

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD
<https://oag.ca.gov/ab953/board>

CIVILIAN COMPLAINTS SUBCOMMITTEE MEETING MINUTES

June 1, 2020 – 10:03 a.m. – 11:37 a.m.

Subcommittee Members Present: Co-Chair Sahar Durali, Co-Chair David Robinson, Nancy Frausto, Tim Silard, Doug Oden, LaWanda Hawkins

Subcommittee Members Absent: Chief David Swing

1. Introductions

Co-Chair Durali acknowledged the disturbing and important moment in which the global pandemic was effecting working people, African American communities and other communities of color, while disproportionate COVID-19 enforcement was also effecting Black communities. She stated that the nation was again dealing with several shootings of unarmed African American people and the pain caused by these deaths. She expressed hope that the Board would collectively work to respond to this moment and create policies and recommendations to address these issues, in particular accountability policies in light of the record of civilian complaints against the officer involved in the killing of George Floyd. Member Oden stated that moving forward law enforcement would need to take the lead regarding training and making changes within law enforcement culture and his belief that the Civilian Complaints subcommittee and the RIPA Board are good resources for this.

Co-Chair Durali introduced new Board member Rev. Nancy Frausto who serves as Associate Rector for St. Luke's Episcopal Church in Long Beach.

2. Approval of Subcommittee Meeting Minutes

MOTION: Co-Chair Robinson made a motion to approve the June 3, 2019 and October 18, 2019 subcommittee meeting minutes. Member Hawkins seconded the motion.

APPROVAL: All subcommittee members present voted “yes;” there were no “no” votes and no abstentions.

3. Overview of Proposed Subcommittee Work by Department of Justice

Allison Elgart from the Department of Justice stated that the DOJ would share a review of Wave 2 agencies’ complaint forms and procedures and the meeting would be an opportunity for the subcommittee to identify priority areas of work for the year.

Anna Rick from the DOJ shared that the Commission on Reimbursement for State Mandates partially approved the Test Claim for RIPA Reimbursement and would receive recommendations and comments on the Draft Expedited Parameters and Guidelines through June 12, 2020. Co-

Chair Robinson stated that San Diego Police Department submitted the Test Claim and the Commission determined that agencies should receive funding for stop data reporting. He stated that the Commission was developing the mechanism for agencies to submit their claims to receive funding. He added that the Board's annual reports included recommendations to the legislature to approve funding. Co-Chair Durali asked if the funding related to analysis of the data. Co-Chair Robinson stated that the Commission's decision related to data collection and other components could be raised in the comment period. Member Silard asked if the State could identify an existing funding source directed to LEAs that should be used for stop data reporting costs instead of providing new funding through reimbursement. Co-Chair Robinson stated that he believes the legislature could do this.

4. Update on Review of Complaint Forms for Wave 2 Agencies by Department of Justice

Domonique Alcaraz from the DOJ stated that in 2019 the subcommittee reviewed Wave 1 agencies' civilian complaint forms and information provided to members of the public. She explained that the DOJ would share the information from the review of Wave 2 agencies' complaint forms with the agencies to allow for input. She requested subcommittee feedback about some of the agencies' forms where the version provided online differed from the printed versions of the forms, and regarding the availability of complaint forms online.

Co-Chair Durali stated that, as outlined in the 2020 Board Report, in California there is not a mandated complaint form or mandated complaint procedures, nor is there a uniform definition of "complaint". She recommended that the LEA Survey include a question about the adoption of the Board's recommendations about complaint accessibility and complaint processes.

5. Discussion of Proposed Subcommittee Report Contents

Co-Chair Durali stated that in previous Board Reports this section had focused on LEA complaint review processes, accessibility of complaint forms, and complaint data. She stated that there is a lot of variability in the accessibility of complaint procedures and in the investigation processes. She added that the subcommittee has not worked in depth on the issue of supervisory review of complaints, complaint tracking and the creation of early intervention systems and accountability as it relates to complaints. She stated that the subcommittee had previously discussed creating a model complaint form but had not done so due to the conflict between California and federal law about requirements that complainants sign their complaint and attest that they are not providing false information.

Member Oden agreed with the recommendation to discuss complaint tracking and transparency in the complaint investigation process to include both the results of the investigation and who conducted the investigation.

Member Silard recommended that the subcommittee discuss independent oversight of complaint investigation processes. He stated that San Francisco has an independent department that handles

complaints instead of them being handled internally by the San Francisco Police Department. He stated that this is a good practice and, at minimum, an independent review within the locality should occur to assess whether complaints are being followed-up on, tracked and responded to.

Member Hawkins stated that there must be transparency and accountability. She stated that civilians feel there is not accountability when people making complaints do not receive a letter or call explaining the actions taken in response to their complaint. She stated that this creates doubt in the community that anything has been done.

Member Frausto stated that there is a need for public access to officers' complaint histories. Member Silard stated that there is pending legislation about this issue and he recommended that the Board support it.

Co-Chair Durali stated that she had researched some of the US DOJ investigations of law enforcement agencies and the related studies of complaint procedures finding a high level of variability and identifying supervisor misclassification of complaints, administrative closure of complaints, and removal of complaints from officers' records as problems. She stated that the US DOJ often recommended independent review of complaints. She stated that it would be very helpful to have an expert speak with the subcommittee about ideal models regarding complaints, including robust tracking mechanisms.

Co-Chair Durali stated that she also found that several of the agencies, following investigations, implemented early intervention systems, in which even when a complaint is not sustained, there is a tracking system that can allow issues to be flagged for review. She stated that it would also be good to have an expert speak to the subcommittee or the full Board about these issues.

Members Silard, Frausto and Hawkins agreed.

Member Silard raised a concern about what happens when an officer who may be facing discipline might resign and seek employment with a different law enforcement agency. He asked if complaint background information is available to LEAs during their hiring process.

Co-Chair Robinson stated that this is a challenge for law enforcement agencies and he believes that the proposed legislation would help to address this issue, so that if an officer resigns any investigations resulting from complaints would have to be concluded. He stated that LEAs do have access to complaints because under POST's guidelines LEAs are required to get a waiver signed to permit the hiring LEA to review the complaint information at a separate agency, even if the complaint was not fully investigated. He stated that this will typically appear as a note in the file showing that the complaint was received and the officer resigned. He stated that hiring LEAs can choose to follow-up with the people involved in the complaint. Co-Chair Robinson stated that he has observed that some agencies, particularly smaller agencies with fewer resources, do not always follow-up on this information. He stated that the State Sheriff's

Association hopes that this legislation will pass. He stated that he would like to have an expert discuss this with the Board at the September Board meeting. He stated that it would also be helpful to have an expert discuss with the Board the legal aspects of the employee-employer relationship as relevant to improving law enforcement.

Co-Chair Durali asked if agencies can reassign the officer in question in instances when employee protections do not permit the agency to dismiss an officer about whom the agency has concerns regarding their conduct. Co-Chair Robinson stated that reassignment is sometimes an option although this varies according to the local Memorandum of Understanding, which may require an investigation to be concluded prior to reassignment. He stated that requiring additional training is an option over which agencies have a lot of control.

Co-Chair Durali stated that the Board is required to publish the data received on civilian complaints each year and it will be important to include a footnote in this section regarding how differences in the accessibility and categorization of complaints by agencies may account for some of the differences for numbers of complaints reported by agencies.

Member Oden stated that it would be important to have an expert speak with the Board about how accessible complaints received by agencies are to the public because there is often civil litigation that arises from alleged police misconduct.

Ms. Elgart stated that the DOJ would try to find an expert to speak about these issues and would work with the Board Co-Chairs to determine if it is more appropriate to invite a panel of speakers or to invite an individual expert. Co-Chair Durali stated that given the breadth of the issues it would be beneficial to have more than one expert speak. Ms. Beninati stated that it will be great to have the experts speak with the Board and the DOJ will present the first draft of the Annual Report to the Board at the September meeting and the DOJ would work to address some of these issues in the Report draft.

6. Public Comment

Lisa Serrano stated that her organization would like to collaborate with other safe space organizations to gather to pray at the State Capitol regarding current events. She stated that her organization would also like to increase collaboration with law enforcement.

Colleen Cusack stated that she is a criminal defense attorney and has practiced for 28 years in San Diego. She stated that she has managed the clinic and bail project of a law school and taught courses to police officers at the University of Phoenix were studying and seeking to promote in their careers. She stated that is essential that the complaint process be transparent and that there be ways for the public to see the use of discipline in order to trust officers that continue to serve. She stated that people will not submit complaint forms when they think that nothing will be done about their complaint.

Anne Baron asked if she had heard correctly that there is no requirement for law enforcement agencies to have a complaint process or form. She asked how the subcommittee received the complaints submitted to LEAs. She stated that there were peaceful protests in La Mesa at which the police department began using gas and flash bombs that escalated the situation. She stated that she did not believe this was an issue of lack of training but that this was an issue about police culture. She stated that she encouraged law enforcement agencies to have trainings in restorative justice, as this type of training can improve the culture in an agency. Anne Barron asked if there is a public communication plan for the subcommittee.

Ms. Beninati stated that the Cal. DOJ does not receive individual complaints filed with the agencies, rather the DOJ collects aggregate data from the agencies annually. She stated that under the Racial and Identity Profiling Act agencies first began reporting disaggregated information about complaints regarding racial and identity profiling. Ms. Elgart stated that information about the data that the DOJ collects is in the Board Report, including information about how complaints were resolved.

Richard Hylton stated that he thought the Attorney General should issue an opinion regarding Penal Code section 148.6. He stated that decisions of the federal judiciary generally compel the states to follow course when they determine that a provision is unconstitutional. He stated he made a complaint to the CHP about racist comments being included in the agency's data from the Reason for Stop and Basis for Search narratives. He stated that the CHP told him that his complaint lacked specificity about an allegation against an employee that could be investigated. He stated that as a member of the public he did not have access to the officer's identification but the CHP would have access to this information. Mr. Hylton stated that his review of data from La Mesa showed an increase in issuance of tickets to public transportation riders and the ticketing is disproportionately affecting Black people. He stated that racial profiling happening in the policing of fare evasion and he has submitted a complaint to the San Diego County Sheriff's Department about this. He stated that the present system of employee-employer relations in law enforcement does not work and asked why we continue this.

Marisa Lundin from California Rural Legal Assistance asked how the LEAs included in the matrix auditing the accessibility of LEA's civilian complaint procedures were determining in which languages translated complaint forms should be provided to ensure that the available forms match the language needs of their communities. She also asked if there were any procedures to receive oral complaints from civilians with low-literacy and speakers of rare languages. Ms. Lundin stated that she was interested in how to verify that agencies have taken steps to meet the language needs of their communities.

Co-Chair Durali stated that the 2018 Board Report included the federal and state requirements for translation of complaint materials and welcomed the submission of comments and recommendations. She stated that the 2020 Board Report included recommendations regarding

oral complaints. She stated that verification of the translation for complaint forms could be addressed through the review of Wave 2 agency complaint forms.

Brandy Taylor Jones asked if there is a public communication plan to inform the community of the subcommittees work. She recommended making outreach easily accessible to the public, and using social media and advertising.

Co-Chair Durali stated that the Board's page on the Office of the Attorney General website includes all of the subcommittee's meeting minutes and upcoming meeting dates and agendas. She stated that the subcommittee welcomes suggestions about how to improve outreach. Ms. Elgart stated that there is an AB 953 listserv to which anyone can subscribe to receive notifications about the Board's activities. She provided the web address to subscribe.

7. Discussion of Next Steps

Anna Rick from the DOJ stated that the DOJ had begun to develop a survey to better understand the actions that reporting agencies are taking to advance the goals of RIPA. She stated that the DOJ planned to include Wave 1 & 2 agencies in the full survey and Wave 3 agencies in the portion of the survey that did not relate to data analysis. She stated that the DOJ believes the survey will provide valuable information about the actions that LEAs are taking in response to the recommendations in the Board's Annual Reports. Ms. Rick stated that the draft Survey includes ten questions, with one question asking about actions the agencies may have taken in response to the best practices recommendations regarding civilian complaint procedures and forms in the Board's 2020 Report.

Co-Chair Durali requested that the review of Wave 2 agencies' complaint forms include an inquiry about how the agencies determine in which languages they will provide forms and how they make the complaint process accessible to speakers of rare languages. She stated that the DOJ would work on identifying experts to speak at the full Board meeting and would draft a section about best practices for accountability regarding civilian complaints for the Report. Member Frausto stated that it is also important to assess the quality of the translations and if translations are being done by persons with training in translation or by speakers of the languages that do not have training in translation. Co-Chair Durali recommended that the DOJ ask agencies what methods they are using to translate their complaint forms.

8. Service Appreciation by Department of Justice

Member Silard expressed his appreciation for the opportunity to serve on the Board and stated that he had seen great growth in the Board's work. Ms. Beninati thanked Member Silard for his input regarding the Stop Data Regulations, and contributions to the content of the Board's Reports.

Member Oden shared his appreciation for the work of the subcommittee and shared that this would be his last meeting as a member of the Civilian Complaints subcommittee. Ms. Beninati thanked Member Oden for this service to the subcommittee and was looking forward to his participation in the upcoming Stop Data subcommittee meeting.

9. Adjourn

Co-Chair Durali thanked everyone for their participation, thanked the members of the public for attending and providing comments and adjourned the meeting at 11:37 a.m.