

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD (BOARD)

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POLICIES SUBCOMMITTEE MEETING MINUTES

September 11, 2023 12:20 p.m.

Subcommittee Members Present: Co-Chair Guerrero, Co-Chair Melanie Ochoa, Member Lily Khadjavi, Member John Dobard, Member Angela Sierra, and Member Manju Kulkarni

Subcommittee Members Absent: Member Rich Randolph and Member Chad Bianco,

1. Introductions

Co-Chair Ochoa called the meeting to order at 1:20 p.m. Each Policies Subcommittee member (herein Subcommittee) introduced themselves. Co-Chair Ochoa concluded introductions with a welcome to all attending the meeting.

2. Approval of August 28, 2023 Subcommittee Minutes

Co-Chair Ochoa moved to approve the meeting minutes as presented which Member Khadjavi seconded. There were four Ayes, zero Nays, and one Abstention. The meeting minutes were passed as presented.

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

Co-Chair Guerrero opened the agenda item to discuss edits made to the Subcommittee's report section suggested at the last meeting and opened the floor to the Department of Justice (DOJ) to present on changes made.

Pretextual Stops

Deputy Attorney General (DAG) Kendal Micklethwaite of the Department of Justice (DOJ) Civil Rights Enforcement Section presented on updates made to the draft report since then. DAG Micklethwaite reported that the DOJ continues to incorporate recommendations and materials provided by the Subcommittee. They informed the Subcommittee that the discussion on this topic from their report section would focus on language revisions on approved recommendations. They stated that the following RIPA Board approved recommendations would be discussed:

1. Prohibit district attorneys from filing and law enforcement agencies from submitting to the district attorney's office for review misdemeanor criminal filings on standalone resisting arrest charges if it is the sole charge listed at the time of arrest and is not accompanied by other citable offenses.
2. Prohibit filings on standalone misdemeanor resisting arrest charges or charges where resisting arrest is charged in conjunction with trespass, disturbing the peace, driving without a valid license or a suspended license, simple drug possession, minor in possession of alcohol, drinking in public, under the influence of a controlled substance, public intoxication, or loitering

5. Eliminate or severely limit arrests and charges filed for resisting arrest during consensual encounters
6. Prohibiting arrest and filing of charges against individuals stopped for community caretaking or experiencing a mental health crisis, or if the alleged resisting stems from a disability that affects the person's ability to understand the officer or communicate with them

DAG Micklethwaite first presented the RIPA Board approved recommendations on resisting arrest. Co-Chair Ochoa recommended language changes to the first and second recommendations that would prohibit district attorneys and law enforcement agencies from respectively filing and submitting misdemeanor criminal filings on standalone resisting arrest charges if the charge is not accompanied by another citable offense or the charges listed in the second recommendation. She stated that legislature cannot actively enforce this recommendation and that the recommendation should be framed to direct its incorporation into the agency's internal policy. Member Sierra asked whether the referenced recommendations was sourced from a district attorney's office. DAG Micklethwaite confirmed that both recommendations were modeled from the Los Angeles District Attorney Office (LADA) internal policy. Member Sierra asked the Subcommittee and the DOJ to consider whether language noting exceptions should be added (e.g., whether situations where an officer is injured or where an exigent emergency exists should be precluded from these recommendations). DAG Micklethwaite informed Member Sierra that there are numerous resisting arrest charges and that the most relevant charges for consideration are Penal Code sections 148(a) and 69. They explained that the former code section does not involve any injuries whereas the latter code section does. They also stated that the recommendations and accompanying information refer to Penal Code section 148(a) and was not necessarily applicable to Penal Code section 69.

The Subcommittee then discussed possible changes to the fifth and sixth recommendations in this section. Co-Chair Ochoa mirrored her prior suggestion and asked that the subcommittee consider revising the fifth recommendations language to direct agencies to adopt an internal policy. She also agreed with Member Sierra's recommendation and advised that substantial and extreme circumstances would be precluded from the recommendation. Co-Chair Guerrero advised that the sixth recommendation's reference to community caretaking should be explained or explicitly defined. DAG Micklethwaite stated that in addition to the defining community caretaking in the recommendation that the definition will be housed in prior passages in this section. Co-Chair Ochoa agreed with Co-Chair Guerrero and added that the sixth recommendation should also direct agencies to create internal policies. Member Sierra also recommended that the language be revised to specify that the recommendation is only applicable to those who are stopped for community caretaking services due to a mental health crisis.

DAG Micklethwaite also asked the Subcommittee to consider amendments to recommendations made related to field interviews in light of Member Khadjavi's submitted resources which were incorporated into the report. Co-Chair Ochoa asked that an additional recommendation be added that would prohibit law enforcement agencies from collecting field interview cards absence in absence of an arrest. Co-Chair Guerrero had a friendly amendment to Co-Chair Ochoa's

recommendation and asked that it preclude investigations of a criminal offense based on probable cause; she stated that this was to ensure investigations could continue unimpeded and in light of the legislature's discussion on a related matter. Co-Chair Ochoa requested that they retain the language of the new recommendation as is. She stated that the recommendation should align more with evidence-based findings and that the legislature could create carve-outs for their concerns if need be. She also asked the Subcommittee to consider that field interview cards are not used to collect data on a crime but on the subject of the interview and would not harm an investigation if the practice is prohibited. DAG Micklethwaite also asked the Subcommittee on possible amendments to the fourth recommendation that requires officers to inform individuals subject to field interviews that they do not have to respond to questions and are free to leave. The Subcommittee then agreed that the language should reflect changes discussed for the third recommendation.

Co-Chair Ochoa then asked to entertain a motion to approve of the six recommendations edited at today's meeting for full board review. Member Kulkarni moved to approve of recommendations edited today located on pages 36 and 37. Member Sierra inquired whether the motion before the Subcommittee would take into consideration that it would include language from the LADA's internal policy, which the Subcommittee did not discuss. Co-Chair Ochoa made an amendment to the motion to approve of recommendations on page 48. Member Kulkarni withdrew her motion and seconded Co-Chair Ochoa's motion. There were six Ayes, zero Nays, and zero Abstentions and the motion passed.

The Subcommittee revisited their recommendations on pages 36 and 37 after DAG Micklethwaite presented LADA's language. Co-Chair Ochoa stated that LADA's language is appropriate to incorporate to the referenced recommendations and asked the Subcommittee to consider how it would be added. Member Sierra stated that LADA's language on preclusions when the person poses, "an identifiable, continuing threat to another individual or there exists another circumstance of similar gravity" to be the appropriate inclusion to their recommendations. She stated that the suggested language would better define when deviations from their recommendations should occur. Co-Chair Guerrero then asked for a motion to adopt the recommendations in light of adding LADA's language in. Co-Chair Ochoa moved to approve recommendations on pages 36 and 37 for full board review, which Member Kulkarni seconded. There were six Ayes, zero Nays, and zero Abstentions. The motion passed.

DAG Micklethwaite continued the Subcommittee's review and asked them to consider whether additional changes were needed to the listed recommendations on specialized teams:

1. Create policies that provide for greater oversight of specialized teams and require law enforcement agencies to develop policies that define clear objectives and outcomes for specialized teams.
2. Provide funding programs that focus on community-based drug and violence intervention programs rather than specialized law enforcement response models.

Co-Chair Ochoa asked that language be included in the first recommendation that directs the agencies to enforce the policies or any other law or policy should an observed deviation occur

from the programmatic mission. Co-Chair Guerrero then asked to entertain a motion to approve of the changes discussed. Member Khadjavi moved to approve the recommendations on specialized teams as now edited which Member Sierra seconded. There were five Ayes, zero Nays, and zero Abstentions and the motion passed.

Youth Interactions with Law Enforcement

Co-Chair Ochoa then opened the floor for Associate Government Program Analyst (AGPA) Anna Rick of the DOJ to present on updates on the section and recommendations for the Subcommittee's recommendation. AGPA Rick reported that analysis was conducted on 2022 RIPA data sourced from reported law enforcement stops on students at K – 12 campuses. She reported that the analysis that included the following:

- Slightly over half of the stops reported were by law enforcement officers with the K – 12 assignment type
- Black students were overrepresented in stops of students on campus
- Nearly 1 in 10 students who were stopped were perceived to be 12 years old or younger
- 58% of stops were based on suspicion that the student was engaged in criminal activity which was the primary and most common reason of stops for students
- The second most common reason for stops was to determine whether the student violated school policy and accounted 18% of stops
- Black students disproportionately encountered more stops for reasonable suspicion and handcuffing outcomes when compared to other ethnic groups
- That half of the stops performed were in response to a call for service

She stated that the section will also include the Subcommittee's research into the impact of school based law enforcement on school discipline practices and climate; law enforcement involvement in student threat assessment processes; and the involvement of school law enforcement officers as informal counselors and mentors. The subsequent segment would then inform readers of current school policies, legislation, schoolboard settlement agreements, and more that are currently active. The final segment provide the recommendations for the Subcommittee's consideration and discussion. AGPA Rick then invited the Subcommittee for their input and feedback.

Co-Chair Ochoa asked that the recommendation that prohibits use of force on students remove mention of threats to facility security as an exception to their recommendation. She stated that the diction used could be interpreted to permit use of force for property damage. Co-Chair Guerrero asked for clarification on stops that did not include an offense code that could not be categorized despite being the second highest category for stops. Data Research Supervisor Kevin Walker of the DOJ Research Center answered that the regulations that were in place at the time instructed officers to input the offense code that the person was suspected to have committed. He stated that the category was allowed by regulations to enable officers to submit data without having all information reported. However, he reported that moving forward amendments to the regulations would now require the referenced category to be completed effective January 1, 2024.

Co-Chair Guerrero also asked for clarification on the two people listed on the draft section who made contact with the U.S. Department of Homeland Security, the U.S. Customs and Border Protection, and the U.S. Immigration and Customs Enforcement agencies. She asked that a paragraph be added to remind readers of Senate Bill 54 (California Values Act) that public officials cannot provide resources to the U.S. Department of Homeland Security. She also asked that the two referenced instances' narrative fields be included to provide additional information as well.

Co-Chair Guerrero also asked that the recommendation that prohibits pursuing or using force on students who are fleeing after committing low-level disciplinary conduct, should incorporate the use of force standard agreed upon by the United States and Internationally. She specifically asked that the words necessary and proportionate be incorporated to better align the recommendation and should also be incorporated into the recommendation that prohibits law enforcement officers and school personnel from using electronic control weapons on children under the age of 14. She also asked that another recommendation be made to promote that under no circumstance should law enforcement use force against students that is not legitimate, necessary, and proportionate.

Member Sierra asked the Subcommittee to consider withdrawing the recommendation to repeal part of Education Code section 38000 as the recommendation and topic may require further review. She also shared the same concerns for some threat assessment and funding recommendations made as additional review may be required. She stated that the referenced recommendations can be covered under a later report once researched. Co-Chair Ochoa responded to Member Sierra's first consideration to withdraw the recommendation that would repeal a part of Education Code section 38000 and stated that the necessary coverage and research has been performed between this year's and last year's reports. She recommended that references to prior reports on this subject matter should then be incorporated to inform readers of the true amount of research conducted.

Co-Chair Ochoa tabled further discussion of the agenda item and proceeded to public comment.

4. Public Comment

Co-Chair Guerrero opened the floor for members of the public to provide comment. She then moved the meeting back to the prior agenda item upon hearing no public comments.

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

Youth Interactions with Law Enforcement

Co-Chair Ochoa stated she would entertain a motion to approve of recommendations made except those that required additional discussion (i.e., repeal Education Code section 38000, funding, and threat assessment recommendations would not be included in the motion). Member Sierra clarified that the funding recommendation should be researched further as the (LCFF) role and how the funding is spent may have not been adequately reviewed. Co-Chair Guerrero asked the Subcommittee to modify the recommendation to add additional language to limit LCFF funding allocation to school police, probation department staff, and school security officers. Co-Chair Ochoa stated that the recommendation's intent is the re-allocation of funds to programs or expenses that would better students. She asked the Subcommittee to consider whether the

recommendation can be generalized to retain its intent while not directing for just LCFF funding in particular to be re-allocated. She stated that the body of information in the report would still be able to bolster this recommendation. Members Sierra and Khadjavi agreed with Member Khadjavi mentioning that the amendment would mirror recommendations made in the pretextual stop section. AGPA Rick also asked the Subcommittee to consider merging a subsequent recommendation made on the Tobacco Grant Program's funding allocation with the LCFF recommendation as both carried similar intents. Co-Chair Ochoa agreed to the change as long as it is properly worded.

Co-Chair Ochoa moved to approve of all recommendations discussed except for the recommendation regarding the role of law enforcement in schools which Co-Chair Guerrero seconded. There were five Ayes, zero Nays, and zero Abstentions. The motion passed. Co-Chair Ochoa then directed the subcommittee to the remaining recommendation left. She asked the Subcommittee to consider moving the recommendation from the Subcommittee to the full board to allow additional discussion. She then moved to approve the recommendation to repeal Education Code section 38000 which Co-Chair Guerrero seconded. There were four Ayes, zero Nays, and one Abstention. The motion passed.

Accountability Systems

In the interest of time Co-Chair Guerrero asked that conversation of the segment be limited to whether recommendations proposed should be approved. She stated that updates made from last meeting only included incorporation of the Subcommittee's feedback.

DAG Soliman of the DOJ noted that the recommendation was for researchers to analyze RIPA research data further to answer questions posed in the RIPA report. Member Sierra approved of the changes made as it solicits further engagements to those reading it. Co-Chair Ochoa made recommended additional changes to make certain areas of the segment clearer. Co-Chair Guerrero stated she would then entertain a motion to adopt the recommendations. Co-Chair Ochoa made a motion to adopt the recommendations with changes discussed. Member Dobard seconded the motion. There were five Ayes, zero Nays, and zero Abstentions. The motion passes.

4. Public Comment

Co-Chair Guerrero opened the floor for members of the public one more time to provide any comments. Hearing none, she then moved to the next agenda item.

5. Discussion of Next Steps

Co-Chair Guerrero informed that the next RIPA Board meeting would occur on October 11, 2023 whereby discussion on the approved recommendations will be had with the full board.

6. Adjourn

Co-Chair Ochoa and Guerrero thanked all for their attendance and wished all a good day before adjourning the meeting.