

CALIFORNIA RACIAL AND IDENTITY PROFILING BOARD
SPECIAL CONSIDERATIONS/SETTINGS SUBCOMMITTEE
MEETING MINUTES

Monday, August 15, 2016, 9 a.m.

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

Other Teleconference Locations:

Kings County Sheriff's Office 1444 W. Lacey Blvd., Administration Building Hanford, CA 93230	Compton USD, Education Service Center 501 South Santa Fe Ave. Conference Rm. #132 Compton, CA 90221
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Subcommittee Members Present: Micah Ali, Sahar Durali, Sheriff David Robinson, Timothy Walker

Subcommittee Members Absent: Reverend Ben McBride, Chief Edward Medrano, Tim Silard

California Department of Justice Staff Present: Nancy Beninati, Shannon Hovis, Rebekah Fretz, Glenn Coffman, Jerry Szymanski

1. Call to Order and Introductions

The first meeting of the Special Considerations/Settings Subcommittee was called to order by Nancy Beninati of the California Department of Justice (DOJ) at 9:20 a.m. The meeting was held by teleconference with a quorum of subcommittee members present. After the meeting was called to order, the subcommittee members, DOJ staff members, and members of the public present at each teleconference location introduced themselves.

2. Selection of Subcommittee Chair

MOTION: Member Ali made a motion that David Robinson be elected as Subcommittee Chair.

VOTE: The motion was passed with Member Robinson, Member Walker, and Member Ali voting "Yes", no "No" votes, and no abstentions. Member Durali was not present for the vote.

3. Swearing In of Member Sahar Durali

Member Durali joined the meeting at 9:20 a.m. and was sworn in as a member of the California Racial and Identity Profiling Advisory (RIPA) Board.

4. Defining Stops in K-12 School Settings

Ms. Beninati from the DOJ asked for comments from the subcommittee members regarding how to define detentions in a K-12 school setting and reasons for a stop that are unique to a K-12 school setting. Chair Robinson provided a brief summary of the discussion held during the Definitions Subcommittee meeting regarding the definition of “detention”.

Member Durali asked if reporting officers included both sworn police officers on campus and school security officers. Ms. Beninati replied that only sworn officers were required to report stop data. Member Durali suggested looking at how detentions are defined for purposes of reporting to the Civil Rights Data Collection (CRDC) system.

Chair Robinson asked whether the AB 953 reporting requirements encompassed all police officers associated with a school district. Member Ali commented that AB 953 does not specifically include school police. Ms. Beninati replied that city and county police officers who contract with a public school district are covered, but the question of whether school districts that have their own police department must report is being reviewed by the DOJ. Mr. Szymanski from the DOJ commented that Los Angeles Unified School District (LAUSD) school police officers respond to calls outside of school settings and also have complete Penal Code Section 830 powers. Member Ali commented that the 15-18 school district police departments in the state all fall under Section 830. Chair Robinson suggested that the subcommittee may want to focus on the largest law enforcement agencies that are required to report in 2017, and expand the scope of their discussions later as needed.

Member Durali suggested that interrogations of students in the presence of peace officers should be reported. Member Ali commented that, in the Compton Unified School District, the sheriff’s department only gets involved in school matters when an incident rises to the level of a sex crime; all other incidents are handled by school police.

Member Durali asked for clarification regarding whether law enforcement agencies with 1,000 officers or less would be required to report. Chair Robinson replied that large agencies are required to begin reporting first, and then gradually all smaller agencies will also be required to report stop data.

Chair Robinson asked whether there were any additional circumstances where data should or should not be reported. He proposed that situations involving an active shooter should be excluded from reporting because the priority of officers during such events should be on the shooter and not on collecting data.

Chair Robinson then turned the conversation to the question of how a school setting should be defined. He commented that the California Gun Free School Zone Act has a definition, but the definition may be less relevant if the focus is on the type of officer involved. Regardless

of whether the setting is a public or private school, if a peace officer is involved, the officer would have to report. Ms. Hovis replied that defining a school setting is important for data purposes, and that the data needs to be disaggregated and the location documented for this reason.

Member Durali asked whether the DOJ had looked at the Education Code for a definition. Ms. Hovis replied that the Education Code has a variety of definitions, and that different legal standards apply in school settings for detentions. For example, an officer in a school setting does not need reasonable suspicion to conduct a search, but a search would clearly be a stop.

Ms. Hovis asked the members for comments on whether the definition of a detention should be different on school campuses and also for any examples of situations that would qualify as a stop and those that would not. Chair Robinson commented that the Kings County Sheriff's Department has a grant with the school district that makes it clear that the school district has priority in enforcement actions and that officers are on campus for community policing. He proposed that if a student is searched or detained pursuant to a criminal investigation, these incidents should be documented, but detentions for purpose of school-related investigations should be exempt from data collection.

Member Durali proposed a broader definition that would include any disciplinary matter in which officers are involved, even if they do not rise to the level of criminal investigations, because this data is not available elsewhere. Member Robinson commented that school disciplinary matters are usually initiated by the school. Member Durali replied that this is not always the case if an officer sees an incident occurring on campus. Ms. Hovis commented that the handling of disciplinary matters varies by school district, and the chain of command is often unclear.

Ms. Beninati asked the members for any hypotheticals of incidents they had witnessed in the school setting that would be a stop and those that would not. Member Durali commented that she has seen cases where an officers will intervene if it looks like there is going to be a fight between students and also in situations where there is simply a student dress code violation.

Member Walker commented that, at his former high school, even in cases that were not serious, officers often approached suspicious-looking students and took them into the office for questioning. There were many instances where officers approached groups of students that were hanging out on campus just to see what was going on. He suggested that violent fights and any physical intervention by an officer should be considered stops, but not situations where an officer simply approaches students to see what is going on. Member Durali commented that seemingly benign situations can escalate into something more, and valuable data will be lost if detentions in the school setting are limited to physical interventions.

Chair Robinson commented that officers often are assigned to patrol the areas around a school and encouraged to build rapport with students. Making the definition of detention too broad would deter officers from engaging with students and would have a chilling effect on community policing with respect to officer-student relationships. He proposed that it would be

better to start cautiously and address the most serious matters, so as not to discourage data collection.

5. Public Comment

Peter Bibring from the ACLU of California commented that the ACLU and other organizations had written a letter to the California Attorney General outlining recommendations on how data collection should be implemented in schools. This letter recommended that the definition of “stop” in a school setting should be similar to the definition of a stop on the street—any situation in which a student is not free to leave and return to his or her class or activities. He also asked the subcommittee to extend the definition of detention to situations where an officer is present when school staff questions or searches students, as well as any search based on individualized suspicion. These searches should exclude wandering or metal detectors but should include any secondary searches triggered from these types of searches. The data reported should also include the outcome of the encounter, including referrals to other disciplinary bodies or law enforcement agencies. “School setting” should be defined to include the areas surrounding schools, within 1,000 feet of schools because school police patrol those areas. There should also be additional data values for location in the school setting.

Chief Deputy Kevin Vest from the Riverside County Sheriff’s Department commented that the initiation of contact by the officer should be the primary source for data collection. He also urged the subcommittee to wait to see how the Definitions Subcommittee decides to define “detention” before trying to define it themselves.

Jacqueline Horton from the Riverside County Sheriff’s Department commented that situations involving school-based discipline should be excluded from data collection, even if an officer is present because school administrators have their own rules and discipline procedures. She gave the example that in a school of 2,300 students, there may only be one school resource officer (SRO), and it would be impossible for the SRO to document all incidents.

Diana Tate Vermeire from the ACLU of California expressed a concern over the motivation of officers in school disciplinary matters, as well as criminal investigations, and urged that the data collection include school disciplinary incidents where an officer’s presence is used to bring greater weight and gravity to the situation.

A representative from Public Counsel commented that the discussion with respect to stops and investigations should focus on the grey area of where there is an Education Code violation that does not amount to a criminal violation.

6. Further Discussion on the Definition of a Stop in a School Setting

After the public comment period, Ms. Hovis reminded the members that the Attorney General’s Office is writing the regulations now, and while they may need to be tweaked in the future, all possible issues need to be considered now even though actual implementation may be a ways off for most law enforcement agencies.

Chair Robinson commented that data collection was intended to be easy for officers and only take a few minutes. He cautioned that using a data form that is too long will put an additional burden on law enforcement agencies, especially in school settings where there is constant contact between officers and students. Member Durali asked whether the length of the data collection form has been discussed. Chair Robinson replied that it had not been discussed in the Definitions subcommittee meeting. He also commented that they needed to be careful about sending the wrong message to a vast majority of officers who care about the communities they serve, and that requiring too much detail in data collection would have a chilling effect on community policing.

Chair Robinson then asked members whether the definition of stops in a school setting should mirror the definition of stops in other settings as defined by the Definitions Subcommittee. Member Ali disagreed that the definitions should be the same in all contexts because smaller school districts and police departments may have stronger relationships with students and the community, and school officers sometimes act more like social workers. He stated that he was interested in the stops these officers made outside of the school setting, and that the discussion of other settings ought to include a discussion of settings such as public housing.

Member Durali commented that the same relationship that exists between students and officers in smaller districts may not exist in larger school districts. Even if there is a friendly relationship, students are not necessarily free to leave, so any incidents in which students are not free to leave should be documented. She also stated that each year more officers are being introduced on school campuses through the local control funding formula. Member Ali asked what school districts are using the local control funding formula to increase the number of officers, and Member Durali and Ms. Hovis answered that Kern County, Oakland, and Los Angeles school districts have all increased the number of officers through this method.

Chair Robinson asked whether a detention in a school setting should be defined as any situation in which a student is not free to leave. Member Ali stated that this definition is excessively too broad, and that documenting situations involving a simple discussion is not a good use of resources. He suggested that only situations where there is a full detention and arrest should be reported. Member Robinson suggested that this was an area where examples could come into play.

Member Durali proposed that a good middle ground may be to include situations involving referrals for discipline and disciplinary proceedings in which an officer is present for questioning. Member Ali suggested including incidents where there is an arrest, incidents in which officers provide medical assistance, and incidents involving miscellaneous documentation, such as referrals to school administration for handling a matter.

Ms. Beninati asked how, if an officer is referring a student to discipline, they would know the student has been disciplined and whether this information is confidential. Member Ali answered that the outcomes of student disciplinary matters are confidential if they do not implicate the Penal Code, and school police are not involved in administrative matters or the outcomes of disciplinary matters, so they do not generate reports on these incidents. Chair

Robinson commented that the point of the data collection should be to document the initial contact only, and that asking about outcomes of a disciplinary matter is unrealistic. Member Durali suggested that referrals to school administration could be a checkbox on the form.

7. Public Comment

Diana Tate Vermeire from the ACLU of California commented that the school referral issue was less about the outcome and more about the discretionary action taken by the officer to make the referral. While there is a need to be careful about being too overinclusive, it is also important to determine the line where a simple discussion turns into something more significant, and the student becomes the target of an investigation or questioning and is not free to leave.

Peter Bibring from the ACLU of California commented that the purpose of AB 953 data collection is not just to examine individual officer discretion but to understand how policing works and its impact on certain communities, even in situations that do not involve officer discretion and where officers are being utilized by school administration. He also reemphasized that the definition of detention should be the same in schools as on the streets—any situation in which a student is not free to leave.

Chief Deputy Kevin Vest from the Riverside County Sheriff's Department expressed concern over the chilling effect on community policing if the data collection is too extensive and onerous. He warned that the reaction from law enforcement will be a drop in both encounters and data collection.

8. Stops in Other Contexts That Require Special Consideration

After the public comment period, Chair Robinson initiated discussion on stops in other contexts. He commented that data is already collected at DUI checkpoints that result in detentions, arrests, searches, or interrogations. He proposed that if a person is stopped and searched or an arrest made during a DUI checkpoint, then the data should be reported, but not if the driver passes through the checkpoint without incident.

Chair Robinson also commented that, with respect to large numbers of people, there should be a threshold for when data reporting is no longer required. For example, if there is only one officer on duty, which is often the case in rural settings, and a large number of people is involved, at what point should data collection start.

Ms. Hovis commented that there are some mass detention situations that will fit within the definition of detention, but may not be included because the detention is made for public safety reasons. She explained that with respect to mass detentions, they need to determine the turning point where the detention triggers the data collection requirements.

9. Public Comment

Peter Bibring from the ACLU commented that for detentions of large numbers of people, it is important to distinguish between individual detentions and crowd control. Situations involving individualized suspicion should be documented.

A representative from Public Counsel commented that in the school setting, an entire classroom of students may be searched even though only one student is the reason for the search. She urged the subcommittee to define what constitutes a “large” group.

In response, Chair Robinson proposed that the committee should determine a number to quantify a large group. He also gave the example that when his officers are breaking up a large party, they detain any youth until they have a ride, but this is done for safety purposes rather than to make arrests. In such situations, officers would not be able to document each person present. He suggested that the detention of a large group should be documented only if the individuals are detained to the point of search or that a checkbox could be included on the form indicating that the group was too large to document.

Member Walker commented that in the case of classroom searches, individual students are often called out of the classroom for a search, and that searches are often so normalized that students are searched three times in a single week. Ms. Beninati commented that AB 953 requires all searches to be reported even if the search includes a large group.

10. Next Steps

MOTION: Chair Robinson made a motion to schedule a subsequent meeting to determine what recommendations they would present to the full RIPA Board.

VOTE: The motion carried with Member Ali, Member Durali, Member Robinson, and Member Walker voting “Yes”, no “No” votes and no abstentions.

11. Adjournment

The meeting was adjourned at 11:10 a.m.