

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD (BOARD)

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POLICIES SUBCOMMITTEE MEETING MINUTES

September 30, 2022 2:00 p.m. - 4:00 p.m.

Subcommittee Members Present: Co-Chair Andrea Guerrero, Member Steven Raphael, Member Melanie Ochoa, Member Lily Khadjavi, Member Manju Kulkarni, and Member Amanda Ray,

Subcommittee Members Absent: Member Ammar Campa-Najjar

1. Introductions

Co-Chair Guerrero called the meeting to order at 2:00 p.m. Each Policies Subcommittee member (herein subcommittee) introduced themselves. Co-Chair Guerrero concluded introductions with a welcome to all attending the meeting.

2. Election of Co-Chair

Co-Chair Guerrero opened the agenda item announcing the opening for the Co-Chair position. She invited the subcommittee to nominate a member for the position. Member Ochoa and Member Kulkarni both nominated Member Khadjavi for the position. Although appreciative, due to prior engagements, Member Khadjavi expressed her interest for the position in the future and moved the discussion to other nominations. To best assist the subcommittee, Supervising Deputy Attorney General (SDAG) Beninati mentioned that should no member present be available to perform the duties of Co-Chair at this time, the agenda item could be tabled for the next subcommittee meeting to allow new and old members more time to consider. Co-Chair Guerrero tabled the agenda item and moved on to the next agenda item.

3. Approval of September 16, 2022 Subcommittee Meeting Minutes

Member Khadjavi moved to approve of the draft meeting minutes with the minor edit she proposed for the last paragraph on page 5. Member Ochoa seconded the motion. With six Ayes, zero Nays, and zero Abstentions the motion passed.

4. Overview by Subcommittee Work by Department of Justice

Associate Government Program Analyst (AGPA) Anna Rick of the Civil Rights Enforcement Section began noting her work for the RIPA Board to address the profiling of youth in collaboration with the DOJ's Research Center; Deputy Attorneys General Yasmin Manners and Kendall Micklethwaite; and Legal Intern Lauren O'Grady. For 2022, the RIPA Board decided to closely examine youth stops as there has been a large racial disparity, between younger and older age groups, in the stop rates and actions taken. Additionally, the RIPA Board has decided to look into youth stops in the school setting as law enforcement presence at schools have greatly increased. AGPA Rick then invited DAGs Manners and Micklethwaite to present on law enforcement interactions with youth.

Nationwide Trends

DAG Manners presented on identifiable nationwide trends from youth encounters with police officers outside the school setting and the related draft report section. To preface, the draft report section used RIPA data to identify factors such as who was stopped, the characteristics of the stop, the potential reason for the stop, and its effect on the youth. To begin, the nationwide trends indicated that there are racial disparities for youth who encounter law enforcement and that effects from the event are significant. The data also indicated that 25% of youth have personally been stopped by police and that 80% have experienced vicarious contact (i.e., they either have personally observed police contact or knew somebody subject to the experience). Of those stopped:

- A third are searched;
- 10% were either threatened or had physical force used against them;
- 20% were subjected to hard language; and
- 8% were subjected to racial slurs

DAG Manners continued noting that youth of color are also more likely to experience personal contact with police and that the contact is more aggressive than their white peers. Additionally, youth of color are less likely to be diverted from the criminal justice system and instead have an increased likelihood of being incarcerated. A possible explanation for these disparities may be that there is an increase of police presence in non-white communities. Further, she explained that because youth of color are viewed by police to be more mature, they are seen to be more culpable for their actions when compared to white youth subsequently leading to criminal justice involved outcomes for them. DAG Manners also highlighted the mental and physical health effects which negative police encounters generate such as post-traumatic stress disorder and depression. She relayed that these events in turn generate ill-feelings toward the justice system and police which further undermine any positive relationship between the community and law enforcement. DAG Manners then opened the floor for DAG Micklethwaite to provide an in-depth discussion on what the RIPA data identified.

Draft Report Section and RIPA Data Trends

DAG Micklethwaite presented on the RIPA data analyses and the relevant section of the report. To begin she highlighted the following trends as identified by RIPA data and that have been added to the draft section:

- The 10-14 age group had a higher rate of stops for reasonable suspicions than other groups possibly caused by the age group experiencing more calls for service initiated interactions;
- That Black and Hispanic youth experience a higher rate of stop encounters which result in no action;
- That Black and Hispanic youth experience a higher rate of stop encounters which result in the officer handcuffing and searching the individual;
- That Black and Hispanic youth experience a higher rate of stop encounters resulting in the use of a field card interview; and

- That Hispanic, Black, and Asian youth experience a higher rate of stop encounters with a consent-only search tentative to the age group viewed

Particular to the report, DAG Micklethwaite noted that the draft section would include information on a number of topics related to youth stops which includes:

- A section on what happens during youth stops with the topic enhanced by first-hand accounts by those subjected to use of force or searches;
- The costs of youth vulnerabilities resulting from negative police interactions;
- The use of field interview cards and subsequent criminalization of youth as the information can be submitted into the CalGang shared database; and
- Recommendations for solutions (e.g., requiring an attorney being present during certain police actions, prohibiting inclusion of youth data entries into criminal databases, etc.) and topics to review in future reports

School Stops

AGPA Rick presented on youth stops within the school setting. Substantively, the section utilizes RIPA stop data particular to stops in K-12 which involved an officer with a K-12 public school assignment type. To further develop the section, AGPA Rick informed the subcommittee that the section was supplemented through conversation with the UCLA Center for Civil Rights Remedies, advocates from the ACLU of Southern California, National Center for Youth Law, and review of the National Association of School Resource Officer material. Lastly the section will end with a discussion on policy considerations that the subcommittee may be interested in developing further based on the data and research conducted. AGPA Rick then invited the subcommittee to discuss the report sections.

5. Subcommittee Discussion of Report

Youth and Law Enforcement

Co-Chair Guerrero opened the floor for subcommittee discussion. Member Raphael, sought clarification particular to the graph displaying data on youth stops which resulted in no action as the graph may visually misrepresent the data it references. In particular, the cells below 7.6% may be not be equidistant to the cells above the figure. He also sought clarification on whether there is a separate database for field interview cards outside of CalGang.

To answer Member Raphael's latter question on field interview cards, SDAG Beninati noted that different agencies handle field interview cards differently. Member Ray, confirmed noting that besides implementing into CalGang when relevant, the CHP would only incorporate the information on field interview cards in the reports they write. In light of the information given, Member Raphael suggested that the various uses of field interview cards should be added to the report section.

Member Ochoa opened her comments by thanking the DOJ for their timely work. To add to the discussion regarding field interview cards, she mentioned that the Los Angeles Police Department will render all field interview cards searchable akin to a database. Additionally, she raised concern

on agency practices that seek additional information such as social media handles. Her concern stemmed from the possibility that agencies will garner a false gang-affiliated impression of the youth from social media material that may not accurately reflect who they are. Member Ochoa also agreed that the section for field interview cards should be expanded to raise the concerns mentioned.

Another question Member Ochoa had was whether youth traffic stops for those 10-years-old or younger were the result of them being a car passenger or for traffic stops tied to operating a vehicle like a bicycle. On another note, she is also concerned on the accuracy of the data reported by law enforcement agencies as it pertains to the use of force on youth; the Los Angeles School Police Department (LASPD) numbers reported; and whether the data shows a particular agency contributing a large number of incidents.

To answer Member Ochoa's questions, Research Data Supervisor Kevin Walker responded that the LASPD data stands alone primarily due to them being the only school police agency that collected data in 2021. He continued noting that other school police agencies will be added and reviewed as they have collect their 2022 data. On Member Ochoa's question particular to whether a singular agency is contributing a significant number of incidents, he said the analysis could be performed to identify any such agency and that they will take that into consideration. To answer Member Raphael's previous question on the 7.6% figure representation, Mr. Walker confirmed that the graph is correctly presented; it establishes that while the 25+ age group has the vast majority of the interactions, the graph demonstrates the younger age groups having an increased rate of police stops. He also answered Member Ochoa's question on how traffic stops for youth 10-years-old or younger by attributing the figure as a combination of the age group being stopped while operating bicycles, as being car passengers, and possible incorrect entries by law enforcement. Further, to best allay concerns of the ambiguity, he mentioned that effective 2024, there will be an entry type to distinguish parties involved as either passengers or vehicle operators.

In light of what was shared, Member Khadjavi thanked the DOJ team for their well-researched work on the section. As a recommendation, Member Khadjavi suggested that the report should provide a definition or an example of reasonable suspicion when it first appears in the text to help those unfamiliar understand the concept. Another suggestion she had was to include the sample numbers for some of the graphs when possible to help make the figures more tangible.

When Co-Chair Guerrero sought clarification whether school referrals to law enforcement was part of the calls for service figure, AGPA Rick confirmed that the RIPA data was inclusive of the school referrals to law enforcement. Upon hearing the response, Co-Chair Guerrero highlighted an opportunity to further delineate calls for service by the source of the call, as it could help identify additional trends (e.g., whether school staff, neighbors, or fellow classmates are making a higher number of calls). Member Kulkarni seconded the suggestion noting that identifying the third party (i.e., the one making the calls) engaged in these interactions can help. Member Raphael contributed to the discussion noting that a recent University of California Los Angeles study observed a link between an adult's involvement with the criminal justice system and teacher's overuse of discipline when they were a child.

Pretext Stops

As most of the section remained unchanged, DAG Micklethwaite directed the subcommittee to highlighted portions of the draft section noting that the following were added:

- Information finding that a tenth of traffic stop deaths were associated with California law enforcement officers;
- Information regarding the discovery rate of weapons and narcotics were low;
- Expanded the section on fines and fees;
- Per Member Ochoa's suggestion, included additional information on RIPA and its connection to *Whren v. U.S.*); and
- Included additional information addressing bias and approaches on high discretion stops

When the agenda item was opened to discussion, Member Ochoa recommended that stronger language should be used on page 7 to demonstrate that RIPA's passage not only allowed for collection of relevant data but made profiling illegal.

The subcommittee went to discuss the second recommendation given on page 22 as they were prompted to identify what type of offences would require probable cause for conducting stops, searches, or questionings. The subcommittee discussed the following options:

- To enumerate the list of offences subject to the probable cause standard;
- To modify language in the second recommendation to best reflect their intentions; or
- To remove the second recommendation in its entirety upon consideration of whether the preceding and proceeding points holistically already demonstrate their intentions

Co-Chair Guerrero opened discussion noting that enumerating offences subject to the probable cause standard would be an effort that the subcommittee may not be equipped to perform given the time remaining. Instead she advocated for modification of the language to include mention of the Fourth Amendment prohibiting warrantless searches. Member Ochoa added that the second recommendation's language should task the California Legislature or a municipality to identify some public safety related offences subject to probable cause as the RIPA data findings have demonstrated a need to limit pretext stops.

To further facilitate discussion, Co-Chair Guerrero cautioned that enumeration of offences may cause unintended limitations. Member Ray agreed with the statement as she was concerned that enumerating offences could limit law enforcement officer discretion particular to stops as it could have a negative effect on traffic safety citing a study NTSA conducted. Further, Member Ray raised concerns on modifying the second recommendation to increase the standard required to perform stops as she noted that traffic infractions and misdemeanors are inherently rooted in public safety.

Member Kulkarni positioned that the proposed language modification (i.e., to increase stop standards for public safety related offences) would also benefit public safety in that the RIPA data shows that pretext stops can result in death as well. Additionally, the proposed language modification could help curb the public's lack of trust with law enforcement officers citing a

survey by Loyola Marymount University which found that 66% of people in Los Angeles believe law enforcement discriminates against Black people. In light of the discussion, Member Ochoa proposed that the second recommendation's language be changed to task legislative bodies to consider the probable cause standard for stops tangentially related to public safety and disproportionate stop rates in an effort to allay concerns that the initial proposal may sweep too broadly. Additionally, Member Kulkarni noted that the judicial branch could also distinguish when the probable cause standard was legally enforceable for traffic stops through the courts to allay concerns members had.

The subcommittee also discussed on removing the second recommendation upon consideration of whether the preceding and proceeding recommendations listed are sufficient. Co-Chair Guerrero raised that an argument could be made for its removal as the second point has yet to be developed to relay the subcommittee's intentions and that the preceding and proceeding recommendations already direct the California legislature. Members Kulkarni and Ochoa raised that there is merit for keeping the second recommendation in as it provides the RIPA board's stance and principles regarding the matter. Further Member Ochoa noted that the recommendations are distinct from one another; the first recommendation encourages enumeration of prohibited stops whereas the second recommendation should be kept to advocate for the probable cause standard to be used for some stops. Ultimately the subcommittee compromised, changing the second recommendation's language to task the legislature to evaluate moving to a probable cause standard for stops which RIPA data shows are highly correlated with disparate stop rates and outcomes.

Upon closing the discussion of the draft report section, Co-Chair Guerrero tasked the DOJ to continue with drafting sections of the report under the considerations of the discussions had today.

Accountability

DAG Jennifer Soliman informed that the DOJ is in the process of incorporating comments and recommendations made in the last meeting. The draft section will be presented in the October 12 board meeting. Additionally,

6. Public Comment

As the members of the public had no comment at this time, Co-Chair Guerrero invited them to provide their thoughts via e-mail.

7. Discussion of Next Steps

Co-Chair Guerrero tasked the DOJ to continue with drafting sections of the report under considerations of the discussion had today.

8. Adjourn

Co-Chair Guerrero adjourned the meeting noting that that she will see everyone in the next full board meeting.