

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD (BOARD)

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ACCOUNTABILITY AND CIVILIAN COMPLAINTS SUBCOMMITTEE MEETING MINUTES

September 9, 2024, 12:00 p.m. – 3:00 p.m.

Subcommittee Members Present: Co-Chair Lawanda Hawkins, Co-Chair D.J. Criner, Member Cha Vang, Member Chauncey Smith

Subcommittee Members Absent: Member Andrea Guerrero, Member Angela Sierra

1. CALL TO ORDER BY BOARD CO-CHAIRS

Co-Chair Hawkins called the meeting to order.

2. WELCOME AND INTRODUCTIONS

Each Accountability and Civilian Complaints Subcommittee (herein Subcommittee) member introduced themselves.

3. APPROVAL OF MAY 21, 2024, SUBCOMMITTEE MEETING MINUTES

Co-Chair Hawkins asked the members to review the draft meeting minutes from the Subcommittee's May 21, 2024 meeting.

Member Vang motioned to approve the meeting minutes and Member Criner seconded.

Deputy Attorney General (DAG) Kendal Micklethwaite of the California Department of Justice (DOJ) proceeded with the roll call vote:

- **AYE:** Co-Chair Criner, Co-Chair Hawkins, Member Vang, Member Smith
- **NAY:**
- **ABSTAIN:**

With four Ayes, the meeting minutes were approved as presented.

4. BOARD DISCUSSION OF DRAFT OF CIVILIAN COMPLAINTS SECTION OF REPORT AND POLICY RECOMMENDATIONS

DAG Yasmin Manners of the DOJ presented the major updates to the Civilian Complaints section of the report, consisting of the incorporation of 2023 civilian complaint data, added discussion regarding youth in relation to civilian complaints, the incorporation of data from a 2024 survey of California law enforcement agencies to support the Board's prior recommendation to remove deterrent language from complaint forms, and updates to the discussion of root cause analysis.

The 2023 civilian complaint data is now incorporated into the report and is laid out as it has been in past reports. It includes:

- The total number of allegations of RIPA profiling that LEAs received in 2023;
- The number of complaints that reached a disposition (resolved or adjudicated) in 2023 by disposition (sustained, not sustained, exonerated, unfounded);
- A cross-year comparison of number of complaints and number of profiling allegations agencies reported receiving in 2023 and in prior years by wave agency which are determined by agency size.

The report was also updated to include a discussion of youth in relation to civilian complaints. The Youth and Complaints Section notes that past RIPA data has shown that youth aged 24 and younger are more vulnerable to use of force in police interactions. In 2023, officers reported pointing their firearms at 5,369 youth aged 24 and younger. Officers reported discharging their firearms in nine stops involving youth aged 15-17 and three stops in youth aged 12-14. Youth perceived to have a disability have experienced higher uses of force during stops compared to youth perceived to not have a disability. The report also lays out research discussing developmental differences between youth and adults to identify why the dynamics may be different for people aged 24 compared to adults.

The purpose of the section is to explain the need for increased monitoring or attention to youth encounters with police and suggest that one way to accomplish this is by examining civilian complaint data. The draft contains several recommendations:

- Require LEAs to report the number of civilian complaints that are filed by youth. This includes complaints filed by a third party on behalf of someone 24 or younger and complaint data be broken down by youth who are 17 and younger and 18-24 years old.
- LEAs and municipalities to modify their complaint forms to include a dropdown box to record if the complainant is 17 or younger or 18-24 years old.
- POST to modify the SB 2 complaint form to allow the complainant to indicate whether the allegation arises from an incident involving youth (17 or younger or 18-24 years old).
- Legislature to amend Penal Code to require consideration of the complainant's age in determining whether the peace officer's conduct rises to the level of serious misconduct that might warrant decertification.
- POST Commission to amend Regulation 1205 to require consideration of the complainant's age in determining if a peace officer's conduct arises to the level of serious misconduct that warrants decertification.

This new section of the report addresses difference in youth interactions with police compared to adults.

Member Smith stated that other uses of forces than pointing a firearm, such as using a TASER, that can give rise to traumatization with a youth, and asked whether there data on this issue, and if so, what does the data show.

DAG Manners stated she does not have the data available in her at the moment. She stated it could be included in the next draft, which could be reviewed before being submitted to the full Board.

Member Smith stated that other types of uses of force that arose to a considerable degree may be helpful for a more holistic understanding of the forces they use. He suggested that more types of uses of force should be provided.

Member Vang asked if those were stops outside of schools.

DAG Manners stated she could consult with the DOJ, but she believed it was all stops involving youth.

Member Smith asked if the DOJ had any insight regarding the stop rate for youth, particularly on school campuses. He stated he heard there could be underreporting on those interactions.

DAG Jennifer Gibson responded that the stop rate for youth is in the Stop Data and Policies section of the Report. However, some of that data can be included in this section of the Report as well.

DAG Manners moved on to present the next section of the Report, discussing the need for a uniform definition of “civilian complaint.” This section of the draft is largely the same as the prior draft, but there were minor edits to phrasing. The definition proposed by the Board and summary of the reasoning for the definition is largely the same as prior years.

The section discussing the need to remove deterrent language from complaint forms is consistent with a prior draft, but was revised to incorporate data from a 2024 survey of the 15 largest LEAs in California. The Board previously reviewed complaint forms of the 15 largest LEAs in California in 2020 and 2021. The new survey shows that, as of 2024, four agencies continue to include deterrent language, three agencies have removed the deterrent language, and one agency has added deterrent language. A slight majority of the 15 largest LEAs in California do have deterrent language in their complaint forms. This is additional context supporting the Board’s reasoning to remove deterrent language from complaint forms.

The draft also provides additional background on pending litigation — *LA Police Protective League vs. City of Los Angeles* — that potentially will challenge the constitutionality of Penal Code section 148.6, which is the basis for deterrent language. The draft now includes a more comprehensive discussion of the litigation. There are no major updates for the litigation since the last draft. If there are updates before the report publishing deadline, they will be included in the draft.

The revised draft also includes a summary AB 2923. As discussed at the last Subcommittee meeting, this is the bill proposed a definition of “civilian complaint” and made recommendations regarding deterrent language. Since the last Subcommittee meeting, the bill stalled and did not pass. The report was revised to reduce the summary of the bill and acknowledge the Legislature in making an effort, while reiterating the Board’s desire to address these issues.

Member Vang stated that the San Diego Police Department was the LEA that added on deterrent language. They stated that the Subcommittee should look at the impacts it had.

DAG Manners stated that the DOJ can look at the data and reach out to the LEA on when the change was enacted.

Member Vang asked if there is an opportunity for the Board to acknowledge AB 2923.

DAG Manners stated that the Report acknowledges the legislation, but can acknowledge Jones-Sawyer as well.

DAG Manners presented updates to the root cause analysis section of the Report. This section built on last year's Report, which defined root cause analysis. This draft looks further at the principles, process, and how root cause analysis is applied in complex industries, since there is not much guidance to apply root cause analysis for complaint data. This is a novel area for developing recommendations, and by describing how it is applied in aviation or healthcare, DOJ hopes to provide guidance so the Board can provide recommendations to police agencies.

DAG Manners flagged areas for discussion by the Subcommittee, including:

- Whether specific recommendations in the Civilian Complaints draft adequate;
- Suggestions for experts, LEAs, or other organizational representatives who may be able to provide guidance at next year's subcommittee meetings to apply root cause analysis in the civilian complaint context;
- Areas for future exploration in next year's report.

Co-Chair Hawkins opened the discussion to the Subcommittee.

Member Smith stated another analogous situation that can be added to the root cause analysis section is in traffic stops. A fair amount of police interactions with community members occurs in traffic stops. The typical conclusion is a warning or a ticket. At the same time, there is a significant public concern over traffic safety and the relationship between traffic stops and traffic safety outcomes. Experts have made a compelling argument that parallels root cause analysis. He stated that if traffic safety outcomes improve, instead of using tickets — which are ineffective — they should look at different variables of traffic safety risks and alleviate those risks. This is preventative, rather than responding when something arises. They could add speed bumps, roundabouts, and stop signs to prevent speeding than giving out tickets.

Co-Chair Hawkins stated root cause analysis is pertinent. They need to understand what makes law enforcement have contact with youth. She stated that trauma enforces a culture of misunderstanding. Furthermore, she is troubled that an LEA has added deterrent language.

Member Smith stated that the Full Board Meeting on June 24, 2024, featured compelling testimony by youth about the presence of law enforcement. He stated that it would be valuable if stories were added to the Report to pair with the data and substantive research to provide a fuller picture of the issues at hand.

Co-Chair Hawkins asked what experts the Subcommittee should be meeting with to speak to them about root cause analysis and the youth who have been victimized.

Member Armaline joined the Subcommittee meeting.

Member Vang stated that they would be interested in, moving forward, tracking how adding or removing deterrent language impacted the number of complaints submitted. She stated it is challenging to measure as the police departments voluntarily submit their reports. Furthermore, it would be interesting if complaints by youth can be disaggregated to show complaints submitted in the community and complaints submitted in schools. She stated that knowing whether and how youth are submitting reports — through police departments, the internet, or schools — is valuable to understand the access points of complaints.

Co-Chair Hawkins stated that she would be interested in reviewing complaints by location (Southern vs. Northern California).

5. BREAK

The Subcommittee adjourned for a break and re-established quorum.

6. BOARD DISCUSSION OF DRAFT OF ACCOUNTABILITY (SENATE BILL NO. 2) SECTION OF REPORT AND POLICY RECOMMENDATIONS

Co-Chair Hawkins opened the discussion to SB 2, which allows the POST Commission to decertify police officers for serious misconduct.

DAG Rebekah Fretz presented on the draft of the Accountability section of the Report. The section provides an overview of the SB 2 decertification process. SB 2 establishes a statewide system for the suspension or permanent revocation of a peace officer certification due to serious misconduct. The Accountability section discusses:

- The key entities involved in the SB 2 decertification process;
- The statutory grounds for decertification, including Government Code section 1029;
- The nine categories for serious misconduct under the current statute;
- The actual decertification process;
- The current data of actions POST has taken against police officers; and
- Board recommendations that to enhance the SB 2 decertification process and how the public can submit complaints to POST about serious misconduct by a peace officer.

The current draft has incorporated a recommendation from the last Subcommittee meeting to connect the draft to the purpose of the RIPA Board. The introduction was re-written to highlight on how the Report can be another tool to eliminate racial and identity profiling. One of the serious misconduct categories under SB 2 is bias by a peace officer, so the current draft has been rewritten to discuss this.

The draft also includes additional discussion about key entities, including how POST conducts its investigations, the POST Accountability Board and its hearing process, the POST Commission, and how administrative law judges also play a part in the decertification process.

In the last Subcommittee meeting, Subcommittee members commented that the data section should be clarified to be more readable. The draft now includes definitions on allegations received, which are the basis for the data. The DOJ has verified the data as it has come in. Furthermore, they have added in a flowchart from POST, which will be replaced with another flowchart the DOJ will create.

The current draft also contains the Board's observation on the decertification process, which was not in the last draft.

DAG Fretz highlighted the six recommendations from the Board for discussion about how to enhance the decertification process:

- A recommendation to the Legislature to enact legislation to fund a statewide public awareness campaign to better inform the public about the SB 2 process and how they can file civilian complaints directly within POST;
- A recommendation for decertification to encompass all serious acts of misconduct, such as dereliction of duty, and not just the nine categories of serious misconduct identified under California law;
- A recommendation to place an officer in a diversion program when POST investigates an allegation of serious misconduct of the officer. The criteria needed for POST's executive director to place that officer into an immediate temporary suspension would be removed, so that there would be a basis to suspend that officer while the investigation is conducted;
- A recommendation that the Legislature enact further legislation to require LEAs in California to modify their disciplinary policies to align their categories more closely with the Penal Code that describe serious misconduct;
- A recommendation to POST to further develop guidelines that assist LEAs to ensure their procedures are proper to conduct adequate investigations into serious misconduct; and
- A recommendation that SB 2 include explicit whistleblower protections for law enforcement officers to report misconduct on other officers.

There is a new section in process about how to file a complaint with POST.

There is a placeholder for a possible section on a vision for future reports. There is a national database that under California law, POST is required to post decertification actions to, however not all states require this. This is pertinent if officers cross state lines, either way, to seek employment.

DAG Fretz noted that highlighted sections are placeholders for data that will be updated for the final draft.

Member Smith asked for the pages in the draft the recommendations are on.

DAG Fretz stated the recommendations start on page twenty.

Co-Chair Hawkins asked what period the reports looked at, and recommended that the DOJ look into the amount of time between the data and reports generated.

DAG Fretz thanked Co-Chair Hawkins for the recommendation.

Co-Chair Hawkins also asked how age is handled for SB 2 complaints. She asked if an adult needs to be present if a youth makes a report, if they are separated, or if they are handled the same.

Member Smith affirmed that would be helpful.

Member Armaline stated that age is helpful. He stated that how complaints are made should be added to the draft. He stated that (1) physical abuse and use of force are still primary reasons for decertification and (2) a lot of it is happening in Southern California. He thinks that either there is more use of force in Los Angeles or that there are more complaints in Los Angeles.

Member Vang stated the flowchart for SB 2 is helpful. She stated the first recommendation regarding the statewide public awareness campaign should clarify how the funding is distributed to communities and the education required for SB 2.

Member Smith stated that the Civilian Complaints section has headings that are bold and all caps, while the Accountability section does not have the same clarification that it is a recommendation.

Member Smith stated that the processes agencies use at the local level to receive complaints are different. He ponders that this could be a reason for the problem Member Armaline raised. Furthermore, he wonders if this problem could be highlighted to the forefront of the report.

Member Armaline stated that appropriately distributing funds is important and proposed finding organizations that have previously done the same work with families and communities. He stated that looking beyond the raw data requires reaching out to people and asking their experience with complaint filing.

Member Smith stated that funding for the public awareness is important, so they should add specificity to the recommendation. Likewise, there is concern among stakeholders in the field that have public funding to flow to LEAs. In this simple form, this could be interpreted as money to LEAs or public relations agencies to build communication staff to do public relations. Member Smith would like to see more specificity that these funds should go to community-based organizations that work on issues such as policing and community safety.

Member Armaline agreed that more specificity would be helpful, such as language that states the funds should go to organizations that can demonstrate an established network in the community. Armaline went on to say that he is concerned about LEAs using the funds for their public relations, as well as nonprofits misappropriating these funds. He stated the organization needs to demonstrate community outreach. Furthermore, he believes LEAs should not be eligible to receive public funds and should explicitly be deemed ineligible.

Co-Chair Hawkins then turned to the public comment section of the meeting.

7. PUBLIC COMMENT

Richard Hylton of San Diego commented that the data is not good. He states that San Francisco has reduced their complaints by 100%, but he submitted complaints in San Francisco in 2022 and 2023. His complaint in 2023 was judged as unfounded, but that is still a complaint. He states that it difficult to get a complaint into San Francisco. He stated police are using traffic stops as crime deterrent irrespective of whether they were given traffic judgment or not. He stated that he believes that if you look at the data, it will prove this.

Co-Chair Hawkins thanked the members of the public for their comments.

8. VOTE ON POLICY RECOMMENDATIONS AND OTHER BOARD ACTIONS

Complaints Recommendations

Co-Chair Criner motioned to send the following recommendations for consideration to the full Board:

1. Recommend that the Legislature amend Penal Code 13012 to require law enforcement agencies to report the number of civilian complaints reported by youth. This would include complaints filed by a third party on behalf of someone 24 or younger, and the data would be broken down into complaints by youth who are “17 and younger” and youth who are “18 to 24 years old.”
2. Recommend that law enforcement agencies and municipalities modify their complaint forms to include a drop-down box to record if the complainant is “17 and younger” or “18 to 24 years old.”
3. Recommend that POST modifies the complaint form used to file complaints under SB 2 to allow the complainant to indicate whether the allegation arises from an incident involving someone 17 and younger, or between the ages of 18 and 24.
4. Recommend that the Legislature amend Penal Code section 13510.8 to require consideration of the complainant’s age in determining if a peace officer’s conduct rises to the level of serious misconduct, warranting decertification.
5. Recommend that the POST Commission amend Regulation 1205 to require consideration of the complainant’s age in determining if a peace officer’s conduct rises to the level of serious misconduct that warrants decertification.
6. Recommend that the Legislature amend Penal Code section 832.5 to define “civilian complaint” using the definition proposed in this draft.
7. Recommend that the law enforcement agencies accept complaints even when the complainant has not signed the advisory required by Penal Code section 148.6.
8. Recommend that, if the California Supreme Court upholds the constitutionality of Penal Code section 148.6 in *Los Angeles Police Protective League v. City of Los Angeles*, the Legislature amend Penal Code section 148.6 to modify or eliminate the requirement that law enforcement agencies obtain a written, signed statement from complainants referencing the possibility of criminal sanctions before accepting a complaint.

Member Armaline seconded.

DAG Micklethwaite proceeded with the roll call vote:

- **AYE:** Co-Chair Criner, Co-Chair Hawkins, Member Vang, Member Armaline, Member Smith
- **NAY:**
- **ABSTAIN:**

With five Ayes, the motion passed as presented.

Accountability Recommendations

DAG Micklethwaite presented the recommendations in the Accountability chapter:

1. Recommend that the Legislature enact legislation to fund a statewide public awareness campaign to inform the public about SB 2 and, more specifically, the public's ability to file civilian complaints directly with POST.
2. Recommend that the Legislature consult with POST, law enforcement agencies, experts, researchers, and community groups about harmful conduct by officers that may not fit within the nine categories of serious misconduct that serve as the basis for POST to suspend or revoke certification, but is still incompatible with the duties of a peace officer. And, further recommend that the Legislature make findings and amend Penal Code section 13510.8 to add that category.
3. Recommend that the Legislature amend Penal Code section 13510.8, subdivision (d) to expand the authority of the POST Executive Director to continue an immediate temporary suspension of an officer where circumstances indicate that the officer continues to pose a danger to the public even if one of the statutory grounds for imposing the immediate temporary suspension has been resolved.
4. Recommend that the Legislature enact legislation requiring law enforcement agencies throughout California to modify their disciplinary policies defining serious misconduct to align with the categories in Penal Code section 13510.8, subdivision (b).
5. Recommend that POST develop guidelines to assist law enforcement agencies in developing procedures to conduct adequate investigations into the complaints of serious misconduct the agencies receive and the ones that POST forwards to the agencies to investigate under SB 2. In developing the guidelines for investigating complaints about demonstrating bias, POST could consult with the Board.
6. Recommend that the Legislature amend Penal Code section 13510.8 to include whistleblower protection for peace officers and other individuals within a law enforcement agency who report serious misconduct by fellow peace officers.

Member Smith proposed that Recommendation 1 be amended to state the funds not be used by LEAs. Member Armaline proposed that Recommendation 1 be further amended to not be used by LEAs directly and indirectly. Member Smith proposed Recommendation 1 be specified the funds go to community organizations that work with community members. Recommendation 1 is amended as:

1. Recommend that the Legislature enact legislation to fund a statewide public awareness campaign to inform the public about SB 2 and, more specifically, the public's ability to file civilian complaints directly with POST. **These funds will not be made available to**

law enforcement agencies, directly or indirectly. Funds should be distributed to community-based organizations that have a demonstrated experience serving as trusted messengers for communities most impacted by issues of police misconduct.

Member Smith stated that Recommendations should be made clear in the Accountability chapter instead of being presented as observations.

Member Vang motioned to send Recommendation 1 as amended for consideration to the full Board:

1. Recommend that the Legislature enact legislation to fund a statewide public awareness campaign to inform the public about SB 2 and, more specifically, the public's ability to file civilian complaints directly with POST. **These funds will not be made available to law enforcement agencies, directly or indirectly. Funds should be distributed to community-based organizations that have a demonstrated experience serving as trusted messengers for communities most impacted by issues of police misconduct.**

Co-Chair Criner seconded.

DAG Micklethwaite proceeded with the roll call vote:

- **AYE:** Co-Chair Criner, Co-Chair Hawkins, Member Vang, Member Armaline, Member Smith
- **NAY:**
- **ABSTAIN:**

With five Ayes, the motion passed as amended.

Member Armaline motioned to send Recommendations 2 through 6 as presented for consideration to the full Board:

2. Recommend that the Legislature consult with POST, law enforcement agencies, experts, researchers, and community groups about harmful conduct by officers that may not fit within the nine categories of serious misconduct that serve as the basis for POST to suspend or revoke certification, but is still incompatible with the duties of a peace officer. And, further recommend that the Legislature make findings and amend Penal Code section 13510.8 to add that category.
3. Recommend that the Legislature amend Penal Code section 13510.8, subdivision (d) to expand the authority of the POST Executive Director to continue an immediate temporary suspension of an officer where circumstances indicate that the officer continues to pose a danger to the public even if one of the statutory grounds for imposing the immediate temporary suspension has been resolved.
4. Recommend that the Legislature enact legislation requiring law enforcement agencies throughout California to modify their disciplinary policies defining serious misconduct to align with the categories in Penal Code section 13510.8, subdivision (b).
5. Recommend that POST develop guidelines to assist law enforcement agencies in developing procedures to conduct adequate investigations into the complaints of serious

misconduct the agencies receive and the ones that POST forwards to the agencies to investigate under SB 2. In developing the guidelines for investigating complaints about demonstrating bias, POST could consult with the Board.

6. Recommend that the Legislature amend Penal Code section 13510.8 to include whistleblower protection for peace officers and other individuals within a law enforcement agency who report serious misconduct by fellow peace officers.

Co-Chair Criner seconded.

DAG Micklethwaite proceeded with the roll call vote:

- **AYE:** Co-Chair Criner, Co-Chair Hawkins, Member Vang, Member Armaline, Member Smith
- **NAY:**
- **ABSTAIN:**

With five Ayes, the motion passed as presented.

9. ADJOURN

Co-Chair Hawkins adjourned the meeting.