

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD (BOARD)

<https://oag.ca.gov/ab953/board>

POST TRAINING AND RECRUITMENT SUBCOMMITTEE MEETING MINUTES

June 6, 2024 11:04 a.m. – 12:50 p.m.

Subcommittee Members Present: Co-Chair Ronaldo Villeda, Member Angela Sierra, Member Manjusha Kulkarni, Member Darren Greene, Member Sean Thuilliez, Member Rich Randolph, Member LaWanda Hawkins, Member Brian Kennedy

Subcommittee Members Absent:

1. INTRODUCTIONS

Co-Chair Villeda called the meeting to order at 11:04 a.m. Each POST Subcommittee member (herein Subcommittee) introduced themselves. Co-Chair Villeda concluded introductions with a welcome to all attending the meeting.

2. INTRODUCTION OF NEW BOARD MEMBER

Member Greene introduced himself. He expressed excitement to work with the Subcommittee.

3. APPROVAL OF FEBRUARY 26, 2024, SUBCOMMITTEE MEETING MINUTES

Member Sierra motioned to adopt the meeting minutes and Member Kulkarni seconded. Each subcommittee member announced their vote:

- **AYE:** Member LaWanda, Member Sierra, Member Kulkarni, Member Randolph, Member Thuilliez, Co-Chair Villeda
- **NAY:**
- **ABSTAIN:** Member Greene

With six Ayes and one Abstain, the meeting minutes were approved.

4. UPDATE BY THE DEPARTMENT OF JUSTICE

Aisha Martin-Wallace of the DOJ shared two updates with the Board:

1) The first pertains to the POST Commission amendments to Regulation 1205 adopted on April 18, 2024, to establish what acts or actions constitute “demonstrating bias” when the Commission makes decertification decisions pursuant to the Serious Misconduct category of bias in SB 2 (Penal Code Section 13510.8(b)(5)).

In July 2022, the Board provided comments to the initial version of Regulation 1205. The Board recommended that the definition demonstrating bias be based on both the perceived and actual identity. POST included this recommendation in its final version of Regulation 1205.

In December 2023, POST proposed an amendment to Regulation 1205 that would define demonstrating bias using definitions contained in 2 new subparts. Although the general language in the original regulation of “perceived or actual bias” is also included in the amended version of subsection (a) (5), Subpart A, omits bias based on “perceived” membership in a group, indicating that bias based on “actual” membership in a protected class or group is required to prove that an officer demonstrated bias.

The Board was not aware of the POST Regulation Notice issue date of December 29, 2023, and therefore, was not able review it in time to consider submitting public comments by the due date of February 12.

POST staff recommended that DOJ sign up as a subscriber to POST PASS via its website to receive the POST Commission regulation proposals and amendments.

2) The second update pertains to the enactment of AB 443 (codified in Penal Code section 13510.6. (a)). AB 443 imposes 4 new duties on POST and LEAs.

First, it requires POST to develop a definition of bias conduct by January 1, 2026, that includes the following at a minimum:

1. Biased conduct includes any conduct, including, but not limited to, conduct online, such as social media use, engaged in by a peace officer in any encounter with the public, first responders, or employees of criminal justice agencies, as defined in Section 13101, motivated by bias toward any person’s protected class or characteristic, whether actual or perceived, that is described in subdivision (b) of Section 51 of the Civil Code.
2. Biased conduct may result from implicit and explicit biases.
3. Conduct is biased if a reasonable person with the same training and experience would conclude, based upon the facts, that the officer’s conduct resulted from bias towards that person’s membership in a protected class described in paragraph (1).
4. An officer need not admit biased or prejudiced intent for conduct to be determined to be biased conduct.

Second, it also requires LEAs, when investigating any bias-related complaint or incident that involves possible indications of officer bias, to determine whether the conduct being investigated constitutes “biased conduct,” using the definition developed by POST.

Third, it requires POST to develop guidance for LEAs on performing effective internet and social media screenings of officer applicants. The guidance must include, at minimum, strategies for identifying applicant social media profiles and for searching for, and identifying, content indicative of potential biases, such as affiliation with hate groups.

And finally, it also requires LEAs to determine in investigations described in AB 953, subdivision (e), whether racial profiling, as defined in section 13519.4 occurred.

AB 443 takes effect on January 1, 2026.

5. UPDATE BY POST COMMISSION

Helena Williams and Michelle Weiler of POST presented.

Michelle Weiler, Bureau Chief of Certification Bureau, introduced herself and her role as overseeing actual certification of new peace officers, finalizing any actions taken against peace officers' certificates, and drafting most of POST's regulations. She wanted to address a couple of things demonstrating bias brought up earlier.

It is POST's opinion that subsections 5A and 5B are subordinate to subsection 5 and therefore the perceived bias is included in subsections 5A and 5B. 5A and 5B were established to clarify how POST will evaluate allegations and evidence of bias. Before December 2023, they received an array of allegations of bias conduct. They needed to determine what constitutes demonstration of bias and an individual officer's free speech rights.

Since January 1, 2022, 546 peace officers separated from their agencies with some allegation related to a demonstration of serious misconduct. Of those, thirty were related to demonstrations of bias. In 2023, 15 of them were related to demonstration of bias. 15 cases were related to demonstrated bias as of June 6, 2024.

POST received approximately 5,100 cases related to demonstrations of bias. Demonstration of bias may not be the sole reason of misconduct. They've closed approximately 2,000 cases. 68% of those closed were classified as non-actionable.

28% of those closed were classified as not serious misconduct. They're still working on approximately 2,000 cases. 1,000 of those cases remain open with originating agencies.

Member Thuilliez wanted to clarify that there were 15 sustained cases of bias by peace officers.

Ms. Weiler stated they were not exactly sustained. Those are 15 officers who separated by termination, resignation, or retirement from their agencies. Either the agencies separated them for the bias act, or they were under investigation for a biased act and choose to resign or retire at that time. It doesn't necessarily mean that POST made a determination. It is also strictly based on separations, which doesn't include those under administrative leave or working patrol.

Member Thuilliez asked how many POST certified peace officers were in the State of California.

Ms. Weiler said that as of June 6, 2024, there were approximately 82,000 full-time peace officers and an unknown number of reserve officers.

Member Sierra asked with respect to allegations of bias that POST is looking at, her understanding is that POST first looks at investigations that the law agency has done and then POST decides whether to further investigate.

Weiler said that because they don't have the capacity to investigate every agency, they initially rely on agency investigations. Should they determine further investigations are required, or if allegation of misconduct is egregious, POST submits the case to a higher level review, or if the involved agency failed to investigate, POST will conduct their own investigation.

Member Sierra asked whether POST has seen agencies look at RIPA data to determine whether allegations of bias are sustained or not.

Ms. Weiler said she had not looked at or checked with agencies about that but will consider the data going forward.

Member Sierra asked, with respect to the new duties of AB 443, whether POST will have public quorums, meetings, or ideas for collecting best practices.

Ms. Weiler said that generally, when implementing something new on a grand scale, they convene subject matter expert work groups. Depending on the subject matter, they will come from an array of members. Peace officers are involved. They could also have command staff, field level staff, attorneys, community members, etc.

Member Sierra asked if public facing stakeholder meetings could be found on POST website.

Ms. Weiler said public meetings would be announced on the POST website.

Member Sierra asked if the POST website FAQs could explain how 5A and 5B are subordinate to perceived bias.

Ms. Weiler said POST will consider making the information available on its website.

Helena Williams indicated their second racial and profiling curriculum guideline workshop is set for October 8 and 9, 2024. At the first workshop, they spent two and a half days at the Museum of Tolerance. They presented the Museum of Tolerance's T4T curriculum. She asked for insight from the members of the subcommittee.

Member Thuilliez asked when POST undertakes their research for the definition of bias, does the DOJ or POST have a criterion of bias that they use to screen their employees, that they can use. He explains this would make the process more streamlined.

DAG Gibson said AB 443 outlines minimum requirements. POST and LEAs can add to the minimum requirements.

Member Kulkarni asked about AB 443 and if POST planned to pose regulations to address the issues of perceived bias that they've been talking about.

Ms. Weiler said that regulations need specific boundaries that do not duplicate what already exists in the statute. Other than the definition for serious misconduct, POST has no current plans to issue regulations related to AB 443.

Member Thuilliez asked about the standard for evaluating what might be considered bias by fellow officers or uninvolved officers.

DAG Gibson asked if Member Thuilliez was referring to AB 443 with bias using the reasonable person standard. Member Thuilliez said yes. DAG Gibson said that AB 443 is a new legislation passed in October 2023 and will be in effect January 1, 2026.

Thuilliez stated that typically a reasonable standard means similar training experience. “Some” implies that officers with less of a year can be compared to someone with 15 years. They have some experience but not similar experience.

Ms. Williams stated POST is developing the racial and identity profiling guidelines, and they hoped to have a working copy available for their subject matter experts by the second workshop on October 8-9 in Sacramento.

Member Randolph stated he didn’t recall the invitation to the workshop. Member Villeda said the DOJ sent an email to all Board members.

Member Randolph asked if the committee had law enforcement representation. Williams said there were fifteen or sixteen members with law enforcement backgrounds. There was a diverse group of law enforcement agencies, advocacy, RIPA, and academy representation.

Member Kennedy attended the workshop and appreciated the openness of executive leadership to ensure their comments were included in the document. It was their first time viewing the updated curriculum. His overall impression was that it was a collegiate environment and appreciated their willingness to consider their ideas.

Co-Chair Villeda asked POST to explain why they framed their response as not training guidelines but as policy guidelines for racial and identity profiling. He asked if this distinction had any pertinence for POST.

Ms. Williams said her understanding of the distinction is that those are guidelines for agencies wanting to create their racial and identity profiling trainings. So they are curriculums. The guidelines are designed to provide law enforcement agencies guidance on what is statutorily required, and how to create curriculum for their five-hour officer trainings. POST is establishing the guidelines to help agencies expand their course outline, provide an hourly distribution, and provide a certified instructor in this particular subject that is regulated by 1082 and 1072 regulations.

Co-Chair Villeda said they weren’t able to review the finalized MOT T4T update. It was provided at the first day of workshop. He asked if the Board could provide feedback to POST before publication of the MOT training.

Ms. Williams said that POST is not creating the MOT training. POST is creating curriculum guidelines through the workshops. The MOT T4T training curriculum was completed in October 2023. The curriculum guidelines was for law enforcement agencies to use to teach their five-hour courses.

Co-Chair Villeda asked how the commissioner intends to work with the RIPA Board to create new training content on accountability as required by AB 953.

Megan Poulos from POST said that the commission has not yet reviewed the responses, but they will next week. She stated they could talk about this in a future date.

Member Kennedy said officers who witness other officers behaving improperly are required to report. It was a hot button issue of how officers could report without retaliation, as there exists a code of loyalty.

Co-Chair Villeda gave context that in August 2023, POST agreed to develop these guidelines as a standalone document and to include the Board in their development. The guidelines were dispersed in POST training. However, in May 2024, POST advised the DOJ that instead of POST developing POST certified training guidelines as required by law, POST would develop racial and identity profiling guidelines for interested California law enforcement agencies. They went into it thinking it would be certified training guidelines and instead they were creating optional racial and identity profiling guidelines.

He attended the May 14-16, 2024 meeting at the Museum of Tolerance. He expressed confusion and misunderstanding regarding the development of the guidelines. He expressed interested in using the RIPA Board recommendations as a foundational starting point to create the guidelines as whole. He didn't think they reviewed or spoke about the guidelines in an open dialogue. Although the facilitation was good, the breakouts weren't incorporated in the document and even the law enforcement representatives were confused about the scenarios. He expressed a need for more key cultural diversity. Facilitators must make clear the legal and ethical constraints in engaging in bias, including SB 2 and reporting misconduct to supervisors. Furthermore, it didn't feel grounded in the fact that California law prohibits profiling based on perceived race or identity.

Member Hawkins was concerned about the last two years of training with POST. Before the guidelines were released, they should've been provided to the RIPA Board so they could've had an opportunity to review.

The video was outdated. Even law enforcement could not identify the scenarios.

She expressed a need for more racial groups and input from the community as well as law enforcement. People in high law enforcement positions indicated officers reporting on fellow officers could be dangerous. They could face retaliation and other things. That struck a chord with the group.

Member Randolph expressed approval that the door was open for having the conversations. He was grateful that POST was seriously considering the comments by RIPA. He said that change comes slowly and systematically, so they need to continue the conversation.

Member Hawkins asked if the comments that RIPA made could be included in the manual.

6. BREAK

Co-Chair took a break and rejoined after a few minutes.

7. DISCUSSION OF POST SECTION OF THE DRAFT 2025 REPORT

DAG Danielle Elliott addressed the draft section of the Draft 2025 Report. The draft can be broken into two components. The first component deals with the Board's interaction with POST and summarizes POST's developments since last year.

Member Sierra asked for clarification about whether guidelines should be optional or not optional.

The second main component of the draft section is about emerging research on anti-bias training.

Member Sierra said that it was important to recognize limitations to training. She supports looking at research and researchers investigating potential solutions.

The end of the section discusses best practices and policies. DAG Elliot went over the recommendations drafted so far and asked for the subcommittees feedback regarding:

- A. Limit officer discretion on LEA stops;
- B. Cognitive training;
- C. Amending the law to allow for a more diverse group of stakeholders to present the MOT training, including the organizations listed on the original bill;
- D. Requiring POST or any training program to present data on the efficacy of their trainings.

Co-Chair Villeda says he supports all four options.

Member Sierra said that "A: Limit officer discretion on LEA stops" is a complex issue and CHP and LAPD have spoken to the Policies subcommittee. Her recommendation was to let the Policies subcommittee continue working on that issue and addressing anything broader is premature, as they are looking at discretion narrowly in a couple of areas.

As for "D: Require POST or any training program to present data on the efficacy of their trainings in order to continue to receive funding/certification," she is thinking about how to measure efficacy of training. She stated it is a complex issue.

Member Kulkarni asked if the draft could include best practice examples of trainings used in other states, beyond implicit bias training.

DAG Elliot stated that the draft included trainings in other states, including cognitive training.

Ms. Martin-Walton said that a couple reports ago, the Board referenced the Little Hoover Commission that had recommendations on measuring training effectiveness. She stated they would circle back and pull that forward.

Member Randolph asked if POST is working on the T4T course.

DAG Elliot confirmed. POST is working on the five-hour refresher course.

Member Randolph had a comment on “4. Require LEA’s have policy on racial and identity profiling that includes accountability and consequences of non-compliance (ex. SB 2).” He stated that was already a requirement in all law enforcement agencies. SB 2 is constantly reminded to FTO. He stated California was among the highest number of hours for academy training.

Member Randolph asked DAG Elliot to elaborate on “7. Require BWC be used in the training or highly publicized incidents in the training in lieu of staged scenarios (see what happened with DOJ recs to POST on these issues).”

DAG Elliot stated the actual use of camera footage is more effective than staged scenarios.

Member Randolph said that the majority of law enforcement agencies already include body worn cameras as part of their training. Review of footage is also included in debriefs.

Member Randolph stated that in regard to “10. To POST: Update trainings relating to youth (from the Policies section) (juvenile law, campus law enforcement, etc.),” law enforcement officers on school campuses already go through additional training and this is a focus of the Policies subcommittee.

DAG Elliot asked Member Randolph whether he would like to see recommendation seven for body worn cameras be included or deleted from the draft.

Member Randolph said he would support changing the word from “require” to “suggest”, but most law enforcement agencies already review body worn camera footage. Likewise, smaller agencies may not have body worn cameras.

DAG Elliot stated that the third recommendation was increasing the number of hours for racial and identity profiling training, not just basic academy and FTO training. Furthermore, DAG Elliot stated that the fourth recommendation was to ensure that law enforcement agencies have internal reporting mechanisms.

Member Randolph stated internal reporting mechanisms already existing. He stated that the problems lie within a generational gap between new and seasoned officers. Officers on the force for a long time need to be reminded.

Member Thuilliez stated that body worn camera footage is so common now that it can be found on YouTube. Furthermore, he stated that if additional training is a mandate that it is a funded mandate, now that California is in a budget deficit.

Member Kulkarni asked if they could include policies to recommend the sharing of body worn cameras with the public to provide accountability on both sides.

Member Hawkins said they should use the word “require” instead of “suggest” for body worn cameras.

DAG Elliot clarified that the recommendation was to use body worn cameras be used for trainings.

8. PUBLIC COMMENT

Co-Chair Villeda opened the floor for public comment.

Richard Hylton from San Diego detailed his experience with the San Francisco Police Department. The CA DOJ reported that San Francisco has had 13,000 stops in 2023. However, data he obtained from San Francisco shows that they have had 20,000 stops, with a difference of approximately 6,500. He stated San Francisco closed his complaint and found it unfounded. Disparities are not trending down in San Francisco.

9. NEXT STEPS

DAG Gibson asked that the Subcommittee to discuss any suggestions for the CA DOJ.

10. ADJOURN

Co-Chair Villeda adjourned the meeting at 12:50pm.