

**CALIFORNIA DEPARTMENT OF JUSTICE**

**TITLE 11. LAW**

**DIVISION 1. ATTORNEY GENERAL**

**CHAPTER 19. RACIAL AND IDENTITY PROFILING ACT OF 2015**

**INITIAL STATEMENT OF REASONS**

PROPOSED AMENDMENTS OF REGULATIONS PURSUANT TO CALIFORNIA'S RACIAL AND IDENTITY PROFILING ACT OF 2015 (Stats. 2015, ch. 466 [Assem. Bill No. 953, as amended by Assem. Bill AB 2773])

**I. PROBLEM STATEMENT**

California's Racial and Identity Profiling Act of 2015 (Assembly Bill (AB) 953) took effect on January 1, 2016. AB 953 enacted multiple provisions to uncover and address the unlawful practice of racial and identity profiling. AB 953 requires state and local law enforcement agencies (LEAs), as specified, to annually report data on all stops conducted by their peace officers to the California Attorney General (the "Department of Justice" or "Department") (Gov. Code, § 12525.5, subd. (a)(1)), and further, that the Department "shall issue regulations for the collection and reporting of [this stop] data." (*Id.* at subd. (e).)

To that end, the Department prepared implementing regulations, which were approved by the Office of Administrative Law (OAL) on November 7, 2017. These implementing regulations set forth the information required to be reported by officers, definitions of terms, and specific guidance regarding the reporting required under the Government Code section 12525.5, subdivision (b). On August 5, 2022, OAL approved amendments to these regulations. The Department prepared these amendments with the goal of providing clarity on stop data collection requirements, improving accuracy and consistency in reporting, and enhancing review and analyses of stop data.

On September 29, 2022, Governor Newsom signed AB 2773 into law, which amended the Vehicle Code to add section 2806.5, which requires officers, for every stop, to give the stopped person the reason for the stop before engaging in any questioning related to a criminal investigation or traffic violation. The officer may withhold the reason for stop if the officer reasonably believes that doing so is necessary to protect life or property from imminent threat. AB 2773 also amended Government Code section 12525.5 to require agencies to report to the Department the reason given to the stopped person for each stop. Both amendments will go into effect on January 1, 2024. The Department determined that this new reporting obligation requires an amendment to the existing regulations.

The Department also proposes three other amendments. First, the Department proposes striking language that requires officers to characterize any stop involving a traffic violation as a "Moving violation," "Non-moving violation," or "Equipment violation," *only* when the stopped person is a driver. The Department has observed that officers, in practice, characterize all stops where the primary reason for the stop is a traffic violation as a "Moving violation," "Non-moving violation," or "Equipment violation," even if the stopped person is not a driver. Thus, to align the

regulations with the existing practice, the Department proposes striking language that requires the further characterization of traffic violation stops only if the stopped person is a driver.

Second, the Department proposes adding parentheticals for Moving violation,” “Non-moving violation,” or “Equipment violation,” that provide definitions and examples of what constitutes each type of violation. The Department has observed inconsistencies in what types of Vehicle Code offenses officers consider to each type of traffic violation, and thus, to increase the consistency and reliability of the data, the Department proposes adding explanatory language providing common examples of each type of traffic violation.

Third, the Department seeks to revise language regarding its disclosure of data to make it consistent with statutory requirements. Specifically, the 2017 regulations stated that the Department shall not release Officer’s I.D. Number and Unique Identifying Information (UII), (Cal. Code Regs., tit. 11, § 999.228(g) (2017 ed.). The regulations define UII as “personally identifying information, the release of which, either alone or in combination with other data reported, is reasonably likely to reveal the identity of the individual officer who collected the stop data information.” (*Id.*, § 999.224(a)(17).) In 2022, the regulations were amended to prohibit the Department from releasing personally identifying information, of which UII is a subset. The Department proposes amending this language to limit non-disclosure to UII, in line with the 2017 language. This proposal is consistent with, and tracks, the statutory requirement prohibiting the Department from disclosing UII. (Gov. Code § 12525.5(d) [“Notwithstanding any other law, the data reported shall be available to the public, except for the badge number or other unique identifying information of the peace officer involved”].)

Finally, the Department proposes correcting a typo, changing “Officer's I.D.” to “Officer's I.D. Number” in two separate places in the text of the regulations."

The purpose of each proposed amendment to AB 953 regulations is set forth in Section II below.

## **II. BENEFITS ANTICIPATED FROM REGULATORY ACTION**

### **Benefit of proposal to add new data element regarding the reason for the stop given to the stopped person and explanatory language for the existing reason for stop data element**

Government Code section 12525.5 requires the Department to draft regulations for the collection and reporting of the stop data required under AB 953 and specifically lists several categories of information that an officer must report, including the race or ethnicity of the stopped person and actions taken by the officer during the stop. Assembly Bill 2773 amends Government Code section 12525.5 to add an additional category that officers must report: “The reason given to the person stopped at the time of the stop.” To that end, the Department proposes adding a data element to account for this new reporting obligation. The benefit of this regulatory action is that it would enable agencies to fulfilling the new statutory obligation to report the reason for the stop given to the stopped person.

The Department further proposes adding language in the existing Reason for Stop to clarify the distinction between this existing data element and the proposed new data element. The benefit of this proposal is that it would help officers understand what they should report for each data element and would ensure more uniform, accurate data. More uniform, accurate data would allow the Racial and Identity Profiling Advisory (RIPA) Board to serve its function specified by law, including: “analyz[ing] the data[.]” producing “detailed findings on the past and current status of racial and identity profiling” in California, “mak[ing] policy recommendations for

eliminating” profiling, and working with “state and local law enforcement agencies to review and analyze racial and identity profiling policies and practices across geographic areas in California.” (Pen. Code, § 13519.4, subd. (j) (3).)

#### **Benefit of proposal to striking language under the Reason for Stop data element**

This proposal would strike language that requires officers to characterize a stop involving a traffic violation as a moving, non-moving, or equipment violation only when the stopped person is a driver. Specifically, the regulations require officers to provide the primary reason for the stop and if they select “Traffic violation” they must also characterize the stop as a moving, non-moving, or equipment violation, only when the stopped person is a driver. The Department proposes striking language requiring the characterization of traffic violation stops as a moving, non-moving, or equipment violation only when the stopped person is a driver. This proposed amendment would be consistent with the existing practice among officers and ensure uniformity in the reported data. Uniform data would allow the RIPA Board to serve its function specified by law, including: “analyz[ing] the data[.]” producing “detailed findings on the past and current status of racial and identity profiling” in California, “mak[ing] policy recommendations for eliminating” profiling, and working with “state and local law enforcement agencies to review and analyze racial and identity profiling policies and practices across geographic areas in California.” (Pen. Code, § 13519.4, subd. (j) (3).)

#### **Benefit of proposal to add language providing examples of each type of traffic violation**

This proposal would provide officers guidance when reporting a stop involving a traffic violation. Specifically, the Department proposes providing examples of each type of violation (moving, non-moving, and equipment). This proposed amendment would add uniformity to how officers report stops involving traffic violations, because they would help officers understand which type of traffic violation accurately describes their stop. More uniform data would allow the RIPA Board to serve its function specified by law, including: “analyz[ing] the data[.]” producing “detailed findings on the past and current status of racial and identity profiling” in California, “mak[ing] policy recommendations for eliminating” profiling, and working with “state and local law enforcement agencies to review and analyze racial and identity profiling policies and practices across geographic areas in California.” (Pen. Code, § 13519.4, subd. (j) (3).)

#### **Benefit of proposal to revise language on the Department’s disclosure obligations**

This proposal would amend language which currently prohibits the Department from releasing to the public personally identifying information and instead, prohibit the Department from releasing unique identifying information, which is a subset of personally identifying information.<sup>1</sup> The benefit of this amendment to the language regarding the Department’s release of information is that it would make this language consistent with Government Code section 12525.5, subdivision (d) which states that, “[n]otwithstanding any other law, the data reported shall be available to the public, except for the badge number or other unique identifying information of the peace officer

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<sup>1</sup> Unique Identifying Information is defined as “personally identifying information, the release of which, either alone or in combination with other data reported, is reasonably likely to reveal the identity of the individual officer who collected the stop data information.” (Cal. Code Regs., tit. 11, § 999.224(a)(17).)

involved.” (Gov. Code § 12525.5, subd., (d).) This amendment would be consistent with other statutory language, and corresponding regulatory language deeming law enforcement agencies solely responsible for ensuring that the stop data they report to the Department does not contain PII. (*Id.* [“Law enforcement agencies are solely responsible for ensuring that personally identifiable information of the individual stopped or any other information that is exempt from disclosure pursuant to this section is not transmitted to the Attorney General in an open text field.”]; Cal. Code Regs., tit. 11, § 999.228(e) [“Law enforcement agencies are solely responsible to ensure that . . . personally identifiable information of the person stopped . . . . By transmitting a stop data report to the Department, the law enforcement agency is attesting that it ensured that . . . personally identifiable information . . . is included in the stop data report.”].)

### III. SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION

#### Article 3. Data Elements To Be Reported

1. **Section 999.226, subd. (a)(new)(14): (1) Striking language and (2) provide explanatory language for secondary data values under the existing data element, entitled “Reason for Stop”**

The Department proposes striking language under the data value of “Traffic violation” under Reason for Stop, which only requires officers to select a secondary data value of “Moving violation,” “Equipment violation,” and “Non-moving violation, including registration violation” to characterize the traffic violation when the stopped person is a driver.

As background, when reporting the primary reason for a stop under the “Reason for Stop” data element, officers can select “Traffic violation.” If they select this data value as the primary reason for the stop, they must also (1) select the specific Vehicle Code section violated using the Department’s standard California Justice Information Services (CJIS) Offense Table and, if the stopped person is a driver, (3) identify the type of traffic violation, selecting one of three secondary data values, “Moving violation,” “Equipment violation,” and “Non-moving violation, including registration violation.”

In reviewing submitted data, the Department has observed that officers select a secondary data value to characterize all stops where the primary reason for the stop is a traffic violation, even if the stop does not involve a driver (such as a pedestrian who commits a traffic violation). The Department determined that striking language that required further characterization of stops involving traffic violations would align the regulations with the existing practice.

The Department further proposes adding explanatory parentheticals that includes definitions and examples for each secondary data value under the data value of “Traffic violation.” under Reason for Stop.

In evaluating submitted stop data, the Department determined that this proposed new language was necessary because there is inconsistency in officers’ stop data entries, in that officers do not uniformly characterize certain Vehicle Code violations as a specific type of traffic violation. For example, the Department determined that officers did not consistently characterize violations of Vehicle Code section 5200(a) (failure to display a license plate correctly) as a moving, non-moving, or equipment violation; roughly a quarter of stops involving a Vehicle Code section 5200(a) violation were characterized as moving violations and three-quarters of the same type of stops were characterized as either non-moving or equipment violations. Given this, the Stop Data Analysis Subcommittee developed definitions of each type of violation to assist the RIPA Board

in its analysis of stops involving traffic violations for the RIPA Board's 2023 annual report. The proposed new explanatory language is consistent with the definitions developed by the Stop Data Analysis Subcommittee.

Both of these proposed amendments would help to ensure the accuracy and "uniform reporting practices across all reporting agencies" for data reported. (Gov. Code, § 12525.5, subd. (e). Further, these proposed amendments would help to ensure consistency of stop data so that the RIPA Board may more readily track and analyze stops involving traffic violations, and in turn, serve its function of producing "detailed findings on the past and current status of racial and identity profiling." (Pen. Code, § 13519.4, subd. (j)(3).)

**2. Section 999.226, subd. (a)(new)(15): Add a new data element entitled "Reason Given to the Stopped Person" and provide explanatory language for the existing data element, entitled "Reason for Stop"**

The Department proposes adding a new subdivision (a)(15), which would be a new data element of "Reason Given to the Stopped Person." The purpose of this new data element would be to enable officers to carry out the new statutory obligation under AB 2773 to report to the Department the reason given to the stopped person at the time of the stop. The data values, or options, that officers can select to describe the reason given to the stopped person closely mirror the data values under the existing Reason for Stop data element. The Department chose to use these data values since officers are already familiar with them. However, the Department proposes adding an additional data value, permitting officers an option to report when they did not communicate a reason to the stopped person, in the event that the officer held a reasonable belief that withholding the reason for the stop was necessary to protect life or property from imminent threat. The purpose of this additional data value is that it tracks Vehicle Code section 2806.5, which was added by AB 2773 and goes into effect on January 1, 2024. Vehicle Code section 2806.6 requires officers to provide a reason for the stop, unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat, including, but not limited to, cases of terrorism or kidnapping." (AB No. 2773 (2021-2022 Reg. Sess.).)

The Department also proposes adding explanatory language for the data element "Reason for Stop," to clarify the distinction between this existing data element and the proposed new data element of, "Reason Given to the Stopped Person."

Finally, the Department proposes requiring officers to explain situations where the reason given to the stopped person differs from the actual, primary reason for the stop reported in the Reason for Stop data element, to the extent applicable. Additionally, when an officer does not give the stopped person a reason for stop, the Department proposes requiring officers to explain the facts and circumstances that gave rise to a reasonable belief that withholding the reason for the stop was necessary to protect life or property from imminent threat.

These amendments are necessary because Government Code section 12525.5, subdivision (e) requires the regulations to "specify all data to be reported, and provide standards, definitions, and technical specifications to ensure uniform reporting practices across all reporting agencies." These proposed amendments serve the additional purpose of ensuring that the information reported is uniform. Without these revisions, agencies may interpret their reporting obligations and specific categories of information to be reported differently from other agencies, which

would prevent “uniform reporting practices across all reporting agencies.” (Gov. Code, § 12525.5, subd. (e).)

## **Article 5. Technical Specifications and Uniform Reporting Practices**

### **1. Section 999.228, subd. (h): Revise the language regarding the Department’s release of data to the public**

Existing regulatory language amended on August 5, 2022 states that the Department “shall not release to the public personally identifying information or the Officer’s I.D. Number.” Cal. Code Regs., tit. 11, § 999.228(h).

The Department determined it was necessary to revise this language to be more aligned with Government Code section 12525.5, subdivision (d), which states that “[n]otwithstanding any other law, the data reported shall be available to the public, except for the badge number or other unique identifying information of the peace officer involved.”

Furthermore, the Department determined it was necessary to revise this language to be consistent with the Act’s statutory and regulatory scheme deeming law enforcement agencies solely responsible for ensuring that the stop data they report to the Department does not contain PII. (*Id.* [“Law enforcement agencies are solely responsible for ensuring that personally identifiable information of the individual stopped or any other information that is exempt from disclosure pursuant to this section is not transmitted to the Attorney General in an open text field.”]; Cal. Code Regs., tit. 11, § 999.228(e) [“Law enforcement agencies are solely responsible to ensure that . . . personally identifiable information of the person stopped . . . . By transmitting a stop data report to the Department, the law enforcement agency is attesting that it ensured that . . . personally identifiable information . . . is included in the stop data report.”].)

## **IV. ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The Attorney General does not anticipate that these proposed regulations will have any impact in creating or eliminating jobs within the State of California, creating or eliminating businesses in the State of California, or any impact on the expansion of businesses in the State of California. The proposed regulations apply only to state and local law enforcement agencies and do not impact private entities or business in any manner, except to the extent it may increase business for private information technology vendors that contract with law enforcement agencies.

With respect to the proposal to add a new data element, the Department anticipates some costs to state and local agencies. Approximately 140 agencies use the Department-hosted Web application to report stop data and thus would not incur any costs with this proposed new data element. The remaining approximately 419 local and state reporting agencies that use their own applications or third-party vendor-hosted applications to collect and report stop data, would incur some costs associated with modifying applications to incorporate this proposed new data element. One such agency, California Highway Patrol, reported in the bill analysis provided by the Senate Appropriations Committee that it estimates costs of approximately \$160,000 for “information technology changes.”

The actual costs that other agencies would incur as a result of this statutory provision’s implementation are unknown. The bill analysis provided by the Senate Appropriations Committee also stated that the costs were “[u]nknown” but “potentially significant.”

Based on the Department's experience working with agencies since 2017 on RIPA implementation, the Department agrees that actual costs are unknown for a few reasons.

First, the costs may vary depending on when agencies modify their systems to add the proposed data element. Specifically, the Department is working directly with agencies and vendors to modify their applications to incorporate the 2022 amendments, with the goal of completing modification by the end of August 2023. Because agencies would be on notice of the proposed data element as of the date of this document's publication, they, at a minimum, would be able to consider and implement some changes associated with this proposed new data element as they proceed with the modification of applications to incorporate the 2022 amendments and await OAL approval of this proposed new data element. As such, the Department hopes that the costs specifically associated with this statutory provision would be incremental; however, the Department anticipates that costs would increase if approval of this proposed new data element occurs after the fall of 2023 because agencies would not be able to exactly "align" the modifications of the application to incorporate the 2022 amendments with the modification of the application to incorporate the proposed new data element.

Second, the actual costs that agencies would incur as a result of this statutory provision's implementation would also vary depending on what type of application agencies use as well as vendor hourly rates and time requirements. While the Department at this time cannot provide an estimate of those costs, the Department can reasonably estimate that the cost would be less than the cost to implement the 2022 amendments, which involve multiple new data elements and data values as well as the re-ordering of one data element, among other changes.

As described in the Initial Statement of Reasons supporting the 2022 amendments, the Department received estimates from private vendors indicating that it would take 12 to 240 hours to make modifications to stop data applications to incorporate the 2022 amendments. One vendor that, at the time, worked with over 180 agencies, indicated that it would not charge its client agencies for costs associated with the 2022 modifications. This same vendor has confirmed that it would not charge its clients for any changes associated with these proposals. Another vendor indicated that it would charge \$150 an hour for senior developers to work on modifying existing systems to incorporate the 2022 amendments. Those estimated costs would range from \$754,200 to \$15,084,000. But the cost to modify applications to incorporate this one new proposed data element would necessarily be significantly less than that range because this proposed change is a much more straightforward and narrow change than the 2022 amendments.

Third, with respect to the proposed new data element, any costs incurred by both local and state government are mandated by statute, and not created as a result of the proposed regulation. The state is required to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. (Legis. Counsel's Dig., Assem. Bill No. 953, Stats. 2015, ch. 466, pp. 4153-4154.) Section 5 of AB 953 provides: If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. (Stats. 2015, ch. 466, § 5, p. 4159.) Accordingly, costs imposed on local agencies and school districts by this proposed new data element may be reimbursable by operation of AB 953 through the state mandates process.

Finally, the Department offers regular, free training on the regulations to any agency and, to the extent an agency offers its own training, any associated training costs would be negligible as the Department can readily incorporate the changes in its existing POST certified training material.

With respect to the two proposals related to the data value of “Traffic Violation” under “Reason for Stop,” the Department determined that the cost associated with modifying systems would be negligible because the proposals would not change, add or re-order any data value, .

Furthermore, to the extent there is any cost related to adding explanatory parentheticals, that cost would be offset by the cost-savings of streamlining reporting if officers have additional guidance on which secondary data value to choose for a stop involving a traffic violation.

With respect to the proposal to revise the language regarding the release of stop data, the Department determined that there is no associated cost.

The Department also concludes that:

(1) These proposals would benefit the health and welfare of California residents by enabling agencies to fulfill the new statutory obligation to report the reason for the stop given to the stopped person, which in turn will help California understand and work towards eliminating racial and identity profiling.

(2) These proposals would not benefit worker safety because it does not regulate workers or working conditions

(3) These proposals may have a slight benefit on the state’s environment because the use of electronic reporting may reduce paper consumption and waste.

## **V. TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS**

The Department has relied on the following studies, reports, and documents in proposing these amendments:

- Racial and Identity Profiling Advisory Board, Stop Data Analysis Subcommittee Meeting Video (July 21, 2022) available at <https://www.youtube.com/watch?v=IBmiw-49ECg>.
- Racial and Identity Profiling Advisory Board, Stop Data Analysis Subcommittee Meeting Video (October 4, 2022) available at <https://www.youtube.com/watch?v=pFq4n-ejE5g>.

## **VI. EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

These proposed amendments will not have a significant adverse economic impact on business. Related to the costs incurred by state and local law enforcement agencies subject to these provisions, it is anticipated that these agencies will be required to either purchase new or modify existing computer systems, software and potentially other types of devices, to report the data required to the Department. These purchases will positively, not adversely, impact vendors and businesses that sell this equipment.

## **VII. REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

The proposed amendments will not have any adverse impact on small business.



## **VII. REASONABLE ALTERNATIVES TO THE PROPOSED ACTION AND THE AGENCY'S REASON FOR REJECTING THOSE ALTERNATIVES**

The Department finds that no alternatives were presented to, or considered by, the Department that would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations.

These proposed amendments impose no costs or requirements on private persons. As a result, there are no less burdensome or more cost-effective alternatives to these proposed amendments with respect to their impact on private persons, because these regulations will impose no costs on private persons.

Performance Standard as Alternative:

Government Code section 12525.5 requires the Department to issue regulations for the collection and reporting of stop data, which must be reported to the Department and analyzed by the Board.

To ensure accurate and uniform reporting, the information collected must be uniform both in its categories of information collected and in the responses to these categories, in order for this information to be submitted electronically and for the data to be accessible to LEAs, the Board, researchers and the public, and so that meaningful review and analysis of this data is possible. As a result, the Department has determined that performance standards are not reasonable alternatives that would be more effective in carrying out the intent of AB 953.