

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

Friday, September 30, 2016, 11:00 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
--	---

Subcommittee Members Present: Sahar Durali, Rev. Ben McBride, Chief Edward Medrano, Tim Silard, Timothy Walker

Subcommittee Members Absent: Micah Ali, Sheriff David Robinson (Chair)

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

1. Call to Order and Introductions

The meeting was called to order by Nancy Beninati of the California Department of Justice (DOJ) at 11:05 a.m. The subcommittee members, DOJ staff members, and members of the public present at each teleconference location introduced themselves. Member Tim Silard agreed to chair the meeting in Sheriff David Robinson's absence.

2. Approval of Minutes

Motion: Member Silard moved to approve the minutes from the prior meeting.

Votes: The motion was passed with Members Durali, McBride, Medrano, Silard, and Walker voting "yes"; no "no votes or abstentions"

3. What Constitutes a "Stop" of a Student in the K-12 Setting

a. General definition of a "stop"

Member Silard opened the floor for comment on what constitutes a stop as to students in the K-12 setting. Ms. Beninati provided additional background regarding the different Fourth Amendment concerns for children who generally are not free to leave school in K-12 setting; given that limitation, Ms. Beninati suggested the subcommittee should decide on what kind of interactions in schools the RIPA Board and DOJ should focus on.

Member Durali expressed concerns raised by advocacy organizations that metal detectors or similar situations where all students entering a building should not trigger data collection, but data should be collected whenever a student is subject to secondary search based on individualized suspicion. These groups suggested that a “stop” be defined as any time a student is not free to leave and go back to his or her assigned school/classroom activity. Member Durali further noted that members of the public have suggested that anytime officers are used in a disciplinary proceeding—even if it is just a referral to the office—that should be recorded, and that the subcommittee came to agreement on that point last time because the presence of an officer elevates the consequences for a student, even if that interaction is not initiated by the officer.

Motion: A motion was made by Member McBride and seconded by Member Medrano to define “detention” in a school setting to require officers to report on interactions with students when students are not free to return to their assigned activity or location. No public comment was offered on this motion.

Votes: The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.

b. Individualized suspicion versus suspicionless searches

Motion: A motion was made by Member Durali and seconded by Member Medrano to define “search” and “detention” in this context as actions based on individualized discretion and not random selection or suspicionless search prompted by school administration (for example, part of a routine classroom inspection).

Votes: The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.

Public comment: Anabel Agloro/Public Counsel said she would want officers to provide more information about the decision to select a specific classroom to search. Jacqueline Horton/Riverside County Sheriff’s Office commented that, if the intent of AB 953 is to capture officer’s conduct, it is not relevant to require reporting when an officer’s action is initiated by school administration and not the result of the officer’s discretion. Rosa Aqeel/PolicyLink responded that there are concerns with the actions a peace officer takes after the stop/detention, and so every time an officer is involved in a search it should be documented. A representative from the San Diego Sheriff’s Office asked whether this would cover a canine search of a classroom initiated by school administration. Ms. Beninati clarified that AB 953 does not cover private security hired by schools, only police officers hired by a city/county law enforcement agency if contracted or called by a school.

In response to a question by Member Durali, Member Medrano clarified that the only time an officer would randomly search a classroom without suspicion is as part of an operational practice of a particular school. Peter Bibring/ACLU commented that officers should not be conducting mass searches of particular classrooms unless justified by individualized suspicion of each student. Bibring further commented that, if officers are conducting full classroom searches based on individualized suspicion, AB 953 requires data recording on each student; if officers are conducting suspicionless searches, that is a separate problem, but one that does not prompt a reporting requirement under AB 953.

Motion: Member Durali revised her prior motion, seconded by Member Medrano, to recommend that data be collected any time there is a search conducted on suspicion, either as to an individual or group, but not when an officer conducts a suspicionless search; Member Durali further recommended the Attorney General include a hypothetical to clarify the distinction.

Votes: The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.

c. Who initiates?

Member Silard opened the floor to comments about whether a peace officer is required to report data when a school administrator initiates a stop or search and then requests either the involvement or presence of a police officer. Member Medrano expressed a concern that data reporting might have a chilling effect on when school administrators request law enforcement presence.

Public comment: Peter Bibring/ACLU commented that AB 953 is not limited to officer intent, but is intended to capture interactions with officers. Outside of schools, a call for service must be recorded when it becomes a stop, even if the interaction begins as a mandatory contact by the officer. Similarly here, when an officer’s interaction with a student becomes a stop—even if the officer’s presence was initially prompted by administration—that would be reported, but data collection is not required simply because an officer is present at a meeting or in the lunch room.

A representative from the San Diego Sheriff’s Department raised a question about School Attendance Review Boards—which students are required to attend and which may include the presence of an officer as a “bailiff” who does not act unless fighting breaks out—and suggested a carve out for such meetings. Member Silard agreed that situation should not be covered, and Member Medrano suggested there is a consensus on that point. Member Durali suggested a distinction might be made when the student’s parents are present because the student would be free to leave with them.

Motion: Member Medrano made a motion that if a school administrator initiates an activity and an officer is asked to participate in any part of the process, that activity is reportable, but if an officer is asked to be present at a special meeting in the capacity of security or as a “bailiff” but is not part of the detention nor process, that is not reportable. Member McBride seconded the motion.

Votes: The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.

Public Comment: Alexandra Santa Ana/National Center for Youth Law suggested that the term “special meeting” be clearly defined so that it does not exclude a meeting between a student, parent, and administrator, for example. Peter Bibring/ACLU seconded that motion, and suggested that when a student is compelled to attend a large group meeting—like a School Attendance Review Boards—that is the student’s assigned activity and the officer’s actions would not be reportable because the officer is not preventing the student from returning to his or her assigned activity.

4. K-12 Specific Data Values

a. Location within the school

Public comment: Anabel Agloro/Public Counsel suggested that additional data on the location of a stop or search within the school would be valuable to show whether a detention occurred out of site of other students. Alexandra Santa Ana/National Center for Youth Law agreed it would be helpful to distinguish settings such as a classroom versus lunchroom. A representative from the Orange County Sheriff’s Office suggests that such data would be difficult to decipher because every school is different. Peter Bibring/ACLU commented that, while this level of detail may not make sense in other settings, it is valuable when a school resource officer is assigned at all times to a particular school because otherwise every stop for that officer would be at the same location

Member Medrano commented that he has not seen that level of specificity in any other data collection effort, and asked whether the distinction between inside or outside the school would account for school hours. Member Durali suggested the Attorney General clarify this final point by reference to the Education Code, which provides that students can be disciplined going to/from school and in school hours.

Motion: Member McBride moved that the form distinguish between stops in a school or outside the school, defined as within 1000 feet from the school. Seconded by Member Durali.

Votes: The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.

Motion: Member Durali moved that the form include a drop-down list of general locations within the school where a stop or detention occurred (classroom, hallway, cafeteria, gym, etc.). Seconded by Member McBride.

Votes: The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.

b. Outcome of the stop

Member Silard noted some discussion at the Additional Data Elements Subcommittee meeting of whether it is realistic for officers to follow up substantially after the incident to determine administrative outcome (suspension, expelled, etc.), and asked whether a data element for referral for administrative action or to other agencies (CPS, welfare, immigration, etc.) would be reasonable. Member Medrano suggested that, to the extent the officer has that information at the time he or she records the stop, it should be reported, but the regulations should not require the officer to follow up or leave the stop data in limbo until there is resolution. Member Durali noted that expulsion can take months to play out in some districts, and suggested the form might include “expulsion (if known).”

Motion: Member Silard moved to include the list of values set forth on page 5 of the June 15 letter from the ACLU and others (arrest, citation, suspension, expulsion, referral to school administrator, referral to a school counselor or other school support staff, referral to another organization like a mental health service provider, or no further action), adding “if known” where applicable. Seconded by Member Medrano.

Votes: The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.”

Motion: Member Durali moved to include a required field for name of the school. Seconded by Member McBride.

Votes: The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.”

c. Reason for the stop

Ms. Hovis asked whether the Board should consider recommending specific data values for “reasons for the stop” that differ from the general setting. Member Medrano suggested that values could be added for truancy sweep, administration request. Member Durali suggested adding Education Code provisions, which might capture non-criminal activity (disruption, dress code violations, etc.). Member Medrano suggested that the field provide options for education-code violations, administrative school violations, administrative request, etc. Member Silard suggested the field for request from administration be coupled with an open field for further explanation.

5. Other Special Settings

a. Mass events (excluding protests)

Member Medrano suggested that that the general “stop” definition would cover these situations: if an individual is specifically detained, that is reportable, but mass evacuations or crowd control would not qualify. Ms. Beninati explained that during DOJ’s review of agencies that collect stop data that some agencies have specific exclusions for these situations (even though, for example, everyone ordered not to leave in an active shooter situation would be detained) because it would be impractical to collect data on large groups of people and because such reports would skew the general data. She noted there is no consensus among academics as

to whether the information on random searches is useful, and asked whether the subcommittee would like to make a recommendation about whether an exclusion for mass events, randomized searches, or metal detectors at large events.

Member Medrano suggested that the definition of detention would not apply to random screenings or metal detectors to enter a stadium; there was no objection from the board.

Motion: Member Medrano made a motion that if an officer in course of duty takes no action except for the protection of life or safety in emergency, no data needs to be recorded; however, data would need to be recorded fro any secondary activity that resulted in an individual detention or search. Seconded by Member Durali.

Votes: The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.

b. DUI and other checkpoints

Member Medrano suggested that officers should be not be required to report on randomized checkpoints, but they should be required to report any individuals selected for secondary screening. No objections from the board.

Public comment: Rosa Aqeel/PolicyLink expressed her concern that data should be collected on all checkpoints, as these are often placed in communities of color so that officers do not have to go to trouble of stopping individuals, either to detect undocumented individuals or for the purpose of harassment. A representative from the San Diego Sheriff’s Department stated that state law already requires departments to justify how and why a checkpoint is set up in a particular location.

Member Medrano concurred that the placement of checkpoints is covered by other law, and that an officer has no discretion of where he is assigned to work. Member McBride expressed a concern of whether the data will allow analysts to cross-reference which drivers are detained versus waived through. Member Medrano explained officers have no discretion of who to waive through or detain when the stop is based on random selection, but officers always have discretion to stop additional vehicles when they observe behavior or contraband giving rise to probable cause, or if the officer observes a vehicle violation.

Motion: Member Silard made a motion that the form include a field for “stop conducted incident to a checkpoint (DUI or otherwise),” with a check box indicated whether or not the individual was detained or searched based on random selection. Seconded by Member Medrano.

Votes: The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting “yes”; no “no votes or abstentions.

c. Protests

Member McBride expressed a concern about how to capture interactions between law enforcement and individuals that are a part of protests and other large community events,

explaining that data on who is detained and how is important when people are not free to leave, which happens many time in protests. Though these are large events, individuals and groups are regularly detained and unable to leave without being accused of any crime. Member Silard commented that the emergency exception for mass detentions should not encompass protests. Member Medrano expressed a practical concern: if an officer detains 50 people from crowd of 500 and then orders them to disperse, the officer will not realistically be able to collect the data and remain engaged in crowd control, but he agreed that data should be reported on anyone who is handcuffed or similarly detained.

Member McBride suggested that officer crowd control practices warranted further discussion in another context, but the question here is what data needs to be recorded when officers detain someone and prevent that person from leaving. Member McBride's position is that, if citizens are not free to walk away, they are detained and we should record that information—officers are exercising discretion in that scenario and that needs to be recorded. Member Medrano suggested that, because the goal of crowd control is to provide a way for people to leave freely, perhaps we should focus only on situations in which a specific group is not free to leave, which should trigger data collection.

Public Comment: A representative from the San Diego Sheriff's Department suggested that a reasonable distinction could be drawn between situations where individuals are not free to leave (should be recorded) and an officer's orders impeding forward progress, such as an order that the crowd cannot go on a freeway (should not be recorded). Rosa Aqeel/Policy Link and Peter Birbring/ACLU agreed with Member McBride's position.

Motion: Member McBride made a motion that, with respect to large crowd control and protests, data should be collected when community members are boxed in by law enforcement and unable to leave. Seconded by Member Walker.

Votes: The motion passed, with Members Durali, McBride, Medrano, Silard, and Walker voting "yes"; no "no votes or abstentions.

d. Public housing and other environments

Member Silard solicited further comment from the Subcommittee on whether additional guidance is necessary for stops in public housing and other environments. Member Durali suggested that the general definition of "not free to leave" should cover these scenarios; Member Medrano agreed that definition should apply everywhere.

6. Adjournment

The meeting was adjourned at 1:07 p.m.