

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD (BOARD)

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CIVILIAN COMPLAINTS SUBCOMMITTEE MEETING MINUTES

June 27, 2022, 1:00 p.m. - 2:30 p.m.

Subcommittee Members Present: Chair LaWanda Hawkins, Cha Vang, Pastor DJ Criner, and William Armaline

Subcommittee Members Absent: Andrea Guerrero

1. Introductions

Chair Hawkins called the meeting to order at 1:30 p.m. Each Civilian Complaints Subcommittee member (herein Subcommittee) introduced themselves which included newly elected subcommittee member DJ Criner. Member Criner is a senior pastor at the Saint Rest Baptist Church in Fresno, California, and also serves as a campus pastor at Fresno Pacific University. Chair Hawkins concluded introductions with a welcome to all attending the meeting.

2. Election of Co-Chair

Chair Hawkins nominated Member Criner to serve as Co-Chair of the Subcommittee. Member Criner accepted the nomination. Hearing no additional nominations or discussion, Member Armaline moved to vote which Member Vang seconded. All members present voted “Yes”, there were no “No” votes, and no abstentions. Co-Chair Criner thanked everyone and considers the position an honor.

3. Approval of February 28, 2022 Subcommittee Meeting Minutes

Chair Hawkins opened asking if any members would like to discuss the draft meeting minutes. Member Armaline moved to adopt the minutes which Co-Chair Criner seconded. All members present voted “Yes”, there were no “No” votes, and no abstentions. With the minutes approved, Deputy Attorney General (DAG) Allison Elgart noted that the DOJ would post the February 28, 2022, Subcommittee meeting minutes on the website.

4. Overview of Subcommittee Work by Department of Justice and Discussion of Subcommittee Section in Report

• **Data Analysis: update from DOJ Research Center**

Per the Subcommittee’s request from their last meeting, Kevin Walker from the Department of Justice Research Center presented on 2020 civilian complaint data reported across wave 1-3 agencies with a breakdown of the data by agencies comparing those whose complaint forms contained deterrent language to those that did not.

Mr. Walker’s presentation premised that the civilian complaint data used for comparisons was sourced from the RIPA Board’s 2021 report and that the following comparisons would be presented on:

- Total complaints reported;
- Number of officers employed per complaint reported; and
- Number of stops made per complaint reported

From his presentation, Mr. Walker stated that of the 28 wave 1-3 agencies, 57% had forms with deterrent language whereas 43% did not. Of the agencies categorized as having deterrent language, he noted that there was one whose deterrent language was a reference to Penal Code Section 148.6 which was contained on the webpage where the form is downloaded rather than on the form itself. To further analyze the two groupings Mr. Walker noted that 3 of 8 wave 1 agencies; 4 of 8 wave 2 agencies; and 9 of 12 wave 3 agencies (i.e. 16 of 28 agencies) had deterrent language in their complaint forms. He highlighted that over half of deterrent language agencies were from wave 3 which were relatively smaller agencies and that the three largest agencies (i.e., Los Angeles County Sherriff Dept., Los Angeles Police Dept., and California Highway Patrol) were part of the non-deterrent language grouping.

When the data is aggregated and grouped between agencies with deterrent language and those without, Mr. Walker reported that more complaints are reported for agencies with no deterrent language. In this aggregate data set, 81% of all complaints reported were from agencies with no deterrent language. However, he explained that some of the discrepancy can be attributed to the fact that the three largest agencies fall within the no deterrent language group. When comparing the number of sworn personnel employed per complaint amongst the two groups, agencies with deterrent language reported fewer complaints per officer than agencies with no deterrent language. In comparisons using stop data collected from 16 agencies (as wave 3 agencies did not start collecting until 2021) agencies with deterrent language made more stops per complaint than agencies with no deterrent language. Mr. Walker stated that stop data used in the report is wider than what peace officers are normally required to report which should be taken into consideration: The stop data was sourced from situations when there was a detention, consensual interaction with or without searches, and in custodial setting such as a jail which makes the sources of the complaints being filed wider.

Mr. Walker also noted the limitations of the civilian complaints against police officers (CCAPO) data used in the presentation. For one, CCAPO does not capture a number of factors which can affect the complaint count such as:

- How the agency defines what constitutes a complaint as there is no standardized definition of what constitutes a complaint;
- Accessibility of the complaint process;
- Complaint investigation policies and procedures; and
- Investigatory unit staffing

In summary, Mr. Walker stated that the deterrent language group of agencies reported less complaints in 2020; employed more officers per complaint; and made more stops per complaint than agencies with deterrent language.

At the conclusion of Mr. Walker's presentation, Member Armaline thanked Mr. Walker for his presentation and elevated an audience member's question of whether DOJ Research is tracking complaint information from Customs and Borders Protection Agency on the San Diego border. Mr. Walker responded that only wave 1-3 agencies data was used for today's presentation which CBP was not included in.

- **Case Summary: L.A. Police Protective League v. City of L.A. (56:21-59:34)**

Lauren O’Grady, a DOJ Law Intern, provided an update to *L.A. Police Protective League v. City of LA* which is a case that the RIPA Board (herein Board) has expressed concern over as it relates to Penal Code Section 148.6. Penal Code Section 148.6 requires that all complaints include the complainant’s signature on advisory that knowingly filing false complaints are subject to prosecution. In past reports the Board has expressed their concern that this code section, namely the signature requirement, could deter complainants from filing and affect the accurate reporting of complaints.

The Board was also concerned that law enforcement compliance to Penal Code Section 148.6 was unclear due to a conflict between United States Court of Appeal for the Ninth Circuit and California Supreme Court cases on whether it violated First Amendment rights. In 2002, the California Supreme Court upheld PC 148.6 whereas the U.S. Court of Appeals for the Ninth Circuit ruled that PC 148.6 violated the First Amendment in 2005. In 2017, the Los Angeles Protective League, a police union, sued the city of Los Angeles and sought a court order that the city follow PC 148.6 as Los Angeles was not requiring complainants to sign the advisory. Last month, an appellate court ruled that PC 148.6 is not a violation of the First Amendment.

In the past the Board recommended to either delete or amend PC 148.6 in order to improve civilian reporting. In 2019 the board sent a letter to CA Legislature which included a recommendation that the Legislature amend the code section to remove the requirement that complaints must be signed and be in writing. Further the Board had also recommended changes in their 2021 report to amend or change the code section noting that doing so would create a more equitable and uniform civilian reporting process. DAG Elgart expressed that the appellate court’s ruling does raise concerns as it would support the code section requirements possibly deterring complainants. She further noted that the subject can be included in the 2022 report. Member Vang inquired whether the state Legislature has responded to the letter sent in 2019. DAG Elgart noted that no legislative response has been received at this time but reminded the Subcommittee another letter can be sent should the Board direct it noting DOJ can draft a letter for review in the next Subcommittee meeting. She also added that recommendations from the Board can also be transmitted directly to the Legislature in short of a letter.

- **Research on Complaints Process**

In the last subcommittee meeting, the members had expressed interest in developing a set of best practices for the Civilian Complaint system. To preface the Subcommittee had developed a civilian complaint definition in the 2022 report that was recommended to the Legislature be added to Penal Code Section 832.5 as data showed there was no uniform definition among agencies. Without a uniform definition, measurement of civilian complaints can be affected. As an example, DAG Elgart noted some agencies classify complaints as inquiries subsequently not reporting them correctly. For the Subcommittee’s consideration DAG Elgart presented on the DOJ’s current research into the complaints process detailing the stages in the complaint process and sharing best practices identified so far.

DAG Elgart started her presentation covering the first step in the civilian complaint process: intake and access to the complaint process. She identified that a proper complaint process should strive to be accessible, fair, and transparent. To meet these goals, DAG Elgart noted a number of practices that agencies should adopt. For one, complaint forms should be as accessible as possible being accepted in

multiple formats (e.g., in-person, in writing, by telephone, anonymously, online, etc.) and from all people (e.g., parents filing on behalf of their minor, a third-party complainant, non-English speaking person, etc.). Particular to the complaint forms, DAG Elgart noted that they should explicitly inquire whether the complaint alleges racial or identifying profiling; be provided in any language spoken by more than 5% of the jurisdiction's population; be accessible for people with disabilities; and should not discourage complainants from filing. DAG Elgart also stressed the importance of an agency's involvement and responsibilities at this stage. In addition to informing the public of their right to make complaints and explaining the complaint procedure, officers should be required to submit complaints on the public's behalf should the public inform an officer of another officer's alleged misconduct but elected not to file a complaint. She also noted that a best practice which encapsulates these goals would be an online portal for members of the public to prepare, submit, and track their complaints.

DAG Elgart then proceeded to cover ideal timeline practices. To best assist with transparency, she noted that agencies should develop written internal deadlines to complete an investigation that would be accessible to the public to help the community better understand the process. A related best practice DAG Elgart introduced was for the entire investigation to be completed within 30 days of the original complaint whereby the officer would be notified and complainant and witness interviews would be conducted within 24 hours of the original complaint. DAG Elgart noted that though this may be possible for smaller agencies, larger agencies should nonetheless adopt this principle as it would provide witnesses and complainants the best conditions to provide information needed while it was still fresh in their minds. In the event the investigation would take longer than 30 days, investigators would provide a written request which the Chief of Police may approve.

To assist with this, complaint tracking practices should also be aligned to meet ideal goals. She noted that agencies should assign a tracking number and log every complaint in a uniform system. A uniform system would not only help agencies provide accurate and complete reporting data, improve their ability to respond to personnel or operational problems identified by the community served, but also ensure the information can be aggregated for periodical publication (e.g., displaying number of civilian complaints received, number of internal investigation conducted, etc.) to the public. Other preferred practices that DAG Elgart noted were that the tracking system should be automated, not only having the capability to capture important information for case tracking purposes, but also alert investigators and management about established deadlines. The complaint system should also be auditable to account for complaints received by a variety of means and the information gathered should be integrated among various databases to identify and remedy at-risk behavior or concerning trends.

When DAG Elgart moved to cover the next aspect of the complaint system, communication with complainants, she noted that this important aspect has much opportunity to improve referencing the Subcommittee's concerns that complainants were only really contacted during the final complaint disposition. To address this, DAG Elgart stated that communication with complainants through the entire process would be best. Upon submission of a complaint, complainants should receive the following:

- Written acknowledgement of their complaint with information to track progress and contact the assigned investigator;
- An opportunity to review their complaint
- Be given information to better understand the process (e.g., disposition categories and standards);
- A timeline that the agency must follow with notice when delays in the investigation occur; and

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- Frequent updates, preferably through letter notification, regarding progress of their complaint

DAG Elgart noted that research indicates complainants would already have low levels of trusts. To address this agencies should allow for communication by complainants to be conducted through a mediator or via phone. Additionally surveying the complainants regarding their satisfaction may prove useful in promoting quality of investigations/debriefings.

When DAG Elgart covered the actual investigation process of complaints, she emphasized that all complaints should be investigated and that a complainant's withdrawal should not be the sole basis of terminating an investigation. She continued noting that though many scholars believe independent investigation is the only way to maintain public confidence in police department integrity, research is not quite settled and that the DOJ would continue its research into the topic. Regardless, DAG Elgart continued her presentation emphasizing that the investigation be structured to avoid inappropriate relationships or outside influence between those reviewing the complaint and the agency being reviewed. She also went to note that any oversight or independent investigator must be familiar with the agency's training procedures while maintaining their impartiality. DAG Elgart continued recommending that investigators proceed while being mindful of the investigated subject's overall complaint history to discover any concerning at-risk behavior or trends that require remedying; this can be accomplished by establishing several key lines of inquiry, looking for indirect evidence of discrimination, comparing how the complainant was treated when compared to individuals without the same protected characteristics, and by interviewing the officer for their assessment of the situation to reveal any potential biases that need remedying. DAG Elgart also recommended periodic independent audits of the civilian complaint process noting that some concerned organizations will pose as complainants to identify any potential concerns such as intimidation. In closing this section of her presentation, DAG Elgart stressed that the number of complaints is not indicative of the effectiveness of the complaint process. A rise or decline in complaints could indicate both a deterioration in public confidence therefore it is necessary to continue collection and analysis of complaint trends to better understand how the systems are working.

In the complaint disposition portion of her presentation, DAG Elgart covered practices that should be adopted along with research associated with the topic. To begin, she referenced the Subcommittee's definition of disposition outcomes (i.e., sustained, exonerated, not sustained, unfounded, and pending) and that regardless of the outcome, she emphasized that the practice of making complainant's feel respected and heard should be adopted. She then followed with a segment indicating that research suggested that independent bodies in charge of civilian complaints were most effective provided they had power to conduct investigations and direct police training and management. Additionally research suggested that complaints resulting in reprimands or cautions were less effective at deterring misconduct.

DAG Elgart then transitioned to early intervention systems as a proactive measure. Early intervention systems (EIS) provide an opportunity for agencies to identify potentially at-risk behavior before the need for disciplinary action. DAG Elgart noted that a strong EIS includes key practices such as encouraging supervisors to flag at-risk behavior, intervention to address that behavior, and monitoring the flagged officer to ensure long-term change. Another important aspect of EIS, is that there should be clear distinction between EIS preventative interventions and formal disciplinary systems allowing intervention to be framed as additional training instead of warnings or rewarding officers exhibiting positive

behavior. This framing would help officers see EIS as a helpful measure rather than disciplinary. However, DAG Elgart stressed the point that supervisors must have full understanding of the EIS system for it be effective, utilizing data captured to properly identify those who reach potential thresholds warranting interventions and to help educate lower level officers. In closing, identifying performance problems and intervening early will result in fewer problematic incidents in the field later possibly mitigating resource and time used to investigate complaints.

After concluding her presentation, DAG Elgart invited the members to provide any comments or additional direction pertinent to what was presented. Member Armaline found the best practices identified as reasonable and well thought out and requested that the presentation text be sent to the Subcommittee as it would provide the Subcommittee the opportunity to review and better discuss the subject in future meetings. DAG Elgart noted that the text presented is still a work in progress but would provide it by the next Subcommittee meeting. Chair Hawkins shared similar sentiments with Member Armaline stating that the presentation was excellent and a copy of the text would prove beneficial. As these best practices will be applied to a recommended policy, DAG Elgart encouraged the Subcommittee to note agencies, reports, and research that they would like to add for review and possible adoption.

Member Vang thanked DAG Elgart for the presentation and mirrored other members' requests for a paper-copy. Member Vang raised a clarifying question regarding the civilian complaint data used and whether it only contained complaints related to racial profiling. Mr. Walker answered that the civilian complaint data contained complaints with elements of profiling with further delineation based on the type of profiling that occurred and its disposition. To further clarify, the data that the DOJ receives did not contain any specific information about the complaint and is more so quantitative; the data are high level aggregate counts.

5. Public Comment

Chair Hawkins opened the meeting for public comment. Craig Ali asked how one would engage agencies to invite external oversight to their complaint process. Craig Ali presented a hypothetical in which an individual was not able to file a complaint because the individual and agency itself was unfamiliar with the complaint process due to the agency's change in management. In closing, Craig Ali applauded the Board for their efforts and for the opportunity to comment.

6. Discussion of Next Steps

DAG Elgart restated that the DOJ would continue to work on the research and to provide a copy to the members and the public when possible.

7. Adjourn

DAG Elgart reminded the members that a full board in-person meeting will convene on July 28, 2022. Further DAG Elgart invited the public to attend and provide public comment. Chair Hawkins thanks everyone for attending and adjourned the meeting at 2:48 p.m.