

from its holster or brandished it, discharged his or her weapon, or used some other type of force.

Collecting information on these actions taken by officer during a stop is consistent with AB 953, which identifies the types of activities that are subject to California's ban on racial and identify profiling, noting that "these activities include, but are not limited to, traffic or pedestrian stops, or actions during a stop, such as asking questions, frisks, consensual and nonconsensual searches of a person or any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest." (Pen. Code, § 13519.4 subd. (e).) These specific data values were included by the Department after balancing the need for robust reporting against the practical and public safety concerns regarding the officer's reporting obligations and the amount of time it will take an officer to complete these data values. The inclusion of these data values is necessary to examine whether racial or identity disparities exist in the specific actions taken by officers after a stop has commenced and was included based on advice from the RIPA Board, and commentary by law enforcement and community representatives.

A recent study of the Oakland Police Department's (OPD) stop data demonstrates why capturing officer behavior during a stop is essential to ensuring that the data collected is informative. (Jennifer Eberhardt et al., *Strategies for Change: Research Initiatives and Recommendations to Improve Police-Community Relations in Oakland, Calif.* (June 20, 2016) ("Strategies for Change Report"), available at <https://stanford.app.box.com/v/Strategies-for-Change> [as of Nov. 21, 2016].) Because the OPD includes, in its stop data collection program, data elements for years of experience of officers and actions taken by officer during a stop, researchers were able to see a pattern between less-experienced officers and more aggressive behavior during stops of African Americans. One of the findings in the study was that OPD officers stopped, searched, handcuffed, and arrested more African Americans than Whites, and that this finding for both stops and officer behavior remained significant even after controlling for neighborhood crime rates and racial demographics; the race, gender, and experience of the officer; and other factors known to influence police actions. (*Strategies for Change Report*, p. 5.) Without this combination of data elements, this pattern would never have been revealed.

Accordingly, the proposed regulations require officers to report actions taken by officers during a stop, including handcuffing, the discharge or use of weapons or other force, in order to provide a "start to finish" snapshot of the interaction. This data will provide meaningful information to researchers, the RIPA Board, law enforcement agencies, and the public regarding officer behavior during stops.

- (7) *Result of Stop*. Requiring agencies to report the result of the stop is necessary to fulfill the reporting agencies' obligations under AB 953 to report this data. (Gov. Code, § 12525.5, subd. (b)(3)-(5).) This data will also enable the RIPA Board to analyze whether racial disparities exist in stop results.

Certain data values were selected to satisfy agencies' reporting requirements under Section 12525.5, to report whether the stop resulted in no action or a warning, citation, property seizure, or arrest. (Gov. Code, § 12525.5, subd. (b)(3)-(5).) Section 12525.5 further requires agencies to report the warning provided or violation cited (if any) (*id.*, subd. (b)(4)) as well as the offense charged if an arrest was made (*id.*, subd. (b)(4)). Accordingly, data values were included to satisfy these reporting obligations and to allow the RIPA Board to analyze, for example, whether racial disparities exist among certain categories of warnings, citations, or arrests.

Other data values were added, including whether the person was taken into custody other than for an arrest, referred to another agency or transported, not only in response to recommendations from the RIPA Board, law enforcement and community representatives, but also to provide a more comprehensive and complete universe of actual situations that officers and persons who are stopped encounter. All of the added data values are necessary to encompass typical stop outcomes and are designed to gain a deeper understanding of the "start to finish" of a stop, which in turn may inform agencies in their training of officers, and the RIPA Board, the public, and researchers in their analysis of this stop data.

- (8) *Perceived Race or Ethnicity of Person Stopped*: Requiring officers to report the perceived race or ethnicity of the person stopped is necessary to fulfill the reporting agencies' obligations under AB 953 to report this data. (Gov. Code, § 12525.5, subd. (b)(6).) This information is only based upon the officer's perception, because Section 12525.5 specifically prohibits the officer from requesting this information from the person stopped. (*Ibid.*)

This data element is necessary to enable the RIPA Board, law enforcement, the public, and researchers to analyze whether persons who appear to be of a particular race or ethnicity are more likely to be stopped or subjected to particular actions or outcomes compared to other racial or ethnic groups. The specific data values were selected in consultation with law enforcement agencies and community representatives in order to provide officers with a reasonable number of options that are consistent with other data sets (such as United States Census data) and that correlate with community concerns regarding racial and identity profiling. The definitions included were derived from the U.S. Census Bureau, as well as from input with stakeholders regarding the definition of "Middle Eastern." This term was included as a standalone category (along with South Asian, i.e., "Middle Eastern or South Asian") to capture stops of persons who appear to be Arabic or from the Middle East, which will enable agencies, researchers, the Board and the public to determine whether implicit or explicit biases in law enforcement practices exist with respect to persons who appear to have origins in that geographic region of the world. The definition of "Middle Eastern or South Asian" was derived in part from a commonly used definition found at Asian Americans/Pacific Islanders in Philanthropy. (See AMEMSA Fact Sheet (Nov. 2011), <http://aapip.org/files/incubation/files/amemsa20fact20sheet.pdf> [as of Nov. 21, 2016].)

- (9) *Perceived Gender of Person Stopped.* Requiring officers to report the perceived gender of the person stopped is necessary to fulfill the reporting agencies' obligations under AB 953 to report this data. (Gov. Code, § 12525.5, subd. (b)(6).) This information is only based upon the officer's perception, because Section 12525.5 specifically prohibits the officer from requesting this information from the person stopped. (*Ibid.*)

This data element is necessary to enable the RIPA Board to analyze whether individuals experience disparate treatment based on perceived gender. For example, Latina transgender women in Los Angeles have reported being unlawfully profiled as sex workers by police officers while they were hailing a taxi or walking down the street. (ACLU et al., letter to Racial and Identity Profiling Advisory Board and Attorney General Kamala D. Harris (June 15, 2016), p. 2.) Specific data values for perceived gender were included in response to recommendations from the RIPA Board, law enforcement agencies, and community representatives. In particular, the data values for "transgender man," "transgender woman," and "gender nonconforming" were included and defined in consultation with community representatives.

- (10) *Perceived Age.* Requiring officers to report the perceived age of the person stopped will fulfill the agencies' obligations under AB 953 to report this data. (Gov. Code, § 12525.5, subd. (b)(6).) This information is only based upon the officer's perception, because Section 12525.5 specifically prohibits the officer from requesting this information from the person stopped.

This data element is necessary to enable the RIPA Board to analyze whether individuals experience disparate treatment based on perceived age. Community representatives in particular have noted that perceived age may influence officer stops especially when it comes to school-aged youth. In order to streamline the officer's reporting requirement, the officer will be prompted to estimate the person's approximate perceived age and select the person's perceived age from several pre-filled age ranges. The actual ranges provided (0-1; 10-14; 15-17; 18-24; 25-29; 30-39; 40-49; 50-59; and 60 and older) were recommended by the Department's California Justice Information Services Division (CJIS), the Division that will be developing the software and related automated systems to collect the stop data from law enforcement agencies.

- (11) *Perceived Limited English Fluency or Pronounced Accent.* The regulations require an officer to report whether he or she perceives that the person stopped has limited fluency in English or a pronounced accent. This information is necessary to provide context to the stop, including information that may be relevant to the duration of the stop. This information is also necessary to help law enforcement agencies assess the need for additional training or for bilingual services, and will provide additional data to help understand whether and to what extent the immigrant community is stopped disproportionately and/or treated differently. This data element was added at the recommendation of the RIPA Board, and in consultation with law enforcement and community representatives

- (12) *Perceived or Known Disability.* The regulations require an officer to report whether he or she perceives or has knowledge that the person stopped displayed signs of one or more

of the following conditions: deafness or that the person is hard of hearing, other physical disability, mental health or psychiatric condition, and developmental disability. It further specifies that nothing in the provision prohibits an officer from complying with his or her duties under state and federal anti-discrimination laws with respect to the treatment of people with disabilities.

This data element is necessary to provide context to a stop, and to provide valuable data to law enforcement agencies regarding the number of stops of persons perceived or known to have disabilities, as well as actions during a stop and stop outcomes. This information will enable analysis of potential disparities in stops and stop outcomes with respect to the disability community, and help inform agencies about training needs to help officers in interactions with persons with mental or physical disabilities.

This data element was recommended by the RIPA Board and community representatives. (See ACLU et al., letter to Attorney General Kamala D. Harris (Sept. 15, 2016), p. 6). The specific data values were selected to capture a broad range of disabilities that might be perceived by or become known to an officer during the course of a stop.

- (13) *Officer's Unique Identifier*. The regulations require reporting agencies to create a permanent unique identifier for each officer required to report stops under these regulations. The officer's unique identifier shall be included on each stop report submitted to the Department.

This data element is necessary to isolate the scope of any racial or identity profiling disparities uncovered regarding who is stopped and how people are treated during stops. (Pen. Code, § 13519.4, subd. (j)(3).) This data element is added to allow an analysis of data at the officer, rather than agency level, so that the Department can determine the extent to which any disparities that are observed reflect agency-wide practices or are attributable to a smaller percentage of officers. Such information will, in turn, inform the RIPA Board's recommendations, including those to the Commission on Peace Officer Standards and Training and local law enforcement agencies to improve training. (Pen. Code § 13519.4, subd. (j)(3).) Collecting officer-level data, while at the same time ensuring that no unique identifying information of the peace officer involved is disclosed to the public, will strike the appropriate balance between the need to analyze stops using officer-level data and privacy considerations.

Although the Department will collect the unique identifier, it will not release the identifier to the public in order to protect the privacy and safety of officers. (11 CCR § 999.228, subdivision (e).) Requiring agencies to create a unique identifier that is then submitted only to the Department is necessary in order to balance the need for the collection of individual officer level data, while complying with the provisions of AB 953 to protect the badge number and unique identifying information of the peace officer from public disclosure. (Gov. Code, § 12525.5, subd. (d).)

The Department respects the needs of individual law enforcement agencies to safeguard the privacy of personally identifying information of peace officers, as contemplated by AB 953 itself. And other state laws in different contexts also recognize that there are

special privacy and safety concerns for peace officers. (See, e.g., Gov. Code, § 3307.5, subd. (a); Gov. Code § 6254.21, subd. (a); Penal Code, §§ 832.5-832.8; see generally *Copley Press, Inc. v. Superior Court* (2006) 39 Cal. 4th 1272, 1298 [recognizing various policy considerations favoring confidentiality of officer personnel records]; Assem. Public Safety Com., Bill Analysis of Assem. Bill No. 1586 (1999-2000 Reg. Sess.) as amended June 23, 1999, p. 2, at http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_1551-1600/ab_1586_cfa_19990513_111539_asm_comm.html [as of Nov. 21, 2016] [““Every day, certain public safety officers are subject to threats of violence while on the job. It is imperative that we ensure the safety of public safety officers and their families.””]; Sen. Com. on Public Safety, Bill Analysis of Assem. Bill No. 2238 (2001-2002 Reg. Sess.) as amended Aug. 5, 2002, p. 5, at http://www.leginfo.ca.gov/pub/01-02/bill/asm/ab_2201-2250/ab_2238_cfa_20020807_093015_sen_comm.html [as of Nov. 21, 2016] [similar].) For these reasons, the Department will maintain the confidentiality of the unique identifier as contemplated by Government Code section 12525.5.

- (14) *Officer’s Years of Experience.* The regulations require an officer to provide, by indicating a range, the total number of years he or she has been a sworn peace officer (including time spent at other agencies). Reporting this information is necessary to enable the RIPA Board, law enforcement agencies, researchers, and the public to determine whether there is a link between officer experience and racial and identity profiling. The specific ranges identified in the regulations are consistent with the ranges utilized in Professor Eberhardt’s report on the Oakland Police Department, which found that racial disparities in stops and stop outcomes were greater for less experienced officers. (See, e.g., *Strategies for Change Report*, p. 5; *Data for Change Report*, pp. 163-164.).

Such analysis may be used to inform the RIPA Board’s recommendations to the Commission on Peace Officers Standards and Training and local law enforcement agencies to improve training. (Penal Code § 13519.4, subd. (j)(3)(A)-(C).) The provision asks the officer to select from three pre-determined options for years of experience in order to streamline officers’ reporting, and to reduce the risk of re-identification (see Gov. Code § 12525.5, subd. (d) [providing that unique identifying information of officers shall not be made public except as permitted by state law]).

- (15) *Type of assignment of officer.* The regulations require an officer to report the type of assignment to which an officer is assigned at the time of the stop. This data element was included at the recommendation of the RIPA Board, law enforcement, and community representatives and is necessary to provide important context to stops. For example, an officer who is on a K-12 school assignment would likely explain a high percentage of stops involving high-school aged individuals.

This data element will also enable the RIPA Board to determine whether particular assignments might be correlated with disparate stops, actions, or outcomes. For example, a study of the Oakland Police Department’s stop data found that the officer’s assignment correlated with racially disparate search rates in at least one geographic area of the city. (*Data for Change Report*, *supra*, pp. 126-127.)

11 CCR § 999.227: This provision specifies general requirements for officers of law enforcement agencies subject to Government Code section 12525.5 when reporting the information required by 11 CCR § 999.227, and any exceptions that apply. These specifications are necessary to provide clarity to officers regarding their reporting obligations, as explained below:

(a) *General reporting requirements.* This provision specifies the various reporting requirements applicable to covered peace officers and reporting agencies as those terms are defined in 11 CCR § 999.224. Subdivision (a)(1) requires peace officers subject to Government Code section 12525.5 to submit required data elements described in 11 CCR § 999.223 except as otherwise provided. This requirement is necessary to ensure consistent data collection across all reporting officers and agencies and to ensure that agencies are able to satisfy their reporting requirements under AB 953.

Subdivision (a)(2) clarifies that the data elements described in 11 CCR § 999.226 are the minimum that a reporting agency must collect and report to comply with the Act and that nothing in this chapter prohibits an agency from voluntarily collecting additional data. Subdivision (a)(3) clarifies that nothing in this chapter prohibits agencies not subject to Government Code section 12525.5 from submitting stop data voluntarily to the Department. These clarifications were added in response to concerns from law enforcement and community representatives that these regulations might otherwise be read to prohibit agencies from continuing to collect additional data for their own use or to preclude additional agencies from voluntarily submitting stop data to the Department.

Subdivision (a)(4) clarifies which agency shall submit a report when two or more agencies are involved in a stop. Subdivision (a)(5) provides that, when more than one officer conducts a stop, only one officer shall collect and report the required information. These provisions are necessary to ensure consistent reporting practices and to prevent duplicate data from being entered into the system.

Subdivision (a)(6) provides that, if multiple persons are stopped during a single incident, the officer shall submit stop data on each person except that passengers in a vehicle shall be reported only as set forth in subdivision (b). This provision is necessary to ensure consistent reporting across all agencies and to ensure reporting agencies satisfy their reporting requirements under AB 953, including the limitations on passenger data set forth in Government Code section 12525.5, subdivision (b)(6).

Subdivision (a)(7) provides that agencies are not prohibited from submitting stop data to the Department earlier than the deadlines set forth by Government Code section 12525.5, subdivision (a). Subdivision (a)(8) provides guidance to agencies to determine how the statutory deadlines set forth in Government Code section 12525.5, subdivision (a) are applied. These provisions are necessary to provide for a consistent understanding between the Department and reporting agencies as to the deadline for each agency to begin submitting stop data.

Subdivision (a)(9) provides that officers shall collect and submit stop data by the end of the officer's shift on the date of the stop. This requirement is necessary to ensure consistent reporting

practices across agencies and to ensure that the data collected and submitted to the Department is an accurate reflection of each incident.

Subdivision (a)(10) provides that agencies, in their discretion, may permit officers to review and revise the data collected up to 96 hours after the officer initially submits the data to the agency, and further provides that no revisions will be permitted once the data is submitted to the Department. This provision also makes clear that if, once the data is submitted to the Department, no revisions can be made, even if the data is submitted to the Department within 96 hours of the officer submitting the data to the agency. This provision is necessary to provide officers and their supervisors an opportunity to ensure that the data reported is complete and is consistent with the requirements set forth in these regulations, while also ensuring that the integrity of the data is not compromised by late changes and further remains secure once it is reported to the Department.

Subdivision (a)(11) requires reporting agencies to create a permanent unique identifier for each officer required to report stops under these regulations and requires the agency to include the officer's unique identifier on each stop report submitted to the Department. Use of unique identifiers—rather than the officer's name or badge number—is necessary to protect officer identity to the extent permitted by law while also allowing the RIPA Board to conduct analysis at the officer level to determine the scope of any concerning patterns reflected in the data (i.e., are 10% or 50% of officers engaging in stops that raise potential racial or identity profiling concerns?).

Subdivision (a)(11) further provides that reporting agencies shall not submit the officer's name or badge number to the Department but shall maintain a system to match an individual officer to his or her stop data for internal agency use. This provision is necessary to permit agencies to conduct quality control review of their own stop records to ensure officers are complying with the requirements set forth in these regulations without compromising officer privacy by including officer names or badge numbers in the statewide database. It will also enable agencies to use stop data for internal early intervention and overall agency accountability.

(b) Reporting Requirements for Passengers in Vehicle Stops. This provision sets forth the reporting requirements regarding passengers in traffic stops. This provision is necessary to ensure that all reporting agencies adopt uniform practices with respect to stop reports on passengers during vehicle stops and to ensure the data collected is consistent with the specific passenger demographic limitations set forth in Government Code section 12525.5, subdivision (b)(6).

This clarification is also necessary because even though Fourth Amendment jurisprudence treats vehicle passengers as “detained,” those passengers are generally not the subject of the stop and often have no substantial interaction with an officer. Requiring officers to complete stop data on every passenger would increase officers' reporting burdens and dilute the data collected pursuant to AB 953 without furthering the legislative intent of the Act to collect and analyze robust data on persons who are stopped, the type of officer actions to which such persons are subjected after a stop, and result of the stop. The specific demographic limitations for passenger data set forth in Government Code section 12525.5, subdivision (b)(6) confirm that such data is beyond the scope of the Legislature's intent with respect to data collection. Accordingly, the regulations provide

that stop data shall only be collected regarding a passenger if the officer observes or suspects that the passenger has violated the Vehicle Code or any other applicable law or ordinance, or if the passenger is subjected to any of the actions identified as data values for “Actions Taken by Officer During Stop,” set forth in section 999.226, subdivision (a)(6)(A) which are described below. This ensures that data is collected regarding passengers only when the passenger is the subject of the officer’s attention or has interacted with the officer, and is not simply a bystander during the stop.

(c) Peace Officer Interactions That Do Not Fall Within Reporting Requirement, Absent Additional Action by Officer.

This provision sets forth the reporting requirements for several limited situations where an officer’s interaction with a person does not fall within the reporting requirements of this chapter, unless the officer takes specific actions. This provision is necessary in order to ensure that actions taken by officers that may technically fall within the scope of a detention or search as defined under AB 953, including consensual searches at sporting events, are not over-reported thereby vitiating or obscuring the stop data.

In addition, this provision is necessary to prevent officers from unnecessarily collecting stop data in certain circumstances involving unique situations, large groups of people, or public safety situations for which the Legislature presumably did not foresee stop data should be collected. In addition, this provision and subdivision (d) were incorporated in order to provide consistency with respect to state and federal Fourth Amendment requirements, including those in a K-12 public school setting. In these unique circumstances, the specific officer actions that will generally compel an officer to collect stop data information include the data values identified as responses to the category of “Actions Taken by Officer During Stop” set forth in section 999.226, subdivision (a)(6)(A), specifically:

- (1) Person removed from vehicle by order or physical contact
- (2) Field sobriety check conducted
- (3) Curbside detention
- (4) Handcuffed
- (5) Patrol car detention
- (6) Use of canine in apprehension
- (7) Weapon removed from holster or brandished. “Brandishing a weapon” means drawing or exhibiting a weapon and includes, but is not limited to, pointing the weapon at the individual or at others present at the scene. Merely unbuttoning the holster or grabbing the weapon while it remains in the officer’s holster is not removing a weapon from holster or brandishing a weapon. (Officers are to identify the type of weapon.)
- (8) Weapon was discharged or used. (Officers are to identify the type of weapon.)
- (9) Other use of force (other than handcuffing, use of canine in apprehension, or use of weapons)
- (10) Asked for consent to search person or property
- (11) Search of person or property conducted
- (12) Property was seized

This limited reporting requirement applies to interactions that take place in the following situations, and subject to the following restrictions:

- (1) *Witness interviews and interactions that potentially involve large numbers of persons.* These are limited to the following:
 - (A) Traffic control of vehicles due to a traffic accident or emergency situation that requires that vehicles are stopped for public safety purposes.
 - (B) Mass evacuations, including those involving bomb threats.
 - (C) Active shooter events.
 - (D) Any type of crowd control in which pedestrians are made to remain in a location or routed to a different location for public safety purposes.
 - (E) Witness interviews.

These interactions will only be reported where the individual is detained based upon individualized suspicion or personal characteristics and/or the officer engages in any of the “Actions Taken by Officer During Stop” data elements set forth in section 999.226, subdivision (a)(6)(A).

- (2) *Searches and arrests inside a home pursuant to a warrant or search condition.* Interactions with persons who are the subject of the warrant or search condition are not reportable, but interactions with others in the home are reportable, if the officer engages in any of the “Actions by Taken by Officer During Stop” data element set forth in section 999.226, subdivision (a)(6)(A).
- (3) *Interactions that take place while an officer is on home detention or house arrest assignment.* Interactions with persons who are subject to the home detention or house arrest are not reportable, but interactions with others in the house are reportable, if the officer engages in any of the “Actions by Taken by Officer During Stop” data element set forth in section 999.226, subdivision (a)(6)(A). Interactions with persons not in the residence or not the subject of the home detention or house arrest will be reported pursuant the reporting requirements of section 999.227, subdivision (a)(1).
- (4) *Programmatic searches or seizures.* These are interactions in which the officer stops a person as the result of a blanket regulatory activity or neutral formula without regard to personal characteristics of the individual. These include checkpoints, roadblocks, and routine security screening. Such interactions shall only be reported if the person is subjected to any of the “Actions Taken by Officer During Stop” data element set forth in section 999.226, subdivision (a)(6)(A), except that the interaction shall not be reported if the officer’s interaction consists solely of any or all of the following, and is not based on individualized suspicion or the personal characteristics of the individual: (1) the officer asks for consent to search the person or person’s property; (2) the officer searches the person or person’s property; or (3) the officer seizes property from the person.

These interactions are subjected to specific reporting requirements, separate from other officer interactions with individuals because (1) reports on mass detentions and programmatic searches or seizures would inundate the Department with information on types of detentions and other officer-civilian encounters that do not further the purpose of the Act and effectively obscure the utility of the data; (2) the officer's actions during mass evacuations and detentions or programmatic searches are less likely to result from racial and identity bias; and (3) data collection in these circumstances would present significant practical challenges for law enforcement.

As specified in this provision, the interactions enumerated will become reportable only under certain circumstances and primarily if the person is subjected to any of the "Actions Taken by Officer During Stop" set forth in section 999.226, subdivision (a)(6)(A). Using "Actions Taken by Officer During Stop" as the criteria by which these interactions become reportable is consistent with AB 953, which identifies the types of activities that are subject to California's ban on racial and identify profiling, noting that "[these] activities include, but are not limited to, traffic or pedestrian stops, or actions during a stop, such as asking questions, frisks, consensual and nonconsensual searches of a person or any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest." (Pen. Code, § 13519.4, subd. (e).)

(d) Stops that Take Place in a K-12 Public School Setting. This provision provides specific reporting instructions for stops that take place in a K-12 public school setting.

As a general rule, persons who are subject to compulsory education law and are present on a public campus are subject to different Fourth Amendment considerations. The basis for a student's reduced expectation of privacy is that school officials are entitled to take all reasonable necessary measures to ensure students, teachers, and staff are safe on campus. As a result, the courts recognize a "lesser standard for school searches." (*Safford Unified School District v. Redding* (2009) 557 U.S. 364, 371.) And "the preservation of order and a proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult." (*New Jersey v. T.L.O.* (1985) 469 U.S. 325, 339.) In California, detentions and searches on a school campus are placed within "a larger body of law holding that 'special needs' administrative searches, conducted without individualized suspicion, do not violate the Fourth Amendment where the government need is great, the intrusion on the individual is limited, and a more rigorous standard of suspicion is unworkable." (*In re Latasha W.* (1998) 60 Cal.App.4th 1524, 1527; accord, *In re Sean A.* (2010) 191 Cal.App.4th 182, 187-188.)

Accordingly, these regulations take these legal principles into consideration. Consistent with Fourth Amendment jurisprudence, the regulations provide that when an officer has an incidental contact with a non-student in a K-12 public school setting solely to determine whether the person is authorized to be on campus that interaction is not considered a "detention" as that term is defined in these regulations. These distinctions are necessary both to conform with Fourth Amendment jurisprudence and to ensure the data collected is limited to that which will further the Legislature's intent to document and analyze interactions that may give rise to racial and identity profiling in public schools. In all other instances, however, the officer's interaction with the non-student is subject to the reporting requirements of this chapter.

Likewise, given different Fourth Amendment standards with respect to interactions with students on school grounds during school hours, this provision provides that interactions between an officer and a student in a K-12 public school setting are only subject to the reporting requirements of this chapter if the interaction:

- (1) Results in a temporary custody under Welfare and Institutions Code section 625, citation, arrest, permanent seizure of property as evidence of a criminal offense, or referral to a school administrator because of suspected criminal activity
- (2) Is one in which the student is being questioned for the purpose of investigating whether the student committed a violation of law.
- (3) Is one in which the student is being questioned for the purpose of investigating to determine whether the student violated Education Code sections 48900, 48900.2, 48900.3, 48900.4, and 48900.7.
- (4) Results in an officer engaging in one or more of the actions listed above in the “Actions Taken by Officer During Stop” data element set forth in section 999.226, subdivision (a)(6)(A). This includes searches and seizures conducted under individualized suspicion, but excludes suspicionless searches and seizures provided that the search or seizure is conducted without regard to individualized suspicion or personal characteristics, including searches conducted at the entries and exits of school facilities by screening devices.

In addition, it is necessary to include additional data values to take into account the unique circumstances in the K-12 public school setting. In order to properly report such interactions in a K-12 public school setting, the officer will have additional proposed responses for certain categories of information, including the specific name of the school where the stop occurred; whether the reason for the stop was to determine if the student violated school policy, if the student was authorized to be on campus, if the student was engaged in conduct warranting discipline under Education Code sections 48900, 48900.2, 48900.3, 48900.4, and 48900.7, or if the student was engaged in other unlawful activity.

Similarly, additional data values for students are included for the basis for the search and result of stop to take into consideration matters that are only applicable inside of the K-12 public school setting.

These additional data values were incorporated in part as a result of recommendations made by the RIPA Board and its members, law enforcement representatives, and community representatives. All of these provisions are necessary to ensure uniform reporting and provide consistency with Fourth Amendment principles, while also taking into consideration the unique circumstances presented in reporting data with respect to students.

11 CCR § 999.228: This provision sets forth various technical specifications and uniform reporting practices necessary to fulfill the Attorney General’s statutory mandate to promulgate regulations that “specify all data to be reported, and provide standards, definitions, and technical specifications to ensure uniform reporting practices across all reporting agencies,” and to ensure the data collected and reported under AB 953 remains confidential and secure.

- (a) *Automated System.* This provision sets forth technical specifications for submission of data by agencies to the Department. Specifically, the system developed by the Department will require automated submission of data by agencies through computer-based systems. Given the significant volume of data that will be collected and reported, as well as the need to ensure that this data is both accurate and accessible, it is necessary that this data be submitted automatically (electronically), as opposed to via paper. This provision is necessary because not all agencies have the same technological capabilities and therefore it is necessary that the Department provide agencies with several options to submit their data
- (b) *Submission of Data.* This provision states that the data must be submitted at least annually via a web-based system, secure file transfer, or system-to-system interface.
- (c) *Timing and Redaction of Personally Identifiable Information.* This provision makes clear that agencies can submit the data more frequently, if they wish, (including on a daily basis), and that the Department recommends agencies submit data on a monthly or quarterly basis. Given the sheer volume of data to be collected and reported, it is necessary that this data be submitted electronically and ideally on intervals (monthly, quarterly, or even daily), to help the Department manage the magnitude of data received. The provision also requires agencies to redact any personally identifiable information before submitting the information to the Department, with the exception of the officer's unique identifier. Further, in order to protect personally identifiable information of persons stopped and officers, as required by Government Code section 12525.5, this provision requires agencies to redact any such information before submitting stop data to the Department.
- (d) *System Security.* This provision requires the Department of Justice to design a computer system that is easily accessible for authorized users, confidential, and accurate, and can provide role-based authorization services. The provision states that the law enforcement agencies will be required to authorize and remove users to the system as necessary, and requires that automated systems handling the stop data (both the Department of Justice and individual law enforcement agencies) be secure from unauthorized access, alteration, deletion or release. This provision is necessary in order to ensure the security of the system and persons using the system.
- (e) *Data Standards.* This provision requires the Department of Justice to publish data standards and a data dictionary, the purpose of which is to ensure uniform and complete reporting of the stop data. These data standards are to be consistent with and not expand the substantive requirements of these regulations. This provision is necessary because the collection system for such data will be automated, and submission of the data to the Department will be electronic. It is anticipated that agencies will require specific computer code instructions and other technical non-substantive instructions regarding how to submit this data to our office. Accordingly, this provision ensures that the Department provides this information, while at the same time ensuring that these additional publications do not expand the substantive requirements of these regulations.

- (f) *Data Publication.* This provision requires the Department to release stop data on the Department's OpenJustice website, which will publish disaggregated statistical data regarding stops for each reporting agency. This is consistent with Penal Code section 13519.4, subdivision (j)(3)(E), which requires the RIPA Board to analyze data regarding stops and citizen complaints alleging racial or identity profiling and to publish reports on this data on the Department's website. This will allow the public easy access to this data.

This provision further provides that the Department will not release an officer's unique identifier to the public in order to protect the privacy and safety of officers. (11 CCR § 999.228, subdivision (e)). Requiring agencies to create a unique identifier that is then submitted only to the Department is necessary in order to balance the need for the collection of individual officer level data, while complying with the provisions of AB 953 to protect the badge number and unique identifying information of the peace officer from public disclosure. (Gov. Code, § 12525.5, subd. (d).) And, maintaining the confidentiality of the officer's unique identifier, while at the same time ensuring officer-level data is collected and can be analyzed, balances the need to protect the confidentiality and safety of peace officers with the overarching goal of AB 953 to uncover patterns in law enforcement stops that may be the result of racial or identity profiling, analyzing this data from a statewide perspective. Such information will, in turn, inform the RIPA Board's recommendations, including those to the Commission on Peace Officer Standards and Training and local law enforcement agencies to improve training. (Pen. Code § 13519.4, subd. (j)(3).) Collecting officer-level data, while at the same time ensuring that no unique identifying information of the peace officer involved is disclosed to the public will strike the appropriate balance between the need to analyze stops using officer-level data and privacy considerations.

The Department respects the needs of individual law enforcement agencies to safeguard the privacy of personally identifying information of peace officers as contemplated by AB 953 itself. And other state laws in different contexts also recognize that there are special privacy and safety concerns for peace officers. (See, e.g., Gov. Code, § 3307.5, subd. (a); Gov. Code § 6254.21, subd. (a); Penal Code, §§ 832.5-832.8; see generally *Copley Press, Inc. v. Superior Court* (2006) 39 Cal. 4th 1272, 1298 [recognizing various policy considerations favoring confidentiality of officer personnel records]; Assem. Public Safety Com., Bill Analysis of Assem. Bill No. 1586 (1999-2000 Reg. Sess.) as amended June 23, 1999, p. 2, at http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_1551-1600/ab_1586_cfa_19990513_111539_asm_comm.html [as of Nov. 21, 2016] [““Every day, certain public safety officers are subject to threats of violence while on the job. It is imperative that we ensure the safety of public safety officers and their families.””]; Sen. Com. on Public Safety, Bill Analysis of Assem. Bill No. 2238 (2001-2002 Reg. Sess.) as amended Aug. 5, 2002, p. 5, at http://www.leginfo.ca.gov/pub/01-02/bill/asm/ab_2201-2250/ab_2238_cfa_20020807_093015_sen_comm.html [as of Nov. 21, 2016] [similar].) For these reasons, the Department will maintain the confidentiality of the unique identifier as contemplated by Government Code section 12525.5.

- (g) *Retention Period.* This provision requires agencies that submit stop data to maintain this data for at least five years, which is necessary to ensure that the information is available for evaluation if there are concerns about the integrity of the data submitted and to inform

the RIPA Board's recommendations to the Commission on Peace Officers Standards and Training and local law enforcement agencies concerning longitudinal trends in the data. (Pen. Code § 13519.4, subd. (j)(3)(A)-(C).) In addition, law enforcement agencies providing commentary informed the Department that there is precedent among law enforcement agencies to retain data for at least five years, and this provision achieves that goal. As this provision specifies, the Department shall retain this information indefinitely.

11 CCR § 999.229. This provision specifies audit and validation requirements necessary to ensure that the integrity of the data reported under AB 953 is not compromised. In particular, this provision requires the Department to keep, for three years, an audit log for incoming and outgoing transactions for each agency's submission of stop data. The regulations also require the Department to perform data validation on stop data, and require agencies to correct any errors in the data submission process. These requirements are necessary to ensure the data is accurate and reliable for subsequent analysis by the RIPA board, law enforcement agencies, researchers and the public.

V. TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Department relied upon the following in proposing these regulations:

1. ACLU et al., letter to the Racial and Identity Profiling Advisory Board and Attorney General Kamala D. Harris (Sept. 30, 2016).
2. ACLU et al., letter to Attorney General Kamala D. Harris (Sept. 15, 2016).
3. ACLU et al., letter to the Racial and Identity Profiling Advisory Board and Attorney General Kamala D. Harris (June 15, 2016).
4. ACLU et al., letter to the Racial and Identity Profiling Advisory Board and Attorney General Kamala D. Harris (June 14, 2016).
5. ACLU et al., letter to Attorney General Kamala D. Harris (June 10, 2016).
6. Asian Americans/Pacific Islanders in Philanthropy, AMEMSA Fact Sheet (Nov. 2011), at <http://aapip.org/files/incubation/files/amemsa20fact20sheet.pdf> [as of Nov. 21, 2016].
7. Assem. Com. on Appropriations, Analysis of Assembly Bill No. 953 (2015-2016 Reg. Sess.) as amended April 16, 2015, at http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0951-1000/ab_953_cfa_20150511_173248_asm_comm.html [as of Nov. 21, 2016].
8. Assem. Com. on Public Safety, Analysis of Assembly Bill No. 953 (2015-2016 Reg. Sess.) as amended April 16, 2015, at http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0951-1000/ab_953_cfa_20150420_093204_asm_comm.html [as of Nov. 21, 2016].

9. Assem. Com. on Public Safety, Off. of Assem. Floor Analyses, 3d reading analysis of Assem. Bill No. 953 (2015-2016 Reg. Sess.) as amended June 1, 2015, at http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0951-1000/ab_953_cfa_20150602_182716_asm_floor.html [as of Nov. 21, 2016].
10. Assem. Com. on Public Safety, Off. of Assem. Floor Analyses, Concurrence in Senate amendments to Assem. Bill No. 953 (2015-2016 Reg. Sess.) as amended August 31, 2015, at http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0951-1000/ab_953_cfa_20150909_201146_asm_floor.html [as of Nov. 21, 2016].
11. Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, Arrest-Related Death Report (2012), at http://www.bjs.gov/content/pub/pdf/cj11a_12.pdf [as of Nov. 21, 2016].
12. Community Oriented Policing Services, U.S. Department of Justice, Collaborative Reform Initiative: An Assessment of the San Francisco Police Department (Oct. 2016), at <https://ric-zai-inc.com/Publications/cops-w0817-pub.pdf> [as of Nov. 21, 2016].
13. Community Oriented Policing Services, How to Correctly Collect and Analyze Racial Profiling Data: Your Reputation Depends on It! (2002) at https://cops.usdoj.gov/html/cd_rom/inaction1/pubs/HowToCorrectlyCollectAnalyzeRacialProfilingData.pdf [as of Nov. 21, 2016].
14. Department of Justice, Information Bulletin: Use of Force Incident Reporting (Dec. 28, 2015) at https://oag.ca.gov/sites/all/files/agweb/pdfs/law_enforcement/dle-15-05-ib-instructions.pdf [as of Nov. 21, 2016].
15. Jennifer L. Eberhardt, et al., Data for Change: A Statistical Analysis of Police Stops, Searches, Handcuffings, and Arrests in Oakland, Calif., (June 23, 2016), at <https://stanford.box.com/v/Data-for-Change> [as of Nov. 21, 2016].
16. Jennifer L. Eberhardt, et al., Strategies for Change: Research Initiatives and Recommendations To Improve Police Community Relations in Oakland, Calif. (June 20, 2016), at <https://stanford.box.com/v/Strategies-for-Change> [as of Nov. 21, 2016].
17. Racial and Identity Profiling Advisory Board, Minutes of the RIPA Board and Subcommittee Meetings (2016) at <https://oag.ca.gov/AB953> [all URLs verified as of Nov. 21, 2016]:
 - a. Racial and Identity Profiling Advisory Board, Meeting Minutes (July 8, 2016) at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/mm-board-070816.pdf>.
 - b. Additional Data Elements Subcommittee, Meeting Minutes (Aug. 16, 2016) at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/mm-data-081616.pdf>; *id.* (Sept. 28, 2016) at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/mm-data-092816.pdf>; *id.* (Oct. 14, 2016) at **Error! Hyperlink reference not valid.**<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/mm-data-101416.pdf>.

- c. Definitions Subcommittee, Meeting Minutes (Aug. 11, 2016) at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/mm-def-081116.pdf>; *id.* (Sept. 26, 2016) at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/mm-def-092616.pdf>.
 - d. Outreach Subcommittee, Meeting Minutes (Aug. 25, 2016) at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/mm-outreach-082516.pdf>; *id.* (Sept. 27, 2016) at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/mm-outreach-092716.pdf>.
 - e. Searches and Seizures Subcommittee, Meeting Minutes (Aug. 8, 2016) at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/mm-searches-080816.pdf>.
 - f. Special Considerations/Settings Subcommittee, Meeting Minutes (Aug. 15, 2016) at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/mm-special-081516.pdf>; *id.* (Sept. 30, 2016) at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/mm-special-093016.pdf>.
 - g. Technology Subcommittee, Meeting Minutes (Aug. 19, 2016) at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/mm-technology-081916.pdf>; *id.* (Sept. 27, 2016) at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/mm-technology-092716.pdf>.
18. Senate Com. on Appropriations, Analysis of Assembly Bill No. 953 (2015-2016 Reg. Sess.) as amended June 30, 2015, at http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0951-1000/ab_953_cfa_20150817_105608_sen_comm.html [as of Nov. 21, 2016].
 19. Senate Com. on Appropriations, Analysis addendum of Assembly Bill No. 953 (2015-2016 Reg. Sess.) as amended June 30, 2015, at http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0951-1000/ab_953_cfa_20150827_151427_sen_comm.html [as of Nov. 21, 2016].
 20. Senate Com. on Public Safety, Analysis of Assembly Bill No. 953 (2015-2016 Reg. Sess.) as amended June 30, 2015, at http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0951-1000/ab_953_cfa_20150706_165955_sen_comm.html [as of Nov. 21, 2016].
 21. Senate Rules Com., Off. of Senate Floor Analyses, 3d reading analysis of Assembly Bill No. 953 (2015-2016 Reg. Sess.) as amended Aug. 31, 2015, at http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0951-1000/ab_953_cfa_20150830_194339_sen_floor.html [as of Nov. 21, 2016].
 22. Uniform Crime Reporting Program, Criminal Justice information Services Division, Federal Bureau of Investigation, U.S. Department of Justice, National Incident-Based Reporting System (NIBRS) User Manual, Version 1.0 (Jan. 17, 2013), at <https://ucr.fbi.gov/nibrs/nibrs-user-manual> [as of Nov. 21, 2016].

23. U.S. Department of Justice, A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned (Nov. 2000) at <http://permanent.access.gpo.gov/lps47663/184768.pdf> [as of Nov. 21, 2016].

VI. 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. These regulations apply only to state and local law enforcement agencies and do not impact private entities or business in any manner.

The proposed regulations will benefit the health and welfare of the residents of the State of California by establishing a uniform system for collecting and analyzing data on detentions and searches of individuals by law enforcement. The Legislature has declared that “[r]acial or identity profiling alienates people from law enforcement, hinders community policing efforts, and causes law enforcement to lose credibility and trust among the people whom law enforcement is sworn to protect and serve.” (Pen. Code, § 13519.4, subd. (d)(3).) The data collected will, in turn, allow the RIPA Board to serve its function specified by law, including: producing detailed findings on the past and current status of racial and identity profiling in California, making 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. (See Penal Code, §§ 13012, 13519.4.) The data will also provide local law enforcement agencies with vital information that will help develop training, improve community relations, and strengthen overall policing practices.

The costs incurred by both local and state government as a result of this new program are mandated by statute, and not created as a result of the proposed regulations. And, with respect to local governments, these costs are reimbursable mandates required by AB 953 itself. The actual costs that will be incurred as a result of the statute’s implementation are unknown, and can likely only be determined by the Commission on State Mandates once “test claims” are filed by city and county agencies subject to the stop data reporting requirement of Government Code section 12525.5.

However, the Department requested estimates from law enforcement agencies; based on those estimates, it appears that the costs to local and state government will be no less than \$81 million in one-time costs to purchase equipment and implement technical changes to local dispatch and/or record management systems. There will also be ongoing costs for personnel, training, and maintenance; most agencies, however, did not provide those costs in response to the Department’s inquiry.

The Department sent similar inquiries to affected state agencies. The estimated average costs for all state agencies that are subject to the stop data reporting requirements—recognizing that the Department has not received responses from all California university educational institutions subject to the stop data reporting requirement—is at least \$5 million, or approximately \$93,000 per agency as a one-time cost, with additional unknown ongoing costs. Again, these costs flow

from the reporting requirements imposed by AB 953 and are not attributable to these proposed regulations. A more detailed discussion of these estimates is set forth below.

The Department of Justice has made the following initial determinations:

FISCAL IMPACT ON LOCAL AND STATE GOVERNMENT

Among other things, AB 953 requires the Department of Justice to draft and issue regulations to implement the stop data reporting requirements of Government Code section 12525.5. This new program requires specified state and local agencies, including school districts that employ peace officers, to collect and report to the Department data regarding stops of their officers.

The Legislative Counsel's Digest of AB 953 notes that costs incurred by local agencies because of this state-mandated program are reimbursable:

By imposing a higher level of service on local entities that employ peace officers, the bill would impose a state-mandated local program.

The California Constitution requires the state 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.) Further, 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, the costs incurred by both local and state government as a result of this new program are mandated by statute, and not created as a result of the proposed regulations. And, with respect to local governments, these costs are reimbursable mandates required by AB 953 itself. The actual costs that will be incurred by local agencies as a result of the statute's implementation are unknown, and can likely only be determined by the Commission on State Mandates once "test claims" are filed by city and county agencies subject to the stop data reporting requirement of Government Code section 12525.5.

With respect to costs incurred by state government, state agencies impacted by the statute's mandates (the Department of Justice, the California Highway Patrol and California university educational institutions, i.e., the University of California, the California State University, and California Community Colleges), will be responsible for submitting budget change proposals for these costs.

ESTIMATES REGARDING FISCAL IMPACT ON LOCAL AND STATE GOVERNMENT

Although the full fiscal impact on local and state government is unknown because agencies have yet to design and develop their data collection programs in response to AB 953's stop data

mandate, the Department of Justice has attempted to estimate some of this information to obtain a sense of the potential costs Government Code section 12525.5 will impose upon state and local agencies.

As discussed below, the Department of Justice requested estimates from law enforcement agencies regarding the fiscal impact to state and local government in reporting the stop data required under AB 953. Based on those responses and other information that the Department has reviewed, specified below, it appears that the costs to local and state government will be no less than \$81 million in one-time costs. These one-time projected costs included purchasing equipment and implementing technical changes to local dispatch and/or record management systems. There will also be ongoing costs for personnel, training, and maintenance; most agencies, however, did not provide those costs. This also does not include state funds already allocated to the Department of Justice for implementation of AB 953 through the approved budget change proposal.

Agencies Impacted By Government Code Section 12525.5

The statute requires all city and county law enforcement agencies to comply with its reporting requirements, excluding probation officers and officers in a custodial setting. The statute also requires the California Highway Patrol, as well as all California state and university educational institutions, to comply with its reporting requirements.

Government Code section 12525.5 requires agencies subject to its reporting requirements to submit their stop data reports annually to the Department of Justice; the time frame within which an agency must begin reporting its stop data is determined by the size of the agency, with agencies with 1,000 or more officers reporting by April 1, 2019, agencies with 667-999 officers reporting by April 1, 2020, agencies with 334-666 officers reporting by April 1, 2022 and agencies with 1-333 officers reporting by April 1, 2023.

Currently the Department of Justice estimates that approximately eight agencies employ more than 1,000 officers (excluding probation officers and officers in a custodial setting), thus making those agencies subject to stop data reporting by April 1, 2019. By the year 2023, our office estimates an additional 570 additional law enforcement agencies, at a minimum, would be subject to these stop data reporting requirements.

Fiscal Impact to Local Agencies, Including School Districts

In attempting to determine Government Code section 12525.5's potential cost to local government, the Department of Justice reviewed AB 953's legislative history, including fiscal analyses provided by legislative staff and information submitted by stakeholders. In addition, the Department of Justice solicited input from law enforcement agencies to determine current data collection costs (for those agencies that already collect any type of stop data), as well as the agencies' cost estimates in complying with Government Code section 12525.5.

Estimates Related to Data Collection Requirements Provided in AB 953's Legislative History

On August 17, 2015, the Senate Committee on Appropriations held a hearing on AB 953. Its analysis of the bill included the following information regarding AB 953's fiscal impact related to data collection and reporting by local agencies:

Fiscal Impact:

Data collection, reporting, retention, and training: Major one-time and ongoing costs, potentially in the tens of millions of dollars annually to local law enforcement agencies for data collection, reporting, and retention requirements specified in the bill. Additional costs for training on the process would likely be required. There are currently 482 cities and 58 counties in California. To the extent local agency expenditures qualify as a reimbursable state mandate, agencies could claim reimbursement of those costs (General Fund). While costs could vary widely, for context, the Commission on State Mandates' statewide cost estimate for Crime Statistics Reports for the DOJ reflects eligible reimbursement of over \$13.6 million per year for slightly over 50 percent of local agencies reporting.

(Sen. Comm. on Approp., Rep. on Assem. Bill No. 953 (2015-2016 Reg. Sess.) as amended June 30, 2016, p. 1.)

In addition, on August 4, 2015, the California Police Chiefs Association (CPCA) issued a report voicing its concerns and costs estimates regarding AB 953. In that report, 86 police agencies throughout California provided estimates of the costs associated with implementing the bill's requirements. (California Police Chiefs Association, AB 953: CPCA Concerns and Cost Estimates (Aug. 4, 2015) pp. 6-18.) Of the 86 agencies that reported, two stated they would incur no additional costs, and 26 stated that additional costs were unknown. The remaining 58 agencies provided very loose estimates that totaled between \$4.1 and \$4.4 million in initial costs, and \$700,000 to \$1.1 million in annual costs thereafter. (*Ibid.*)

Estimates Provided by Law Enforcement Agencies Following Passage of AB 953

Following the passage of AB 953, the Department of Justice surveyed agencies to obtain information on their anticipated one-time technical development and personnel costs, and anticipated costs for training, equipment, and on-going system maintenance to comply with Government Code section 12525.5, based upon the minimum data identified in the statute to be reported.

According to feedback provided by agencies, the anticipated costs of initially implementing the stop data reporting program ranged from \$0 to \$2 million (responses varied from agencies regarding technical and personnel costs), with additional ongoing costs anticipated, but not specified, in most responses. As these significant variances demonstrate, and based on discussions the Department of Justice has had with law enforcement agencies, the cost to local governments will vary widely based on the degree to which their current technical environments can be leveraged to perform the required new functions for the collection and reporting of stop data.

Although the fiscal impact to local governments is unknown, based upon feedback from city and county law enforcement agencies, combined with data collected in the California Police Chiefs Association's report referenced above, the fiscal impact is estimated to be one-time costs of at least \$76 million, with unknown ongoing costs. This figure, however, is based in part upon estimates provided by a sample of local law enforcement agencies, and thus the true costs may be significantly more when looking at the entire group of reporting agencies.

Estimates Regarding Impact on School Districts

In addition to city and county law enforcement agencies, Government Code section 12525.5 will also impact school districts with police departments established pursuant to Education Code section 38000 that employ peace officers, as defined in California Penal Code section 830. As with city and county law enforcement agencies, the fiscal impact to school districts is unknown, because agencies have yet to design and develop their data collection programs in response to AB 953's stop data mandate. Based upon commentary from similarly situated city and county law enforcement agencies, the cost to school districts will vary based on the degree to which their current technical environments can be leveraged to perform the required new functions for the collection and reporting of stop data.

Nonetheless, the estimates the Department received from city and county law enforcement agencies are relevant to estimates of the fiscal impact to school districts because the collection of the stop data is fairly analogous in both school and non-school police departments. As discussed above, in the CCPA's report referenced above, 86 police agencies throughout California provided estimates of the costs associated with implementing the bill's requirements. (California Police Chiefs Association, AB 953: CPCA Concerns and Cost Estimates (Aug. 4, 2015) pp. 6-18.) Of the 86 agencies that reported, two stated they would incur no additional costs, and 26 stated that additional costs were unknown. The remaining 58 agencies provided very loose estimates that totaled between \$4.1 and \$4.4 million in initial costs, and \$700,000 to \$1.1 million in annual costs thereafter. (*Ibid.*) Thus, using the estimates from city and county police departments with similar numbers of sworn peace officers to school police departments provides relevant background regarding the potential fiscal impacts to those school districts.

It has been estimated that there are at least 24 school districts with their own police departments, and that these school districts serve over one million students in California, or roughly 1 in 6 students.

Other Non-discretionary Costs or Savings Imposed Upon Local Agencies.

The Department does not anticipate any additional non-discretionary costs, other than the estimates set forth above, imposed upon local agencies. Nor does it anticipate any savings incurred as a result of compliance with Government Code section 12525.5 and these proposed regulations.

Fiscal Impact on State Government

Fiscal Estimates Provided in AB 953's Legislative History

The bill analysis provided by the Senate Appropriations Committee contained the following estimates regarding AB 953's impact on state government:

CHP impact: Potentially significant one-time costs of about \$1 million (Motor Vehicle Account) to modify its existing database, create the program to generate the report, and train personnel. Ongoing increase in workload costs potentially in the range of \$250,000 to \$500,000 (Motor Vehicle Account) for data collection and reporting activities. Data for 2013-14 from the CHP indicates approximately 3.1 million enforcement actions potentially subject to the data collection and reporting provisions of this bill.

CSU/UC police impact: Potentially significant ongoing non-reimbursable costs to California State University police and University of California police officers – the CSM has determined CSU and UC use of campus police is a discretionary act, and therefore any mandated costs are not subject to state reimbursement.

(Sen. Comm. on Approp., Rep. on Assem. Bill No. 953 (2015-2016 Reg. Sess.) as amended June 30, 2016, p. 2.)

Estimates Provided by State Agencies Following Passage of AB 953

In addition to surveying local law enforcement agencies, the Department of Justice also solicited feedback from the California Highway Patrol as well as the police departments of campuses of the University of California and the California State University. The California Highway Patrol estimated fiscal costs of at least \$1.9 million in initial costs and \$240,000 in on-going costs annually. The police departments of the UCs and CSUs that responded to the Department's request for input estimated costs ranging from \$0 - \$415,000 in initial one-time costs, and \$0 – 150,000 in additional costs annually. It should be noted, however, that the feedback we received represented a very small sampling of the state university law enforcement agencies subject to the stop data reporting requirements of AB 953.

Accordingly, the estimated average costs for all state agencies that are subject to the stop data reporting requirements, recognizing that the Department of Justice has not received feedback from all California university educational institutions subject to the stop data reporting requirement, is at least \$5 million, or approximately \$93,000 per agency as a one-time cost, with additional unknown ongoing costs.

Finally, as reflected in its Budget Change Proposal (BCP), the Department of Justice estimated the fiscal impact of AB 953 as requiring \$9,879,000 General Fund spending authority in FY 2016-2017 and \$7,919,000 each FY thereafter to address the continuing mandates associated with AB 953's implementation, including the stop data program implemented by these regulations, as well as other mandates required by AB 953.

Methodology in Analyzing Survey Responses

As noted above, the Department of Justice estimates, based on feedback and discussions with state and local agencies potentially impacted by the mandate imposed by Government Code section 12525.5, that the fiscal impact on state and local agencies reporting this data to the Department (i.e., excluding the amount already provided in the Department's approved BCP) will be no less than \$81 million in one-time costs, and may be significantly more.

The methodology used to obtain this overall estimate is described below.

Factors to Consider: One-time technical development costs generally will be less for those agencies with existing record management systems that can be readily modified to accommodate additional data elements. Further, costs relating to data collection will be less for agencies that currently have mobile data capture equipment and systems. A small number of agencies are currently collecting stop data and thus reported minimal cost estimates for the implementation of AB 953. Local governments will also incur varied personnel-related costs based on the time needed to enter stop data in the field and associated data processing support. These costs will be greatly affected by the number of peace officers in the agencies and the volume of stops conducted.

Basis of Estimate: AB 953 separates agencies into four reporting categories based on the number of sworn peace officers at the agency (excluding those in a custodial setting). The larger the agency, the sooner it is required to report stop data. The average estimated one-time cost to the vast majority of agencies (those with less than 334 peace officers) totaled \$169,234 based on data submitted by 113 such agencies. Details from 26 of these agencies indicate that roughly 57% (\$96,170) of the costs are tied to technical development and 43% (\$73,063) are tied to personnel. Estimates from five larger agencies varied considerably, from no cost to \$2 million, depending mainly on the extent of required technical development and whether the agencies are already collecting stop data.

The Department of Justice took the average for each category of agency size, multiplied it by the number of agencies in that category statewide, and calculated the following totals for each category.

Local Agencies

Size of Agency	Average One-Time Cost Estimate on Survey	Number of Agencies	Total Estimated One-Time Cost
1 - 333	169,234	363	61,431,942
334 - 999	101,667	11	1,118,337
667 - 999	272,500	8	2,180,000
1,000 +	1,625,000	9	14,625,000
TOTAL:			76,056,942

State Agencies

Agency	Average One-Time Cost Estimate on Survey	Number of Agencies	Total Estimated One-Time Cost
CSUs & UCs	93,917	33	3,099,261
CHP	1,940,000	1	1,940,000
TOTAL:			5,039,261

Limitations on Estimates Provided: Many agencies from whom the Department of Justice solicited feedback did not differentiate between one-time costs (system development) and ongoing costs (personnel and system maintenance). Thus, the estimates they provided may have overlooked some cost factors. It should also be noted that many agencies indicated they were currently unable to provide cost estimates regarding the implementation of Government Code section 12525.5.

Cost or Savings in Federal Funding to the State

None.

SIGNIFICANT, STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES.

The Department of Justice has determined that there will be no significant statewide adverse impact directly affecting businesses. Although it is expected that agencies may purchase software and hardware systems to collect the stop data required by these proposed regulations, including purchasing these items from vendors, the economic impact would likely benefit, and not adversely affect, these businesses.

Cost impacts on representative private person or businesses

The Department of Justice is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) Create or eliminate jobs within California
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.

Impact on Small Businesses

The Department has determined that these proposed regulations will not affect small businesses. These regulations impose mandates only upon local and state agencies, and not upon small businesses. Small businesses are not legally required to comply with or enforce these proposed regulations. Nor will they derive a benefit or detriment from the enforcement of these regulations. Only law enforcement agencies subjected to the reporting requirements of

Government Code section 12525.5 will be required to incur costs as a result of Government Code section 12525.5. Although it is anticipated that agencies may purchase additional software and/or systems from vendors to assist in their compliance with these regulations, with respect to the collection and submission of this data electronically to the Department, these transactions will not materially impact small businesses.

Significant Effect on Housing Costs

None.

Business Report

The reporting requirements of these proposed regulations do not apply to businesses. Rather, only law enforcement agencies, as specified in Government Code section 12525.5 and these proposed regulations, will be required to collect and report stop data to the Department.

VII. CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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 RIPA Board.

In order 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 law enforcement agencies, the RIPA Board, researchers and the public, and so that meaningful review and analysis of this data is possible. As a result, the Department has preliminarily determined that there are no reasonable alternatives that would be more effective in carrying out the intent of AB 953.

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

Accordingly, the Attorney General believes that there are no reasonable alternatives to the proposed regulations. However, the Attorney General's Office invites and will consider all public comments on any proposed alternatives.

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

The proposed regulations will not have any adverse impact on small business. No other reasonable alternatives were presented to or considered by the Department that would be either more effective in carrying out the purpose and statutory mandate for which the action is proposed, or would be as effective and less burdensome.

IX. EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

These proposed regulations 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 purchase or modify existing computer systems, software and potentially other types of devices, in order to report the data required to the Department. These purchases will positively, not adversely, impact vendors and businesses who sell this equipment.

X. DOES THE PROPOSED REGULATORY ACTION CONTAIN FACTS, EVIDENCE, DOCUMENTS TESTIMONY, ON WHICH THE AGENCY RELIES TO SUPPORT AN INITIAL DETERMINATION THAT THE ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS?

No.

XI. REGULATIONS MANDATED BY FEDERAL LAW (11346.2(c))

The proposed regulatory action does not contain any regulations that are identical to any corresponding federal regulation.

All initial statement of reasons requirements for the proposed regulations has been satisfied.