Chair Medrano and Members Durant, Eberhardt, Lytle, Robinson, and Silard voting "yes"; no "no" votes or abstentions.

e. Perceived Gender

This data element, and related values, was approved at the subcommittee's prior meeting. Member Silard asked whether the committee considered adding explanatory parentheticals like

those provided on page 3 of the June 15, 2016 letter to the Board from LGBT groups to the previously-agreed upon data values for “Transgender-Male” and “Transgender-Female.” Member Eberhardt suggested this might be addressed through training, and Chair Medrano recommended that the Board include those definitions in its guidance on training.

Member Silard also noted the very serious privacy protection concerns raised on pages 5-6 of that same letter.

f. Perceived LGBTQ

This data element and related values were approved at the subcommittee’s prior meeting. Member Silard questioned whether the reference to “questioning” prompts any useful data.

Public Comment: Jo Michael/Equality California noted that the June 15 letter from advocacy groups include several additional elements that would provide more depth on sexual orientation, but stated that Equality California is working on an updated letter to be presented in advance of the full Board meeting proposing a single yes/no data element of whether the officer perceives the subject to be LGBT, which would provide the opportunity for an officer to note his or her perception of the relevant “community catchall,” rather than requiring the officer to make an individualized assessment.

4. Additional Comments

Member Silard suggested the subcommittee meet again to address peace officer data, as serious concerns remained as to those proposed data elements and values.

Public Comment: Rosa Aqeel/Policy link encouraged the subcommittee to set future meetings after work or at other times when the public could more easily attend.

5. Adjournment

The meeting was adjourned at 3:10 p.m.