



An engagement initiative on policing in Modesto

Work Group Meeting December 20, 2021

Forward *Together*

An engagement initiative on policing in Modesto

WELCOME!

Intentions for our time

- Get updates: Ad Hoc work
- Begin our education on accountability
- Align on next steps

Approximate Session flow

5:30pm	Welcome and Opening
5:45pm	Ad Hoc Updates
6:00pm	Public Comment
6:30pm	Educational Presentation and Dialogue: Accountability
7:50pm	Next steps and Closing
8:00pm	Adjourn

We will take a break at some appropriate time

Group Agreements

How we will do our best work together

- Call each other “in”, not “out”
- Expect, and be in, discomfort
- Stay at the table
- Keep the end in mind - aligning on recommendations
- Keep disagreements productive
- Respect each other
- Stay open to other perspectives and opinions
- Do our work with transparency, openness, inclusivity
- Step up, Step back
- Be patient and flexible
- Make room for, and be curious about, other people and ideas

Ad Hoc Updates

- Accept Minutes of Nov 10 Policies and Procedures ad hoc meeting
- Ad Hoc Group Updates
- Ad Hoc Meeting Transparency Discussion

Public Comment

Ad Hoc Meeting Transparency

- Take action related Ad Hoc Meeting Transparency

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Exploring

Accountability

for police conduct, decisions, and how they impact the Modesto community

Accountability – Roadmap of Topics

- City Department Selection
- Hiring Process
- Internal Affairs
- Personnel Complaints
- Use of Force/Pursuit Review
- Officer Involved Shootings
- Critical Incidents
- Audits
- Police Personnel Records
- Legislative Updates

City of Modesto Organizational Chart

Citizens of Modesto

City Council

City Manager's Office

Utilities

Park Rec & Neighborhoods

C.E.D.

Fire

Police

Public Works

Information Technology

Finance

Human Resources

Accountability Starts at Hiring

- Pellet B Entrance Exam
- Physical Agility Exam
- Oral Interview
- Personal History Statement (PHS)
 - Extensive Questions related to personal history
- Polygraph Examination
 - Not required by POST, but required by Modesto Police Department
- Background Investigation
 - Specific Investigators specifically trained for backgrounds
- Chief's Interview
- Medical Evaluation
- Psychological Evaluation
- Final Offer

Accountability Starts at Hiring

Year	Applicants	Hired	Percentage Hired
2015	2,200	39	1.7%
2016	1,706	36	2.1%
2017	1,526	30	3.3%
2018	1,116	27	2.4%
2019	910	24	2.6%
2020	576	19	3.2%
2021 (YTD)	559	18	3.2%

Internal Affairs Unit

- I.A. personnel are selected and directly overseen by the Chief of Police
- I.A. Staff
 - 1 Lieutenant
 - 2 Sergeants
 - 1 Detective
 - Civilian Clerk

Personnel Complaints-Source of Complaints

Individuals

- Writing
- Email
- In Person
- Phone

Department Member

- Required to notify supervisor immediately on becoming aware of misconduct

Supervisor

- Observed Conduct
- Receipt of any source alleging misconduct that could result in discipline

Anonymous & 3rd Party Complaints

- To the extent that sufficient information is provided

Tort claims and lawsuits

- May generate a personnel complaint

Types of Complaints

- **Formal** - A matter in which the complaining party requests further investigation or which a department supervisor determines that further action is warranted. Such complaints may be investigated by a department supervisor or referred to the IAU depending on the seriousness and complexity of the investigation. Complaints including, but not limited to the following, shall be deemed a formal complaint:
 - Commission of a crime by department personnel
 - Excessive use of force
 - Use of illegal drugs
 - Dishonesty
 - Sexual harassment
 - Discrimination
 - Any acts of a serious nature

Types of Complaints

- **Informal** - A matter in which the complaining party is satisfied that appropriate action has been taken by a department supervisor. Informal complaints need not be documented on a personnel complaint form and the responsible supervisor shall have the discretion to handle the complaint in any manner consistent with this policy. An informal complaint should be limited to issues involving:
 - Perceived discourteous or rudeness by department personnel
 - Citizen's lack of understanding of agency procedures, laws, etc.
 - Minor infractions of department regulations
 - Minor misconduct
 - Differences of opinion between citizen and employee relative to enforcement, action or omission

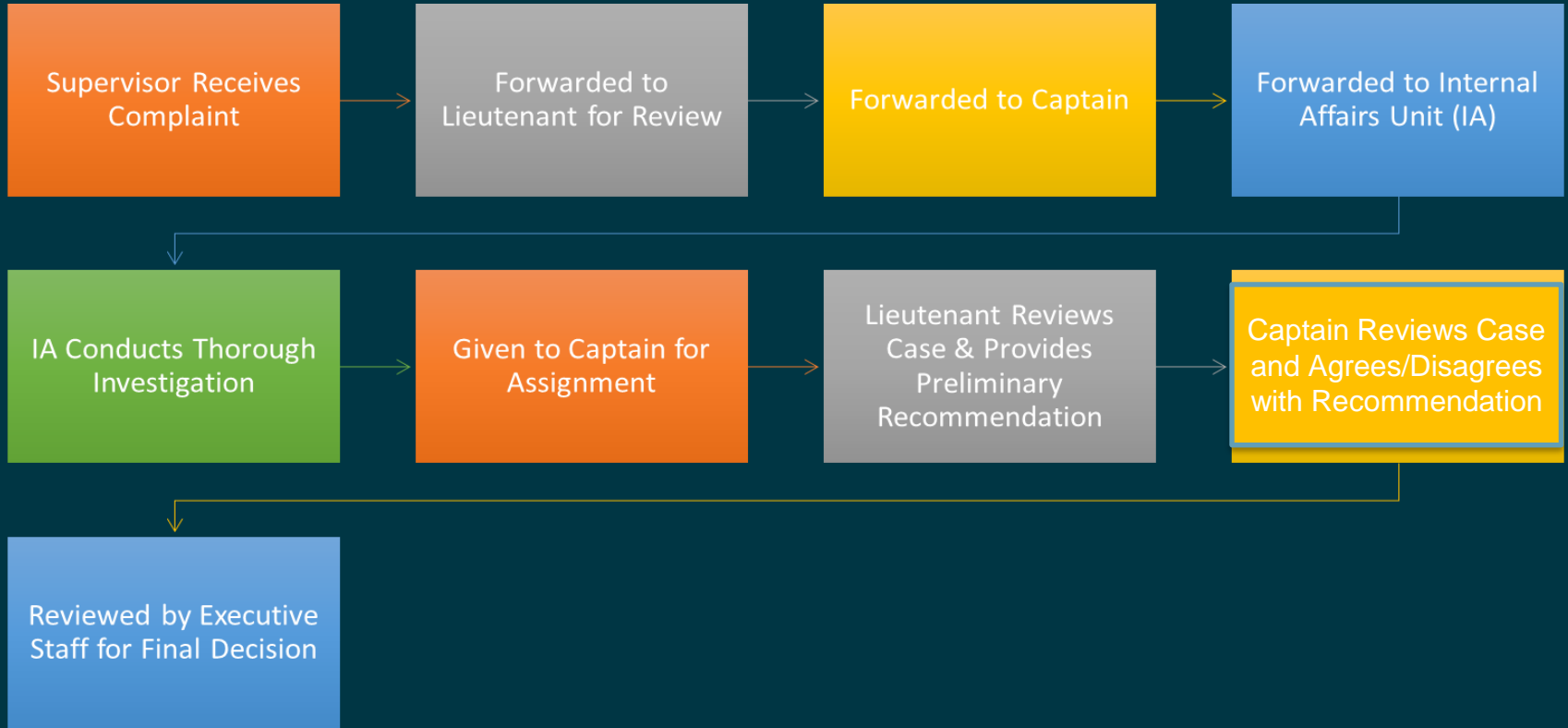
Complaint Assignments

- Internal Affairs will Investigate allegations including, but not limited to:
 - Commission of a crime by department personnel
 - Excessive use of force
 - Use of illegal drugs
 - Any acts of serious nature
 - Dishonesty
 - Sexual Harassment
 - Discrimination
 - Cases referred by the office of Chief of Police
 - Cases referred by the Assistant Chief or Division Commander

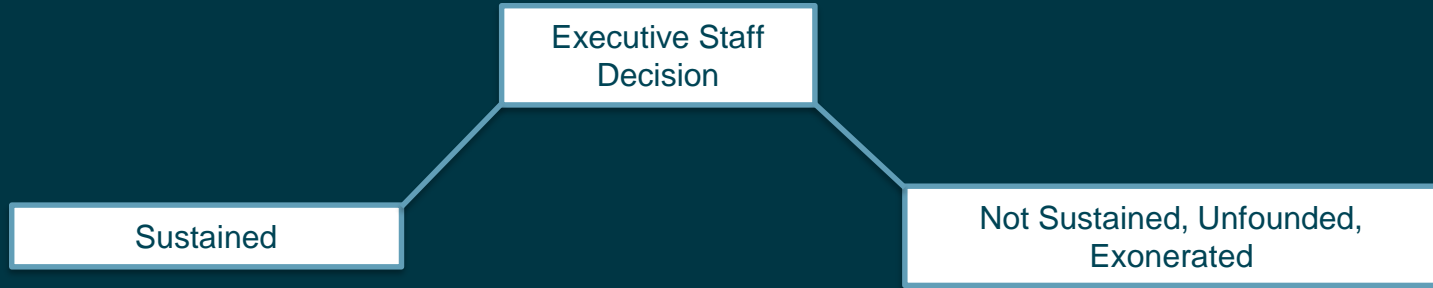
Complaint Assignments

- A Supervisor may be assigned to Investigate allegations including but, not limited to:
 - Discourteous or rudeness
 - Improper procedure
 - Minor infractions of departmental regulations
 - Minor misconduct
 - Differences of opinion between citizen and employee relative to enforcement, action, or omission
 - Cases referred by the office of the Chief of Police
 - Cases referred by the Assistant Chief or Division Commander

Personnel Complaints-Workflow



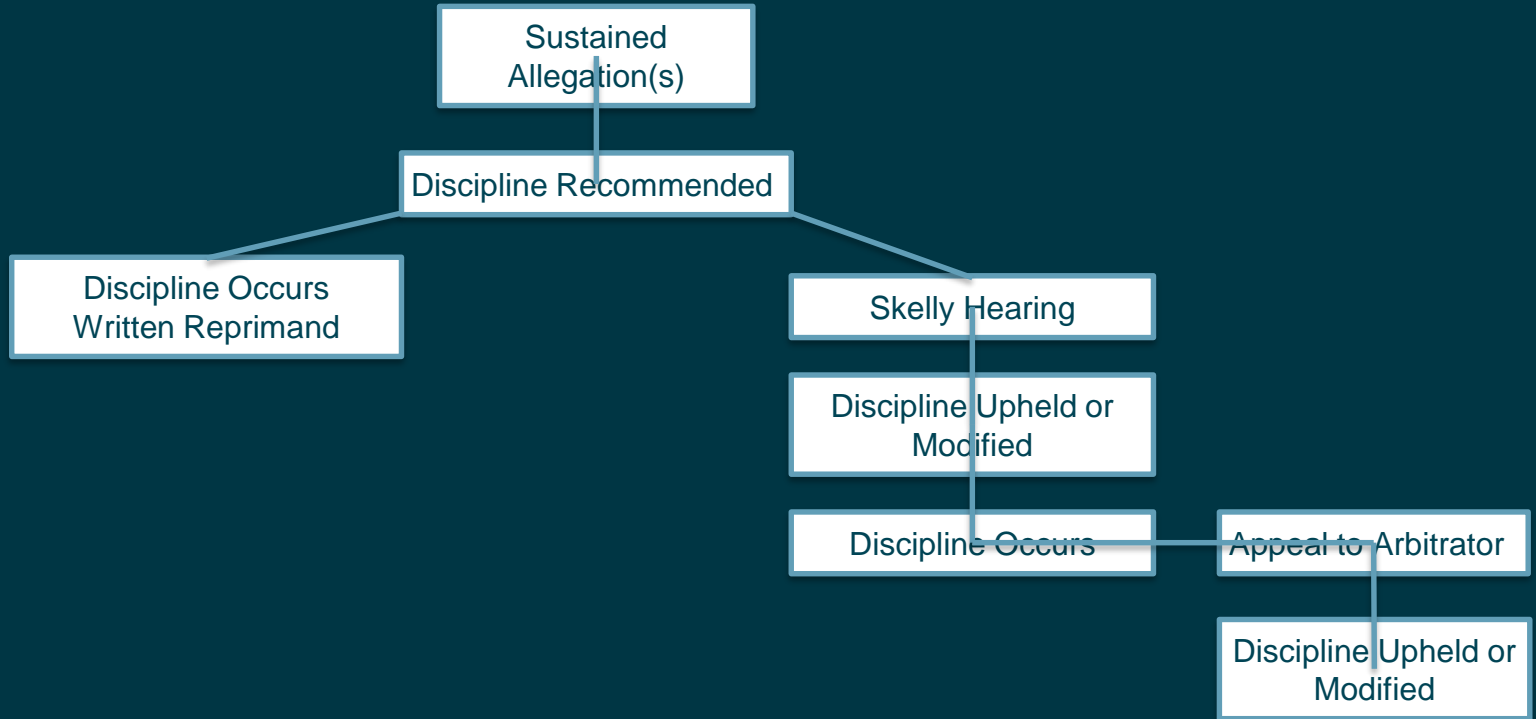
Personnel Complaints-Workflow



Personnel Complaints-Dispositions

- **Unfounded** - When the investigation discloses that the alleged **acts did not occur or did not involve department members**. Complaints that are determined to be frivolous will fall within the classification of unfounded.
- **Exonerated** - When the investigation discloses that the alleged **act occurred but that the act was justified, lawful and/or proper**.
- **Not sustained** - When the investigation discloses that there is **insufficient evidence to sustain the complaint or fully exonerate the member**.
- **Sustained** - When the investigation discloses sufficient evidence to establish that **the act occurred and that it constituted misconduct**.
- **Other** - The investigation revealed the alleged act was not misconduct or the **employee was a witness only, or other disposition by the Chief of Police**.

Personnel Complaints-Workflow



Skelly Hearing

- Notice must allege factual basis for violation (i.e. “cause for discipline”);
- Notice must be served with all documents that were relied upon by the official proposing the discipline;
- Sustaining the allegations and level of discipline.
- Sustaining the allegations and reducing the level of discipline
- Requesting further investigation of the allegations based upon information provided by the employee.

Skelly Hearing

- Pre-disciplinary due process conference or meeting for public sector employees
- A *Skelly* hearing ensures that an employee is informed of the allegations and has an opportunity to refute the allegations
- Employee must receive notice of the proposed discipline (a/k/a Notice of Adverse Action, or “Notice”);
- Notice must identify the specific rule/policy that has allegedly been violated by the employee;

Cause for Discipline

- Laws, Rules, and Orders
- Force
- Ethics
- Discrimination, Oppression, or Favoritism
- Relationships
- Attendance
- Unauthorized Access, Disclosure, or Use
- Efficiency
- Performance
- Conduct
- Safety
- Intoxicants

Administrative Leave

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

Why is it Paid Leave?

Use of Force Review Process

IAPRO Software

Blue Team

Documents use of force, pursuits, and damage equipment

Creates automated review and approval workflow (3 layers of Review)

IAPRO

Early Identification and Intervention

Case Management

Generates Reports for Audits

Use of Force Review-Initial Response

Use of Force
Incident

Medical
Aid if
Needed

Supervisor
Notification &
Response

Supervisor is
briefed on the
incident

Contacts Arrestee
and takes brief
Statement and
Responsible for
Photographs

Supervisor Makes Initial Assessment
Based on Observations and Initial Statements

Use of Force: Supervisor Review Process



Body Worn and In Car Cameras Activation

- BWC Originally Deployed in 2012
- In Car Cameras Deployed in 2021
- Manual Activation
- Taser Activation (Power On)
- Holster Activation
- Police Vehicle Emergency Light Activation
- Proximity Activation

Use of Force – Blue Team Review

- Incident is entered into Blue Team creating a file folder
- Associated police reports, photographs, videos and digital evidence are attached
- Sergeant receives an email notification stating incident is ready for review.
- Based on policy, procedures and law Sergeant determines if incident is within policy, or follows best practices.
- Upon Sergeant review, Lieutenant receives notification and conducts own review
- Once Lieutenant completes review Captain receives notification and gives final approval

Use of Force – Blue Team Review

- At any point in the Blue Team process the incident can be elevated to an Internal Affairs Investigation
- A use of force that received a citizen complaint shall be investigated by internal affairs

Use of Force - IAPRO

- Captures all use of forces, pursuits, and damage equipment reports
- 6 use of force incidents within a rolling 12 month period generate an automated Alert (3 layer review)
- The 6 incidents will now be reviewed together to see if there are any concerning patterns
 - Demographics (gender, race, age)
 - Tactics (De-escalation, Resources, Strategies)
 - Policy Violations
 - Training

Sergeant Review

Lieutenant Review

Captain Review

Officer Involved Shootings

Post incident review of any need for immediate policy, training, or equipment.

72 Hour
Critical
Incident
Review

Criminal
Invest

A criminal investigation is initiated by the agency with jurisdiction where the shooting occurred.

Shooting
Occurs

An administrative investigation is conducted by MPD's Internal Affairs Unit (IAU).

Admin.
Invest

District
Attorney
Invest

The Stanislaus County District Attorney's Office has its own investigators respond to the incident and independently review the shooting.

AB 1506

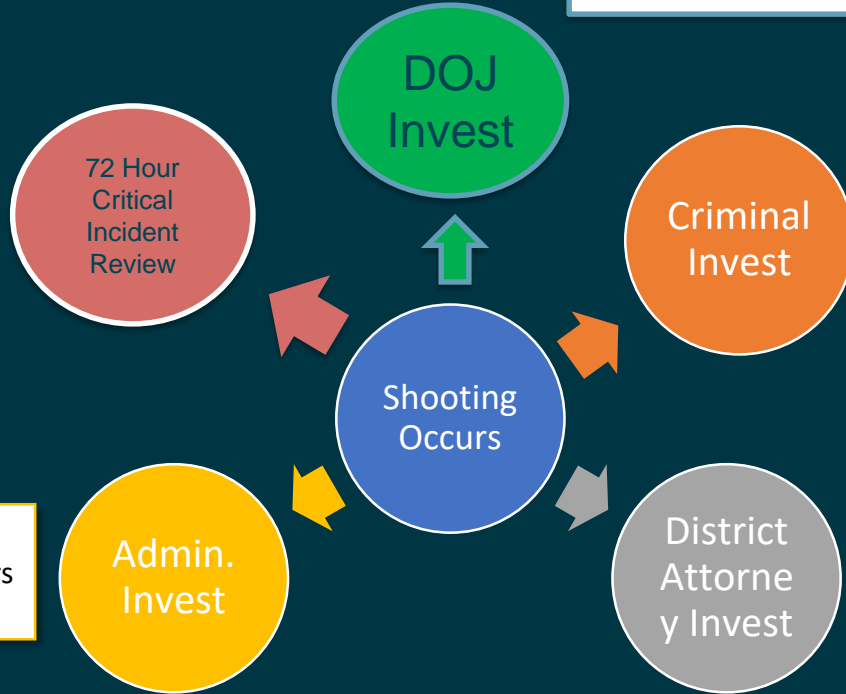
➤ SIGNED INTO LAW—AB 1506 Effective January 1, 2021

Authorizes State Attorney General to investigate officer-involved shootings of unarmed civilians; requires AG to prepare an investigation report and post on the internet; and requires AG to prosecute criminal actions as warranted against peace officers.

Officer Involved Shootings

The California Department of Justice (DOJ) is notified in any shooting resulting in the death of an unarmed civilian (Government Code § 12525.3).

Post incident review of any need for immediate policy, training, or equipment.



A criminal investigation is initiated by the agency with jurisdiction where the shooting occurred.

An administrative investigation is conducted by MPD's Internal Affairs Unit (IAU).

The Stanislaus County District Attorney's Office has its own investigators respond to the incident and independently review the shooting.

72 Hour Critical Incident Review

- Occurs within 72 hours of Critical Incident
- Includes Executive Staff, Training Staff, and City Attorney's Office
- Used to determine any immediate needs for changes in Policy, Equipment, or Training (Not used to determine in policy or out of policy)
- Includes in custody death, officers involved shootings, any other incident deemed "Critical Incident".

IAPro Alerts/Internal Evaluation

- Bean Bag (Less Lethal) Policy Change – Dual Verification
- Slow Speed Traffic Collision Training
- Use of Force Policy Change – Face Strikes
- Officer Involved Shooting Reintegration Training
- Search Warrant Service – Deployment Strategies
- High Risk Mission Risk Matrix
- Safety Checks/Brief Backs
- Rear facing in-car camera video

Police Audits

Audits

➤ Biased Based Policing Audit

- Reporting to California Department of Justice:
 - 402.8: The Internal Affairs Unit Sergeant and the Police Civilian Supervisor or the authorized designee shall ensure that all data required by the Department of Justice (DOJ) regarding complaints of racial bias against officers is collected and reported annually to DOJ (Penal Code § 13012; Penal Code § 13020).

➤ Use of Force Audit

- At least annually, the Internal Affairs Unit should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police.

Audits

➤ Internal Affairs Audit

- RETENTION OF PERSONNEL INVESTIGATION FILES
 - All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy
- STATISTICAL REPORTS
- The IAU will, on an annual basis, compile statistical summaries of internal affairs investigations completed during the last calendar year.

Audits

- Pursuits
- Property and Evidence
- Employee Grievance
- Asset Forfeiture
- CLETS
- Donations
- ISD Funds

Police Personnel Records

Penal Code 832.7

(a) Except as provided in subdivision (b), the personnel records of peace officers and custodial officers and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code.

SB-1421

- Approved by Governor: September 30, 2018
- Amended Section 832.7 and 832.8 of the Penal Code
- Makes certain peace officer or custodial officer personnel records and records relating to specific incidents, complaints, and investigations available for public inspection.
 - Officer shooting at a person
 - Officer use of force causing death or great bodily injury against a person
 - Officer sexually assaulting a person
 - Sustained allegations of officer dishonesty about a crime or misconduct of another officer

AB 748: Video & Audio Recordings



- Approved by Governor: September 30, 2018
- Amended Section 6254 of the California Government Code
- Requires that video of “critical incidents” be released within 45 days, absent certain exceptions
- “Critical Incident” includes:
 - An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 - An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury.

AB 953: California Racial and Identity Profiling Act

- Creates the Racial and Identity Profiling Advisory Board (public, L.E., Educators) Aims to strengthen L.E./community relations through transparency and accountability
- Collection of Data Regarding Citizen Complaints Alleging Racial and Identity Profiling
- Requires Annual Report to Attorney General data on all stops
 1. ORI number
 2. Date, time, and duration of the stop
 3. Location of stop
 4. Perceived race or ethnicity of person stopped
 5. Perceived gender of person stopped
 6. Person stopped perceived to be LGBT
 7. Perceived age of person stopped
 8. Person stopped has limited or no English
 8. Officers I.D. number
 9. Perceived or known disability
 10. Reason for Stop
 11. Stop made in response to call for service
 12. Actions taken by officer during stop
 13. Result of stop
 14. Officer's years of experience
 15. Type of assignment of officer

Role of Racial and Identity Profiling Advisory Board

- The Attorney General, beginning July 1, 2016 established the Racial and Identity Profiling Advisory (RIPA) Board, a 19- member board made up of law enforcement, attorneys, community and spiritual leaders, and a university professor, for the purpose of eliminating racial and identity profiling, and improving diversity and racial and identity sensitivity in law enforcement. AB 953 requires the board to, among other things:
 - Advise the Attorney General in developing the regulations for the stop data collection and reporting
 - Annually review and analyze stop data and citizen complaint data submitted by law enforcement
 - Work with law enforcement to review and analyze racial and identity profiling policies and practices
 - Issue an annual report that details the past and current status of racial and identity profiling and provides policy recommendations for eliminating profiling in California

SB-16 Release of Records

- Approved by Governor: September 30, 2021
- Expands access to police misconduct records
- Misconduct record retention increases from 5 to 15 years
- Requires Misconduct records to be released even if the officer quits before the investigation is completed

Disclose Information Regarding:

Officers found to engage in biased or discriminatory behavior

Unlawful arrests or searches

Used force that is excessive, unreasonable or failed to intervene

SB-2 Release of Records

- Approved by Governor: September 30, 2021
- Creates a process of police officer de-certification,
- Revises disqualifying criteria for certification,
- Requires all law enforcement agencies within the State to investigate and report all claims, allegations, and findings of serious misconduct regardless of the officer's employment status,
- Requires law enforcement agencies to report all complaints, claims, allegations, and findings of serious misconduct to the Commission on Peace Officer Standards and Training; and
- Revises and removes immunity provisions for police officers and public agencies employing them in lawsuits brought under the State's Tom Bane Civil Rights Act

SB-2 Release of Records

- Creates the Peace Officer Standards Accountability Division within the commission to review investigations conducted by law enforcement agencies and to conduct additional investigations into serious misconduct that may provide grounds for suspension or revocation of a peace officer's certification, as specified. The bill would require the division to review grounds for decertification and make findings as to whether grounds for action against an officer's certification exist. The bill would require the division to notify the officer subject to decertification of their findings and allow the officer to request review. The bill would also create the Peace Officer Standards Accountability Advisory Board with 9 members to be appointed as specified. The bill would require the board to hold public meetings to review the findings after an investigation made by the division and to make a recommendation to the commission. The bill would require the commission to review the recommendation made by the board based on whether there is evidence that reasonably supports the board's conclusion that misconduct has been established and, if action is to be taken against an officer's certification, return the determination to the division to commence formal proceedings consistent with the Administrative Procedure Act. The bill would require the commission to notify the employing agency and the district attorney of the county in which the officer is employed of this determination, as specified.
- The bill would make all records related to the revocation of a peace officer's certification public and would require that records of an investigation be retained for 30 years.

Peace Officer Standards Accountability Advisory Board

- No later than January 1, 2023, the Governor shall establish the Peace Officer Standards Accountability Advisory Board.
- The purpose of the board shall be to make recommendations on the decertification of peace officers to the commission.
- The protection of the public and all constitutional and statutory rights shall be the highest priority for the board as it upholds the standards for peace officers in California.
- The board shall consist of nine members, as follows:
 - One member shall be a peace officer or former peace officer with substantial experience at a command rank, appointed by the Governor.
 - One member shall be a peace officer or former peace officer with substantial experience at a management rank in internal investigations or disciplinary proceedings of peace officers, appointed by the Governor

Peace Officer Standards Accountability Advisory Board (con't)

- Two members shall be members of the public, who shall not be former peace officers, who have substantial experience working at nonprofit or academic institutions on issues related to police accountability. One of these members shall be appointed by the Governor and one by the Speaker of the Assembly.
- Two members shall be members of the public, who shall not be former peace officers, who have substantial experience working at community-based organizations on issues related to police accountability. One of these members shall be appointed by the Governor and one by the Senate Rules Committee.
- Two members shall be members of the public, who shall not be former peace officers, with strong consideration given to individuals who have been subject to wrongful use of force likely to cause death or serious bodily injury by a peace officer, or who are surviving family members of a person killed by the wrongful use of deadly force by a peace officer, appointed by the Governor.
- One member shall be an attorney, who shall not be a former peace officer, with substantial professional experience involving oversight of peace officers, appointed by the Governor.

Future Projects

- Forward Facing Dashboards
- Annual Reports with additional audit information
- Community Survey Solution

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Questions?

Emerging calendar

Month	January 20	February TBD	March TBD
Type of meeting	Full work group meeting & Ad Hoc work	Full work group & Ad Hoc work	Full work group & Ad Hoc work
Topic	Education: Accountability	Continued learning, developing & refining recommendations	Developing & refining recommendations

Closing session

- Work group members, please consider doing a ride-along with MPD
 - You can contact Ruth Baca at Bacar@modestopd.com.
 - We will also arrange for you to experience the Forced Option Simulator (FOS). Stay tuned.
- Final thoughts and reflections

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Thank you