

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

POST TRAINING AND RECRUITMENT SUBCOMMITTEE
MEETING MINUTES

September 9, 2021

Subcommittee Members Present: Co-Chair Melanie Ochoa, Co-Chair Brendon Woods, La Wanda Hawkins, Amanda Ray, Edgar Hampton, Steve Raphael.

Subcommittee Members Absent: Ammar Campa-Najjar, Ronald Villeda

1. Introductions

Chair Melanie Ochoa called the meeting to order at 12:30 p.m. This meeting was held by video conference with a quorum of members present.

2. Approval of July 27, 2021 POST Subcommittee Meeting Minutes

MOTION: Co-Chair Ochoa made a motion to approve the July 27, 2021 subcommittee meeting minutes.

The minutes were approved by the Subcommittee without objection or abstention.

3. DOJ Update and POST Comments on Training

DOJ Update:

Allison Elgart, Deputy Attorney General with DOJ gave an overview of the meeting items to be discussed. She stated that they included: 1) hearing from POST about previous discussions with the Subcommittee about its review of the POST Implicit Bias Course for Supervisors, 2) wrapping up discussion on the course LD3 Principled Policing in the Community and what if any recommendations the subcommittee wanted to make to the Full Board, 3) hearing from POST on AB 846, the law passed to add in bias as part of the evaluation for candidates applying to be peace officers and the requirement that job descriptions to de-emphasize para military training and focus more on community, and 4) making any other recommendations or comments on the POST Section of the draft 2022 Report.

POST Comments:

Meagan Catafi the Legislative Liaison with POST gave the following update on the POST Implicit Bias Supervisors course.

She acknowledged that POST had been in discussion with the Subcommittee for some time about their plan to review the Implicit Bias course and indicated that on July 15, 2021 POST provided DOJ a written response that the Implicit Bias Supervisors course was not intended to and would not meet the peace officer training mandates of AB 953. She stated that this course was more of a tool and self-assessment for law enforcement supervisors. She further indicated that the prior feedback provided by the Subcommittee for the Racial and Bias video and Implicit Bias course of seasoned officers was incorporated into the development of the Implicit Bias Course updated for Supervisors. Additionally, that the Implicit Bias course for seasoned officers and supervisors were being developed in parallel and that POST felt that they had received sufficient feedback from the Subcommittee. Ms. Catafi completed her presentation by stating that while POST had not planned for additional feedback, for transparency purposes it is open to sending a link to interested Subcommittee members provided they submit feedback within one week or by Friday September 17.

Co-Chair Ochoa asked POST questions about the content of the Implicit Bias Course for Supervisors. Charday Alcaraz, a Program manager with POST provided the following summary. She stated that the course asks law enforcement supervisors to ask themselves questions about whether they know their agency's policy on bias, how to handle an employee who comes to you with bias, how to handle racial profiling issues in the context of the Peace Officer Bill of Rights. She indicated that there is session on evaluating or really self-assessing whether you are connecting with your community, how to set up programs to bridge the gap. She closed by stating it is a tool more than a course and asks supervisors to ask themselves are they prepared to implement things in the Implicit Bias course for seasoned officers.

Rosanne Richeal, Bureau Chief of POST requested the names and emails of RIPA Subcommittee members interested in reviewing the supervisors course as soon as possible and expressed that POST wanted to coordinate the Subcommittees' feedback in a timely manner with feedback to be received from POST's Subject Matter Experts who helped design the course. Co-Chair Melanie expressed appreciation to review the course and understood POST's tight timeline, however also emphasized the importance of POST finalizing its work on this course in a way that best serves the community.

4. Presentation By DOJ on Hiring and AB 846 Subcommittee Discussion

Anthony Jackson, Sr. Legal Analyst with DOJ provided the following background on AB 846. He stated that AB 846 addresses the requirement to improve the screening and evaluation process for identifying explicit and implicit biases in existing peace officers and potential candidates for hire. The bill also calls for the review and update of all law enforcement agencies job descriptions to deemphasize paramilitary aspects and to instead emphasize the community interaction and collaborative problem solving. Mr. Jackson further stated that AB 846 revises the minimum standard requirement that peace officers be free of any physical, emotional or mental condition, including biases of race, ethnicity, gender, nationality, disability, or sexual orientation that might adversely affect the exercise of power of a peace officer. Also that POST shall review and update regulations and associated screening materials to incorporate the identification of explicit and implicit bias. He closed by stating that the statute mandates that these requirements be met by January 2022.

Melanie Singley, a Program Manager with POST provided the following update to the AB 846 requirements for POST to study, review and update regulations and associated materials to incorporate in order to identify peace officer and peace officer candidates' explicit and implicit biases. Ms. Singley advised that psychologists associated with POST for tools currently being used to screen for bias and gather that data for the study. POST also created a subject matter expert panel to review and analyze the collected surveys to determine baseline trends. Ms. Singley indicated that they helped POST create the Bias Assessment Framework Tool. POST will use this tool in conjunction with the psychological evaluation, the background investigation and with any noted multicultural competencies revealed during the assessment.

Tanya Koshy, Deputy Attorney General with DOJ provided an update to the AB 846 regulations and areas of possible Subcommittee interest. Ms. Koshy advised that there is little data to support the ability to determine if an individual is free from bias and it is therefore more feasible to focus on how to manage the bias through education and training. Member Raphael commented that based on this information it is unclear what recommendations the subcommittee should make.

Ms. Koshy stated that as a result of her research and analysis, she and Mr. Jackson identified three areas of improvement in the proposed regulations; 1) that investigators identify their investigative findings and the sources used, 2) that the psychological evaluators identify their findings and the sources used and 3) in the footnote regarding the Bias Assessment Framework in which POST advises that in situations where the evidence of Bias is weak, that in lieu of agreeing with POST's suggested language that evaluators "can" look at other factors, that this language be made stronger and state that evaluators "have " to look at other factors. Ms. Koshy reminded the subcommittee that there is a tight timeframe if the they

would like to provide recommended comments on the AB 846 regulations in time for the October 20, 2021 full board meeting. Ms. Koshy suggested that the subcommittee may wish to frame the ideas of their comments today and allow the co-chairs to craft the actual language of the comments in a letter with DOJ for inclusion in the AB 846 regulation process should the full board agree.

Member Hampton was called away from the subcommittee meeting, so approximately halfway through the meeting the subcommittee lost its quorum. The subcommittee members present agreed to make two motions at the next subcommittee meeting to be scheduled, when there would be a quorum. There was general consensus that a regulation comment letter be drafted about AB 846 for recommendation to the full board. There was also agreement that the comment letter contain the three recommendations presented by DOJ and the actual wording would be crafted by DOJ and the two co-chairs. The proposed letter would also include a statement emphasizing the evidence and relevance of explicit bias and that social media should be clearly identified as a source required to be reviewed by both investigators and evaluators.

Co-Chair Ochoa also requested that two studies referenced as footnotes in the current draft of the report about guilt and procedural justice be highlighted and placed in the body of the report. Finally, she added that on page 31 the word “practical” should be deleted.

5. Subcommittee Discussion of Training and Board Report

Aisha Martin-Walton, Retired Annuitant with DOJ, provided highlights of the POST subcommittee’s work last year and vision for future reports. She asked the subcommittee to think broadly about their role as an advisory body to the legislature when thinking about the courses pursuant to AB 953 that they review, the composition of the POST Commission and the oversight of the POST Commission, all of which were previously discussed at subcommittee meetings or included in RIPA reports. Ms. Martin-Walton stated that the subcommittee will wrap up its review and discussion of LD3, Principled Policing in the Community the academy courses for new recruits and it will take advantage of the announcement today that POST will provide the subcommittee the opportunity to review over the Implicit Bias course for Supervisors discussed at previous meetings. She added that the subcommittee has expressed interest in reviewing academy course LD42, Cultural Awareness and Discrimination for next year’s report and continuing to review courses related to racial and identity profiling.

Regarding the composition of POST, Ms. Martin-Walton reminded the subcommittee that POST is responsible for setting the minimum guidelines and training for all 95,000

participating officers and dispatchers throughout the state and their individual careers. She added that the POST Commission consists of 18 members who the policy direction for the Commission staff and that ten are mandated to be law enforcement and there is no mandate for members with experience or expertise in civil rights in the context of the criminal justice system.

Ms. Martin-Walton advised the Subcommittee that the POST Commission reports to the Governor with no executive branch agency level oversight. She stated that this year's report highlights the Little Hoover Commission (LHC) who voted to study law enforcement training in California this year, and the Legislative Analyst Office (LAO) the legislature's fiscal agency, who in its 2019-2020 annual report discussed the \$20 million augmentation provide to POST for use of force and de-escalation. The LAO recommended that funding for POST should require annual reports on training priorities, outcomes and performance measures.

Kendal Micklethwaite, Deputy Attorney General with DOJ provided a status of all of the POST courses reviewed, underway or planned by the Subcommittee. She indicated that the Subcommittee provided a full review of the POST academy course LD3, Principled Policing in the Community this year and the Subcommittees comments can be found in the draft 2022 report. Also two Subcommittee member and DOJ staff has the opportunity to attend the academy for CHP and the academy in San Bernardino County. Ms. Micklethwaite stated that overall the Subcommittee found the course designed by POST lacked primary focus on principled policing concepts and in fact only a few pages of the lengthy course document was dedicated to principled policing. Another consistent concern of the Subcommittee was that it emphasized outdated policy theories like "Broken Windows." A third an overarching concern is that the course failed to include community perspectives.

Ms. Micklethwaite continued her presentation with the following information. Specifically POST represented to the Subcommittee that it does not provide a facilitators guide to academy trainers teaching the course. The Subcommittee expressed concern with this because there are no guidelines to ensure consistency. When Subcommittee members observed academy courses, DOJ and Subcommittee members learned separately that POST may in fact provide additional materials, so DOJ and the Subcommittee are hoping to receive all of those materials to conduct a holistic review of LD3. She added that it was important to note that the Subcommittee is not reviewing the individual academy course, but rather the material provided to the academies by POST. Several other documented concerns of the Subcommittee about LD3 was that despite being updated in April 2020, it did not adequately reflect current events, or historical events. In other words, it was important to take time to improve and update the course to encourage law enforcement to take ownership for the

history of policing and current events and how that contributes to community mistrust. The section on implicit bias would benefit from concrete examples and data about how implicit bias influences everyday decisions.

Ms. Micklethwaite reminded the subcommittee that these were all comments made in prior public meetings and discussed at the last meeting. The Subcommittee commented that there were no alternatives to police interventions particularly that mental health crisis information should be woven throughout the course. Also understanding that different communities have different views on heavy police presence in their neighborhoods. The Subcommittee indicated that the Broken Windows theory should be removed from the course and the principles not be included throughout the course content. The principled policing section is not well-developed and does not give the students the impression that this is actually the primary focus of the course. The last set of comments is also in the vision for future reports is that the Subcommittee will continue to review these trainings of LD3 and LD42 and continue to monitor recommendations made from the course, She also noted that Co-chair Ochoa raised that the Subcommittee is interested in how POST incorporates Subcommittee feedback made for LD3 and the communications courses and other courses more broadly that are being reviewed and understand when POST decides not to adopt Subcommittee recommendations. Another concern was ensuring the Subcommittee had meaningful time to review the course content and provide feedback given the importance of this work.

In closing the presentation of this agenda item, Ms. Micklethwaite advised that the Subcommittee may now want to discuss more about LD3 or more broadly how to tackle these different issues in reviewing courses with POST. Possible legislative recommendations regarding the composition of POST or oversight of POST, perhaps after learning more about the results of the Little Hoover Commission's study. Also she added that the Subcommittee wanted to gain a better understanding of how their comments will be incorporated into the courses by POST.

Member Raphael stated that Commission structure and oversight are important topics for subcommittee members to think about and asked a clarifying question about the number of agencies that do not choose to participate in POST? Ms. Catafi of POST responded that the number is very small and they are usually campus police for community colleges of district attorney investigators. Co-Chair Ochoa had thoughts about the composition of the POST Commission in the context of a previous discussion with a POST representative during reviews of the Implicit Bias refresher course. She shared a story to illustrate her thoughts. She stated that she was in a training setting with POST subject matter experts who were all law enforcement, and they were debating about whether to include an example of someone jaywalking as an instance of biased based policing and the answer by the group was "no"

because “no one is ever stopped for jaywalking.” Other people at this training who were not subject matter experts who worked for POST and were African Americans said they had been stopped for jaywalking. Co-chair Ochoa concluded that this example speaks to the need for inclusion of other perspectives and voices in understanding the training process and really understanding what policing actually looks like and is experienced.

Co-Chair Ochoa agreed that it should be recommended to the legislature that the structure of POST be amended to include folks with other perspectives besides just law enforcement. There are models like the RIPA mandates persons with certain backgrounds and SB 2 which just passed on decertification recommends a POST subcommittee that includes persons directly impacted by law enforcement have experience with police oversight. Therefore, RIPA should recommend to the legislature that the statute for POST composition be amended to have certain backgrounds or completely rethink the composition which she believes is ten law enforcement and eight non mandatory law enforcement. Co-Chair Ochoa would also like POST to also explain and review the process for selecting subject matter experts.

Ms. Beninati advised the Subcommittee that DOJ will be doing additional work on the scope and powers of the RIPA Board to provide more clarity to the full board on their advisory role, however wanted to the Subcommittee to know it has the ability to make formal recommendations through the report because the report is voted upon.

Member Raphael asked if SB 2 would provide POST authority over decertifying peace officers. Ms. Catafi explained the following process: POST will have oversight responsibility, local agencies will conduct the investigation, POST will have authority to review the investigation and make recommendations the advisory board proposed by the bill. The advisory board will make recommendations to the closed Commission and the Commission can recommend by a two-thirds vote to recommend to decertify a peace officer. Beyond that that is an administrative judge process that is automatic for those recommended for decertification.

Co-chair Woods asked if POST established the advisory board. Ms. Catafi stated no, that the make-up of the board will be in the penal code. POST will have no authority over who is on the advisory board.

Co-chair Ochoa asked how POST plans to handle the Subcommittee’s comments on LD3? Ms. Catafi advised that while she was at the meeting she assumed that POST would receive the comments in writing. Ms. Beninati advised Ms. Catafi that the July 27, 2021 POST

subcommittee minutes were a very detailed rendition of the comments and DOJ would provide her a copy.

6. Public Comment

Mr. Hylton, Southern California stated that he is encouraged that the board continues to review POST Trainings on bias free policing. He believes that POST thinks there is no such thing as bias free. Mr. Hyton added that he questions the amount of data that is available to review.

Ms. Wittig, Santa Monica Coalition of Police Reform informed the subcommittee that there is a potential source of expertise of Applied Psychologists within the Sheriff and police departments that might be helpful with constructive feedback on issues involving AB 846.

Following Public Comment, Co-chair Woods asked if the subcommittee decides to write POST a letter would it have to go back to the subcommittee prior to going to the full board? Ms. Elgart said that if the recommendations were already made then no. Ms. Beninati reminded the subcommittee that part of the RIPA's charge is to make recommendations to POST. Ms. Catafi added that during the POST Commission's February meeting the RIPA Board's recommendations in the report are presented to the Commission for discussion and to provide the Commission staff direction so it is up to the subcommittee whether it wants to emphasize the recommendations in a separate letter. The consensus of the member's present was to not write a letter, and share this suggestion to the remaining members at the next subcommittee meeting.

Co-Chair Ochoa asked if there was a quorum? Ms. Elgart advised that member Hampton was regrettably not able to return to the meeting therefore the subcommittee could not vote on recommendations today. She added that because the subcommittee has to vote prior to making recommendations to the Full Board meeting on October 20, the subcommittee may wish to have a short meeting prior to that time to vote on recommendations and have public comment. Co-chair Ochoa asked DOJ to repeat its AB 846 recommendations and Ms. Koshy put them in the chat. The subcommittee agreed to scheduling an additional meeting in order to have a quorum and make a motion on the items discussed at today's meeting for AB 846 and on the composition of the POST Commission and to recap the discussion and thoughts going forward on their review LD3.

7. Adjourn

The meeting was adjourned by Co-chair Ochoa at 3:00 p.m.