

Addendum to Initial Statement of Reasons (OAL File No. Z-2016-1129-03)

On December 9, 2016, the Department of Justice (Department or DOJ) published proposed regulations regarding California's Racial and Identity Profiling Act of 2015. (See OAL File No. Z-2016-1129-03.) The Department also published an Initial Statement of Reasons (ISOR) regarding these proposed regulations. These and other rulemaking documents are available for review on the Attorney General's website at <https://oag.ca.gov/ab953/regulations>.

The Department heard public comment on the proposed regulations until January 27, 2017. During that time, the Department also held public hearings on January 12th (Los Angeles), January 18th (Oakland), and January 26th (Fresno). Oral comments on the proposed regulations were accepted at each of these hearings and transcribed by a certified court reporter. In addition, written comments were received by the Department throughout the public comment period, which closed on January 27, 2017. These comments, as well as the transcripts for the three hearings, are included in the rulemaking file, and are also available for review on the Attorney General's website at <https://oag.ca.gov/ab953/regulations>.

The Department reviewed all comments received during the public comment period. In response to these public comments, and to clarify the regulations as originally proposed, the Department has modified its proposed regulations, and has prepared this Addendum to the ISOR (Addendum). The revised regulations are available for public comment at <https://oag.ca.gov/ab953/regulations>, along with a document displaying the changes made to the original proposed regulations.

This Addendum explains the modifications and the reasons for these modifications in the "Necessity" section below. This Addendum also updates the section from the ISOR entitled "Technical Theoretical, and/or Empirical Study, Reports, or Documents" relied on for the proposed regulations. Finally, this Addendum updates the section from the original ISOR entitled "Economic Impact Assessment/Analysis."

IV. Necessity of Modifications to Proposed Regulations

Following is a statement of the necessity for each modification the Department has incorporated into the proposed regulations. This statement of necessity is intended to supplement and/or add additional reasons to the original statement of necessity set forth in the ISOR published on December 9, 2016. This Addendum is meant only to explain the reasons for these proposed modifications and does not supplant the original ISOR with respect to items that were not modified.

A. Article 1. Section 999.224 (Definitions)

The following definitions in this section have been modified, for the following reasons:

999.224, subd. (a)(1). "*Act.*" This definition was amended nonsubstantively to reorder the statutory provisions cited in the order in which they appear in California's Racial and Identity Profiling Act of 2015.

999.224, subd. (a)(3). “Custodial setting.” The definition of “custodial setting” has been amended in response to comments from law enforcement agencies to clarify that a “custodial setting” also includes the parking lots and grounds within the perimeter of correctional institutions, juvenile detention facilities, and jails.

999.224, subds. (a)(4)-(5). “Data element” and “Data Value.” Nonsubstantive edits were made to conform with a nonsubstantive revision to the data element of “perceived gender,” which has been amended to “perceived gender of person stopped” and with amendments to the data values for the data element of “perceived gender of person stopped.” These amendments are discussed below.

In addition, the following language was added to the definition of “data value”: “[r]eporting agencies shall ensure that the technical specifications for data values are consistent with these regulations and in doing so shall follow the data dictionary prepared by the Department.” This amendment is intended to provide guidance to law enforcement agencies so that agencies develop technical specifications for their computer systems that are consistent with the requirements of the regulations. To assist agencies in this objective, the regulations also reference the data dictionary that the Department shall prepare, as required by section 999.228, subdivision (f). As subdivision (f) makes clear, this data dictionary is designed to provide technical specifications regarding the requirements in these regulations and must be consistent with those requirements.

999.224, subd. (a)(6). “Department.” The definition of “Department” has been revised nonsubstantively to clarify that the term “Department” refers to the California Department of Justice *or* – not “and” – the California Attorney General to provide clarity to the definition of the California Department of Justice, a state agency that is referred to interchangeably as the California Department of Justice or the Office of the California Attorney General.

999.224, subd. (a)(7). “Detention.” The phrase “person’s body” has been replaced with “person,” which is a nonsubstantive editing change.

999.224, subd. (a)(9). “K-12 Public School Setting.” A nonsubstantive editing change was made to the definition of “K-12 Public School Setting,” by deleting the word “setting.” References to this term (K-12 Public School) have been similarly amended throughout the regulations to reflect this nonsubstantive editing change.

999.224, subd. (a)(11). “Reporting agency.”

999.224, subd. (a)(11)(A)(1). A nonsubstantive editing change was made to this paragraph for clarity, by separating the previous single sentence in this provision into two sentences, and using the phrase “government agencies or private entities, instead of “government or private entities.”

999.224, subd. (a)(11)(C)(1)(a). “*The law enforcement agencies of California state educational institutions.*” This definition was amended to delete the reference to Penal Code section 830, in order to track the provision more closely with the cited Education

Code section (Education Code section 38000). Education Code section 38000, subdivision (b), is the specific code section that gives school districts the authority to establish police departments. This nonsubstantive amendment was an editing change done in order to more closely mirror the language in Education Code section 38000, subdivision (b).

999.224, subd. (a)(11)(C)(2)(a)(1)-(3). *“The law enforcement agencies of California university educational institutions.”* A nonsubstantive editing change was made to this definition, replacing “law enforcement agencies” with “police departments,” because the statutory provisions referenced (Education Code sections 89560, 92600, and 72330) use the term “police department” and not “law enforcement agency.” This edit was made to more closely track the statutory provisions referenced.

999.224, subd. (a)(13). “Search.” A nonsubstantive editing change was made to the definition of “search,” to add the words “under his or her” before the word “control,” to read “search of a person’s body or property in the person’s possession or under his or her control.” The phrase “as defined in these regulations” was added following the term “consensual search.” These edits were done for clarity, and are not substantive edits.

999.224, subd. (a)(14). “Stop.” The definition of the term “stop” was revised to clarify that the meaning of the term “search,” as well as the definition of the term “detention,” refer to the definitions provided for those terms in the regulations. In the previous version, only the term “detention” contained the phrase “as that term is defined in these regulations.” This is a nonsubstantive edit for clarity.

999.224, subd. (a)(15). “Stop data.” This is a new definition that has been added to the regulations, which defines “stop data” to mean the data elements and data values that must be reported to the Department. This definition was added in response to comments received questioning what “stop data” refers to, and provides clarity that the term refers to the information that must be collected and reported for each stop subject to these reporting requirements.

999.224, subd. (a)(16). “Student.” The definition of “student” was amended to clarify that the term “student” includes not only persons between the ages of 6 and 18 who are not otherwise exempt from compulsory education laws (which was in the original version), but also persons up to 22 years of age who are being provided special education and services, as provided in Education Code section 56026. These amendments were made in response to comments noting it is not clear from the original regulations whether these persons are included in the definition of student and requesting the addition of language to clarify that these persons are “students” within the meaning of these regulations.

The term “or excluded” was removed from the definition of “student” to more closely track the statutory language it references in Education Code section 48200, which does not use the word “excluded,” but rather only uses the word “exempt.” This provision was also amended to make clear that the reporting requirements of this chapter regarding “students” apply only to interactions between officers and students that take place at a K-12 Public School, and not in other locations.

999.224, subd. (a)(16)(A). This example was amended to make clear that the definition of student applies to a person who is not enrolled in a K-12 Public School because he or she has been expelled “or is temporarily suspended.” It is a nonsubstantive edit that was provided to further clarify the definition of “student.”

999.224, subd. (a)(16)[old](C). This example was deleted as a substantive edit because a person between the ages of 6 and 18 who has received his or her G.E.D. has satisfied California’s compulsory education law (Education Code section 48200) and is thus not a student; this example was thus deleted to conform with the definition of “student.”

999.224, subd. (a)(16)[new](C). Nonsubstantive stylistic edits were made to the example in this provision.

999.224, subd. (a)(16)[new](D). This provision (giving as an example of a “student,” a 21-year old special education student enrolled in a K-12 Public School) was added as another example of when a person is deemed to be a “student” for purposes of these regulations. This example conforms to and is intended to clarify the revision to the definition of “student” to explicitly include persons up to 22 years of age who are being provided special education and services under Education Code section 56026.

999.224, subd. (a)(16)[new][E]. This example was added to clarify that the reporting requirements of this chapter regarding “students” apply only to interactions between officers and students that take place at a K-12 Public School, and not elsewhere, such as at a mall. It clarifies that interactions with students enrolled at a K-12 Public School that take place outside of that setting are subject to the regular reporting requirements set forth in section 999.227, subdivision (a), and not the reporting requirements unique to K-12 Public Schools set forth in section 999.227, subd. (e)(2) and (3). This is a nonsubstantive edit intended to clarify the applicability of the definition of “student” outside of a K-12 Public School setting.

999.224, subd. [new] (a)(17). *“Unique Identifying Information.”* The regulations were amended substantively to add a new term entitled “Unique Identifying Information,” which refers to personally identifying information that, either alone or in combination with other data reported, is likely to reveal the identity of the individual officer who collected the stop data. This term does not include the minimum information that is specified in Government Code section 12525.5, subdivision (b), i.e., the time, date and location of stop; reason for stop; result of stop; warning or citation issued if warning was provided or violation cited; offense charged, if an arrest was made; perceived race or ethnicity, gender and approximate age of person stopped; and actions taken by officer during the stop.

This definition was added after further review of the regulations and the statute, as well as comments received on the regulations, in order to give meaning to the term “unique identifying information” that is referenced in Government Code section 12525.5, subdivision (d). The definition recognizes that some information collected during a stop may, if combined with other data elements, lead to the disclosure of information that may identify the officer who made the stop, which is prohibited by Section 12525.5, subdivision (d). The definition also, however, ensures that information about the stop itself – as opposed to any information collected regarding

the officer who made the stop – cannot be considered to be an “Officer’s Unique Identifying Information.”

999.224, subd. [old] (a)(17). “*Weapon.*” The definition for “weapon” was deleted for clarity, because the regulations already identify specific types of instruments in the data values for “Actions Taken by Officer During Stop.” Further, other references to “weapon” in the regulations do not require a specific definition (for example, in the data values for the data elements for “Reason for Stop,” “Basis for Search,” “Contraband or Evidence Discovered, if Any,” and “Type of Property Seized”). Accordingly, in order to streamline the regulations and eliminate a definition that is unnecessary, this provision was deleted.

B. Article 2. Section 999.225 (Law Enforcement Agencies Subject to Government Code section 12525.5)

The following provisions within this section have been modified, for the reasons set forth below:

999.225, [new] subs. (b) and (c). These provisions were revised to make clear that these regulations do not apply to probation officers or to stops made by an officer in a custodial setting. The previous version differed in that it stated that peace officers who work in a custodial setting are not subject to the regulations. The amendment makes clear that, in instances when an officer may work at times in a custodial setting and at other times in a non-custodial setting, the officer is only required to report stops that occur in a non-custodial setting. The revision was made for clarity and is a nonsubstantive edit.

999.225, subd. (c)(1) and (2). The regulations were revised to delete the examples provided. These are nonsubstantive edits made in order to streamline the regulations, because the example in former subdivision (c)(1) is redundant of the edits made to [new] subdivision (c), and the example in former subdivision (c)(2) is redundant of the provisions in the regulations regarding reporting requirements at section 999.227, subd. (d)(3).

999.225, [new] subd. (d). This provision was amended nonsubstantively to make clear that all peace officers of reporting agencies, except for probation officers, are subject to these regulations. This provision was also amended nonsubstantively regarding the requirement that an officer must report stops while assigned or contracted to work for another governmental agency or private entity, pursuant to a contract or memorandum of understanding between the reporting agency and that governmental agency or private entity. The amendment clarifies that there must be a contract or memorandum of understanding with the reporting agency.

This provision was also amended substantively to remove the requirement that an officer must report stops that occur when he or she is off-duty or if the officer identifies himself or herself as a peace officer, and to delete examples [in former subdivisions (c)(4) and 5)] to reflect this change. This amendment was made upon further review of the regulations because of the infrequent nature of such stops and the practical and logistical complications that may arise regarding the reporting by an officer who is off-duty. For example, an officer who is off-duty will be unable to complete the reporting requirement by the end of his or her shift, and may not have access to mobile or electronic devices, or other means of reporting the data electronically, as he or she would if on-duty.

C. Article 3. Section 999.226 (Data Elements to be Reported)

The following provisions within this section have been modified, for the reasons set forth below:

999.226, subd. (a)(2). Date, Time and Duration of Stop

999.226, subd. (a)(2)(B). *Time of Stop*. In response to comments received regarding the regulations, this data element was substantively amended to require only the *approximate* time that the stop began. This was done because, as a practical matter, an officer may not be able to recall, because he/she is reporting on the data at some point after the stop is concluded, the exact time the stop took place.

999.226, subd. (a)(2)(C). *Duration of Stop*. In response to comments received regarding the regulations, this provision was amended to require the officer to enter the approximate length of the stop in minutes, rather than selecting from among the ranges of time presented in the original proposed regulations. The reason for this amendment is to ensure that accurate information is captured, as opposed to a range of time, and to provide greater insight into the stop. For example, a stop that lasts 31 minutes differs from a stop that lasts 60 minutes, yet under the previous version, both stops would be reported under the category of “31-60 minutes.”

999.226, subd. (a)(2)(C)(1)-(2). The examples provided to demonstrate how to measure the duration of a stop have been amended to reflect the new proposed requirement of actual approximate length of stop, rather than a range of time.

999.226, subd. (a)(3). Location and Type of Stop

This data element was substantively revised to eliminate the type of stop and to simplify the options presented to officers to record the location of the stop.

These provisions were amended in response to comments regarding the regulations and upon further review regarding (1) whether agencies might inadvertently report residential locations through the publication of geographic coordinates; (2) whether agencies universally had the ability to collect geographic coordinates, particularly in rural areas where Internet may be sparse and given some agencies do not equip their officers with mobile devices; and (3) whether technical obstacles would prevent the Department from collecting geographic coordinates submitted to it due to varying ways that geographic coordinates can be reported depending upon the system or vender used for collection of this information.

In response to these concerns, the regulations have been revised to eliminate the option to report location using geographic coordinates and to eliminate the requirement to provide a zip code. Instead, for any location – including a residence or K-12 Public School – the regulations provide that the officer shall report one of the following options, which are provided in order of preference: block number and street name; closest intersection; or highway and closest highway exit. If none of these options are available, a road marker, landmark, or other description may be reported, except that the officer cannot provide a street address if the location is a residence. The revised regulations also require the officer to report the city in which the stop took place, using a list provided by the Department.

999.226, subd. (a)(3)(E) *Type of Stop*. This data element was removed to streamline the regulations and because the information that would have been collected pursuant to this element – vehicle, non-vehicle, or bicycle – can, for the most part, be determined from other responses provide by officers including their responses to the data element “Reason for Stop.”

999.226, subd. (a)(4). Perceived Race or Ethnicity of Person Stopped

This data element was previously located at section 999.226, subdivision (a)(8). It was moved to section 999.226, subdivision (a)(4).

999.226, subd. (a)(4)(A)(1)-(4). *Use of Word “Or.”* The previous version used the data values of (1) “Asian *or* Pacific Islander”; (2) “Black *or* African American;” (3) “Hispanic *or* Latino/a;” and (4) “Middle Eastern *or* South Asian.” This provision has been revised in response to comments, because the use of the word “or” has different meanings in this context. Specifically, in (1) and (4), the word “or” refers to two different racial or ethnic categories, while in (2) and (3) the word “or” signifies two synonymous terms. This provision was thus revised to use “/” for synonymous terms and “or” for different categories.

999.226, subd. (a)(4)(A), (B), and (G). *Asian and/or Pacific Islander*. These provisions were substantively amended to separate the previous single choice for “Asian or Pacific Islander” into two separate choices: “Pacific Islander” and “Asian.” These amendments were in response to comments received regarding the regulations, which highlighted the distinct histories of and diversity between the Asian and Pacific Islander communities.

There is also significant precedent for decoupling these two racial/ethnic choices. Namely, the racial classifications issued by the federal Office of Management and Budget (OMB) and used by the Census Bureau require five minimum categories for race (White, Black or African American, American Indian or Alaska Native, Asian, and Native Hawaiian or Other Pacific Islander).

Because “Pacific Islander” has been separated into its own perceived racial or ethnic category, the definition of “Asian or Pacific Islander” has been substantively amended into two separate definitions: a new definition for “Pacific Islander” and an amended definition for “Asian.” The definition for “Pacific Islander” comes from the definition used in the 2010 Census and by the OMB.¹ The definition of “Asian” was expanded beyond the definition included in the original regulations for clarifying purposes, and comes from the definition used in the 2010 Census and by the OMB, but excludes the persons already captured by other choices for this data element.²

999.226, subd. (a)(4)(H). This provision, which provides a definition for “White,” was revised nonsubstantively to remove non-inclusive examples of specific nationalities. This amendment was in response to comments questioning whether the examples were necessary.

999.226, subd. (a)(5). Perceived Gender of Person Stopped

¹ <https://www.census.gov/prod/cen2010/briefs/c2010br-12.pdf>

² <https://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf>

This data element was previously located at section 999.226, subdivision (a)(9). It was moved to section 999.226, subdivision (a)(5).

999.226, subd. (a)(5)(A). The original version of this provision required an officer to select only one of the following data values: Male; Female; Transgender man; Transgender woman; Gender nonconforming. This provision was further revised to permit the officer to select “Gender nonconforming” in addition to any one of those categories, e.g., an officer may select both Male and Gender nonconforming. This provision has been further amended to require an officer to select “Gender nonconforming” if the officer cannot determine whether which of the other data values applies to the person stopped (Male; Female; Transgender man/boy; or Transgender woman/girl).

These amendments were in response to comments that persons of all genders may appear to be gender nonconforming, and that an officer may be unable to perceive the gender of the person. As a result, this provision was revised to provide officers with the option of selecting only gender nonconforming, or both gender nonconforming and a specific gender.

This provision was also revised to add “boy” and “girl” to the categories of “Transgender man/boy” and “Transgender woman/girl,” respectively. This nonsubstantive amendment was in response to comments that stops are not limited to adults, and that minors may also be stopped.

999.226, subd. (a)(5)(B)(1) and (2). Similarly, the definitions of “Transgender man/boy” and “Transgender woman/girl” were amended in response to comments that stops are not limited to adults, and that minors may also be stopped, so the phrases “or boy if they are a minor,” and “girl if they are a minor” were added to these definitions.

999.226, subd. (a)(5)(B)(3). The definition of “Gender nonconforming” was revised to replace the word “stereotypes” with “conceptions” for clarity and in response to comments received on the regulations. The definition was also revised to add an explanation that a person of any gender of gender identity may be gender nonconforming, and therefore an officer may select “Gender nonconforming” in addition to any of the other gender data values, for the reasons noted above.

***(new)* 999.226, subd. (a)(6). Person Stopped Perceived to be LGBT**

The proposed regulations have been substantively amended to add another data element that must be collected by officers for each stop. This data element is entitled “Person Stopped Perceived to be LGBT,” and asks an officer to submit a “yes” or “no” response to the question of whether the officer perceived that the person stopped was LGBT. (If the officer does not have any perception of whether the person is LGBT, the officer should answer “No.”) “LGBT” refers to lesbian, gay, bisexual or transgender. The officer is to report his or her perception based on personal observation, without asking whether the person is LGBT. If an officer selects transgender in response to the data element for “Perceived gender,” he or she must also select “Yes” in response to this data element.

This data element was added in response to recommendations from the RIPA Board and other stakeholders urging the DOJ to include a specific data element regarding perceived sexual

orientation and/or membership in the LGBT community in the regulations, in addition to the question about perceived gender.

The inclusion of data to be collected regarding whether the officer perceived that the person stopped was LGBT is in keeping with AB 953's goal of identifying and eliminating racial and identity profiling. Among other things, AB 953 specifically expanded the definition of "racial or identity profiling" to include gender identity or expression and sexual orientation, among other bases, and also expanded the definition of "racial or identity profiling" to include not only persons subject to a stop, but decisions regarding "the scope or substance of law enforcement activities following a stop," including interactions that occur during a stop, as well as the outcomes of a stop. (Pen. Code, § 13519.4, subd. (e).)

Accordingly, collecting information regarding whether the officer perceived the person stopped is LGBT will enable researchers to determine whether (1) persons perceived to be LGBT are being stopped in disproportionate numbers; and (2) whether persons perceived to be LGBT are treated differently during a stop. This data element will enable the RIPA Board and researchers to comprehensively track interactions between peace officers and individuals they perceive to be LGBT to help assess whether bias exists with respect to gender, gender nonconformity, or sexual orientation.

Given that, based on field testing, the average time to complete the data entry for each stop was approximately 2.5 minutes, a data element that requires only a yes/no answer should not result in much, if any, increase in data entry completion time. Moreover, because the data elements and values reported as part of the field testing have been streamlined (for example, "Reason for Presence at Scene" has been eliminated, and data values for Actions Taken During Stop have been streamlined), the additional time to report this data element will likely be offset by the time saved by the streamlining of other data elements and values.

999.226, subd. (a)(7). Perceived Age of Person Stopped

This data element was previously located at section 999.226, subdivision (a)(10). It was moved to section 999.226, subdivision (a)(7).

The previous version of the regulations required officers to select from categories of age ranges in submitting the officer's perception of the age of the person stopped. The Department received comments that the age brackets reflected in the original version do not sufficiently distinguish between substantially different ages and since the brackets reflected unequal intervals, they would pose a challenge to data analysis. For example, under the previous regulations a person perceived to be 18 and a person perceived to be 24 would fall within the same category. The revised regulations now require an officer to provide the actual approximate perceived age of the person stopped, using Arabic numerals (e.g., 1, 2, 3, 4) rounded to the closest whole number.

999.226, subd. (a)(8). Person Stopped Had Limited or No English Fluency

This data element was previously located at section 999.226, subdivision (a)(11). It was moved to section 999.226, subdivision (a)(8).

The original regulations required officers to select this data element if the officer perceived that the person stopped had limited English fluency or a pronounced accent. This provision was amended to remove the term “or pronounced accent,” in response to comments that “pronounced accent” was ambiguous. For example, a person could have a pronounced accent in the English language from a particular region within the United States (e.g., a Southern accent), or a particular country (e.g., an Irish accent).

In addition, the provision was revised to include “no English fluency,” in addition to “limited English fluency,” in response to comments to make clear that persons who speak no English would also fall within this category.

999.226, subd. (a)(9). Perceived or Known Disability of Person Stopped

This data element was previously located at section 999.226, subdivision (a)(12). It was moved to section 999.226, subdivision (a)(9).

This provision was amended to clarify that the provision does not alter “any existing requirements to comply with reasonable accommodation and anti-discrimination laws.” This is a nonsubstantive editing amendment to the original sentence.

The provision was also amended to clarify that this data element should be completed if the officer had prior knowledge that the person stopped had one or more of the data values provided. Previously, this data element applied only if the officer perceived that the individual had these conditions, or if the person advised the officer that he/she had one or more of these conditions. This is a substantive change intended to cover the situation where an officer may have had prior contact with the person stopped, or if someone other than the person stopped advised the officer that the person had one or more of these conditions.

This provision also previously offered five choices from which officers must select in completing this data element: deafness or difficulty hearing; other physical disability; impaired mental health or psychiatric condition; developmental disability; or none. The choices for this data element have been amended in response to comments requesting that the regulations include additional choices to capture a broader range of perceived disabilities. News reports also chronicle concerns regarding interactions of officers with persons with disabilities, especially those with mental disabilities. (See, e.g., <http://www.latimes.com/local/lanow/la-me-el-cajon-mentally-ill-20160928-snap-story.html>; <http://www.nbcnews.com/news/us-news/half-people-killed-police-suffer-mental-disability-report-n538371>.)

Specifically, “developmental disability” was changed to “intellectual or developmental disability, including dementia,” in order to clarify that this category applies to intellectual disabilities that may evolve later in life, such as dementia and to conform with recommended terminology from advocates. “Impaired mental health or psychiatric condition” was also changed to “Mental health condition,” for purposes of simplicity. “Other physical disability” was changed to “Other disability” to capture all other disabilities, and not just other physical disabilities that an officer may observe.

(former) 999.226, subd. (a)(4). Reason for Presence at Scene of Stop

The original regulations included a data element entitled “Reason for Presence at Scene of Stop.” The regulations have been amended to delete this element completely in response to comments that including “Reason for Presence at Scene of Stop” in addition to “Reason for Stop” is confusing and redundant, particularly for traffic violations. In many instances, the “Officer’s Type of Assignment” also provides similar information that could have been provided by the data element “Reason for Presence at Scene of Stop.”

999.226, subd. (a)(10). Reason for Stop

Relocation and renumbering of provisions regarding Reason for Stop. In the original regulations, the data element entitled “Reason for Stop” was set forth at section 999.226, subdivision (a)(5). However, because the data elements for demographic information regarding the person stopped (“Perceived Race or Ethnicity of Person Stopped,” “Perceived Gender of Person Stopped,” “Perceived Age of Person Stopped,” “Person Stopped has Limited or No English Fluency,” and “Perceived or Known Disability of Person Stopped”) were moved from 999.226, subd. (a)(8)-(12) to 999.226, subd. (a)(4)-(9), respectively (including “Person Stopped Perceived to be LGBT,” which was added as a new element, at (a)(6)), the data element for “Reason for Stop” is now located at section 999.226, subdivision (a)(10).

999.226, subd. (a)(10)(A). This provision was amended substantively to require officers to select only the one, primary reason for the stop and to clarify that justifications for the stop that did not inform the officer’s primary reason for the stop should not be selected.

This amendment was in response to comments noting that it is critical for officers to isolate the primary reason for the stop, because there will typically be one primary reason and selecting this reason alone will help prevent against the selection of reasons that may have presented themselves during the detention or search. The amendment was also made due to concerns that allowing multiple responses might reduce data integrity and complicate data analysis.

999.226, subd. (a)(10)(A)(1). *Traffic Violation.* This provision was amended nonsubstantively to make clear that an officer will be able to use the Department’s standard California Justice Information Services (CJIS) Offense Table to select the applicable Vehicle Code section.

The prior data value “Status Violation” was replaced with “Non-moving violation, including registration violation.” This nonsubstantive amendment responds to comments that the term “status violation” was ambiguous and to ensure that this category captures traffic violations that do not involve either a moving car or an equipment violation (e.g., improper use of a cell phone or expired registration). This provision was also amended to ensure that the officer select only one type of violation, which should reflect the primary type of violation.

999.226, subd. (a)(10)(A)(2). *Reasonable suspicion that the person was engaged in criminal activity (other than a traffic violation).* The data values were revised as follows:

- 999.226, subd. (a)(9)(A)(2). The phrase “other than traffic violation” was removed from the description of the data value; instead, the regulations state affirmatively: “This data value should not be selected if “Traffic violation” is the reason for the stop.” This is a

nonsubstantive edit for clarity. Because reasonable suspicion is often assessed on the totality of circumstances, the provision was revised to clarify that the officer shall select *all applicable* data values. The provision was also revised to clarify that, with respect to the required code section, the officer should identify only the primary applicable code section. Although an officer may have reasonable suspicion that a variety of crimes have been committed, permitting or requiring multiple code sections would increase the reporting burden on officers and systems without increasing the utility of the data.

- 999.226, subd. (a)(10)(A)(2)(*new*)(a). *Officer witnessed commission of a crime*. This new subcategory was added because none of the other subcategories captured this reason for a stop.
- 999.226, subd. (a)(10)(A)(2)(*renumbered*)(b). *Person matched suspect description*. This pre-existing subcategory was amended nonsubstantively to remove the word “person” as a stylistic edit.
- 999.226, subd. (a)(10)(A)(2)(*renumbered*)(e) – (h). These pre-existing subcategories were amended nonsubstantively to replace the term “person taking actions” or “person suspected” with “Actions” or “Suspected,” respectively, as a stylistic edit.
- 999.226, subd. (a)(10)(A)(2)(*deleted*)(h). *Person carrying objects in plain view used in a commission of crime*. This subcategory of “reasons suspicion that the person was engaged in criminal activity” was deleted in its entirety to streamline the regulations and because it is now captured by “officer witnessed commission of a crime,” and may be duplicative of “carrying suspicious object.”

999.226, subd. (a)(10)(A)(*deleted*)(3). *Probable Cause to Arrest*. This data value for “Reason for Stop” has been deleted in its entirety because it is now encompassed in the subcategory “officer witnessed commission of crime,” which is a new subcategory for the data value of “Reasonable Suspicion.” This amendment is designed to streamline the choices from which an officer must elect in determining Reason for Stop.

999.226, subd. (a)(10)(A)(*deleted*)(4). *Probable cause to search*. This data value as a choice for “Reason for Stop” has been deleted in its entirety because probable cause to search requires a higher legal standard than reasonable suspicion, and this data value should be encompassed within either the subcategories set forth for the data value entitled, “Reasonable suspicion that the person was engaged in criminal activity,” or the data value, “Consensual encounter resulting in a search.” Because an officer will also have to explain the “Basis for search” as part of this data collection, “Probable cause to search” did not provide additional analytic value as an option here.

999.226, subd. (a)(10)(A)(3). *Known to be on parole/probation/PRCS/mandatory supervision*. This data value for “Reason for Stop” has been amended nonsubstantively to clarify that an officer must know the person is on parole/probation/PRCS/mandatory supervision prior to the stop for this data value to be a legitimate reason for the stop. This value cannot be selected if the officer learns only after he/she stops the person that the person is on

parole/probation/PRCS/mandatory supervision, because information gained after the fact cannot inform the officer's decision to stop a person.

999.226, subd. (a)(10)(A)(new)(4). *Knowledge of outstanding arrest warrant/wanted person.* This data value as a choice for "Reason for Stop" was added to the regulations in response to comments that an officer may stop a person he or she knows to be the subject of an outstanding arrest warrant, but no existing data value would be applicable to that situation. The provision specifies that officers can only select this data value if they know, before the person is stopped, about the outstanding warrant and if the outstanding warrant was the reason for the stop. If the officer learns about the warrant after the person has already been stopped, he/she may not select this data value as the reason for the stop.

999.226, subd. (a)(10)(A)(new)(5). *Investigation to determine whether person was truant.* This data value as a choice for "Reason for Stop" was added to the regulations in response to comments that school-age persons are commonly detained to check for truancy, but no existing data values would be applicable in that situation.

999.226, subd. (a)(10)(A)(6). *Consensual encounter resulting in search.* This data value for "Reason for Stop" has been amended to delete the term "consensual search" and replace it with "search." This substantive amendment is intended to capture both consensual as well as nonconsensual searches, because either may result from a consensual encounter, so that officers may select this option if a consensual encounter (which is not a stop) leads to a search (which, as defined in the regulations and Government Code section 12525.5, subd. (g)(2), is considered a stop and is reportable even if the search is consensual).

Accordingly, the phrase "regardless of whether the resulting search is consensual" was added to reiterate that, as set forth in the statute, the reporting requirements do not apply to consensual encounters unless that encounter results in a search, and that any such searches that result from that consensual encounter must be reported, even if the search was consensual. By contrast, if a consensual encounter results in a detention (and not a search), the officer shall not select this data value and must instead select a data value to explain the reason for the detention.

999.226, subd. (a)(10)(deleted)(B) *"Reason for Presence at Scene of Stop" Differs from the "Reason for Stop."*

This provision has been deleted in its entirety because the data element for "Reason for Presence at Scene of Stop" has been deleted. As a result, this provision is no longer necessary.

999.226, subd. (a)(10)(new)(B). *Required Brief Narrative Explanation for Reason for Stop.*

The regulations have been revised to require an officer to complete a brief explanation (250-character maximum) in addition to selecting one of the data values identified in section 999.226, subd. (a)(10)(A) as the primary reason for the stop. This substantive amendment is in response to recommendations from the RIPA Board, academics, and other stakeholders encouraging the addition of an open narrative for reason for stop in order to fully capture the statutory element for "reason for stop." (See e.g., *Floyd v. City of New York* (SDNY 2013) 959 F. Supp. 2d 668, available at <https://ccrjustice.org/sites/default/files/assets/Floyd-Remedy-Opinion-8-12-13.pdf>.,

for a district court’s discussion regarding why check boxes alone were insufficient to ascertain the reason for the stop and assess potential disparities, in the context of the City of New York’s stop data collection program.)

Based on comments received, as well as the experience of other jurisdictions as articulated in police practices cases concerning racial profiling such as *Floyd*,³ the Department has added a brief explanatory field in addition to specified data values. The decision was further informed by the Department’s own field tests of the proposed regulations, in which officers collected stop data that included an explanatory field for both reason for stop and basis for search. The length of time to complete those narratives was a median time of 16 and 22 seconds, respectively, based upon a maximum 150 characters. The regulations were amended to provide examples of the type of information expected to be included in this open narrative field and to provide, consistent with the statute, that the officer shall not include any personal identifying information regarding the person stopped or Unique Identifying Information of any officer in this explanatory field.

999.226, subd. (a)(new)(11). Stop Made in Response to a Call for Service

As discussed above in explaining why the regulations were amended to delete “Reason for Presence at Scene of Stop,” the regulations were also amended to add a new element that shall only be selected if the stop was made in response to a call for service, radio call, or dispatch. While it was determined that “Reason for Presence at Scene” may be redundant with other information being captured, stops that occur as a response to a call for service, radio call, or dispatch are important to capture independently to distinguish between stops that are the result of a non-discretionary event (e.g., 911 calls to which an officer must respond) and interactions that reflect officer-initiated activity.

This new data element will provide critical context to understand whether the officer had discretion to go to the scene of the stop – including in situations when subsequent decisions and actions made by the officer did involve officer discretion. The provision also makes clear that not all interactions that occur in response to a call for service are subject to these regulations; rather, only interactions that meet the definition of “stop” are to be reported. Finally, the provision makes clear that a call to service is not a reason for a stop.

999.226, subd. (a)(12). Actions Taken by Officer During Stop

The choices for the data element for “Actions Taken by Officer During Stop” were amended in response to comments in order to eliminate ambiguity and adequately capture the range of actions that can be taken by an officer during a stop. The amendments to these data values are as follows:

- 999.226, subd. (a)(12)(A)(1)-(2). The previous data value for “person removed from vehicle by order or physical contact” was separated into two choices: “removed from

³ See, e.g., Susan Hutson, Independent Police Monitor, Review of the New Orleans Police Department’s Field Interview Policies, Practices, and Data (Mar. 12, 2013), available at <http://www.nolaipm.gov/main/uploads/File/Reports/%20FINAL%20STOP%20AND%20FRISK.pdf>.

vehicle by order” and “removed from vehicle by physical contact.” This amendment was made in response to comments and because the experience of being verbally ordered from a car and being physically removed from a car are sufficiently different to require two separate entries.

- 999.226, subd. (a)(12)(A)(3). The previous data value for “field sobriety check conducted” was revised to “field sobriety test conducted.” This amendment was intended to capture only tests actually conducted on a person, and not “checks,” which may occur any time an officer approaches a vehicle to informally “check” on a person’s field sobriety. The amendment is designed to eliminate ambiguity between what action should be captured by this data value.
- 999.226, subd. (a)(12)(A)(4). The previous data value for “curbside detention” was amended nonsubstantively in order to provide an explanation regarding the meaning of “curbside detention,” specifically that it includes when an officer directs the person to sit on the sidewalk, curb, or ground. It is intended to clarify ambiguity and to distinguish between an officer ordering an individual out of a car as opposed to ordering an individual (either a pedestrian, driver or passenger) to sit in a specific location (even if there is no curb).
- 999.226, subd. (a)(12)(A)(5). The previous data value for “handcuffed” (previously (a)(6)(A)(4)) was amended to include “flex cuffed.” This amendment is in response to comments regarding accurate terminology (i.e., a person may be restrained using material other than a handcuff).
- 999.226, subd. (a)(12)(A)(7) and (12). The previous data value for “use of canine in apprehension” (previously (a)(6)(A)(6)) has been replaced with two separate data values for “canine removed from vehicle or used to search” ((a)(12)(A)(7)) and “canine bit or held person” ((a)(12)(A)(12)). This amendment is intended to distinguish between two distinct scenarios involving the use of a canine and to enable more comprehensive analysis of the data.
- *(former)* 999.226, subd. (a)(6)(A)(7)-(8).

The original version of the regulations had the following data values regarding weapons as choices for “Actions Taken During Stop:”

- Weapon removed from holster or brandished
- Weapon was discharged or used.

In the original version, within the category of “weapon removed from holster or brandished,” an officer could select from five subcategories of types of weapons:

- (a) Firearm
- (b) Taser or electronic control device

- (c) Stun gun, BB gun, pellet gun, air gun, gas-powered gun, or device that discharges rubber bullets or bean bags
- (d) Baton
- (e) Pepper spray or mace

In the original version, within the category of “weapon was discharged or used,” an officer could select from the same five categories of weapons identified above.

The amendments to the regulations have deleted two previous data values (“Weapon removed from holster or brandished” and “Weapon was discharged or used”) and their required subcategories, and replaced them with six independent data values, in order to streamline the officer’s reporting. Specifically, the new data values that replace “weapon removed from holster or brandished” and “weapon was discharged or used” (and their five subcategories) are as follows:

- a) Firearm pointed at person
- b) Firearm discharged or used
- c) Electronic control device used
- d) Impact projectile discharged or used (e.g. blunt impact projectile, rubber bullets or bean bags)
- e) Baton or other impact weapon used
- f) Chemical spray used (e.g. pepper spray, mace, or other chemical irritants)

These amendments were in response to comments regarding the definitions and types of weapons identified, and in order to streamline the choices for officers by retaining only the most important categories of information. For example, former section 999.226, subd. (a)(6)(A)(7)(c) included “BB gun” and “pellet gun” within its choices for “weapon removed from holster or brandished.” Those terms were removed based on public comment and because they are not typically weapons that officers utilize. The amendments are also designed to be more consistent with terms utilized in the collection of use of force data required by Government Code section 12525.2 (“AB 71”).

999.226, subd. (a)(12)(A)(15). *Other Physical or Vehicle Contact*. This data value is a nonsubstantive edit to rename the data value entitled “Other use of force,” which was at previous section 999.226, subd. (a)(6)(A)(9), in order to eliminate confusion regarding the term “use of force,” as that term is used in the collection of use of force data required by AB 71. (See California Department of Justice Information Bulletin No. 16-12-CJIS (Dec. 21, 2016), entitled “Use of Force Incident Reporting, available at https://oag.ca.gov/sites/all/files/agweb/pdfs/law_enforcement/16-12-cjis-use-force-incident-reporting-ursus.pdf.) This provision was also amended nonsubstantively to remove the parenthetical “(other than handcuffing, use of canine in apprehension, or use of weapon listed above),” as this distinction was unnecessary.

999.226, subd. (a)(12)(A)(16). *Person photographed*. This data value for “Actions Taken by Officer During Stop” was added in order to more fully capture the types of actions an officer may take during a stop.

996.226, subd. (a)(12)(A)(17). *Asked for consent to search person*. This provision, which was previously located at section 999.226, subdivision (a)(6)(A)(10), was modified nonsubstantively to provide an additional check box to indicate if consent was *not* given. This was done for clarity, to ensure that officers indicate affirmatively whether or not consent was given, if consent was requested.

996.226, subd. (a)(12)(A)(18). *Search of person was conducted*. This provision, which was previously located at section 999.226, subdivision (a)(6)(A)(11), was amended for clarity by adding an explanatory sentence to ensure that officers understand that this data value should be selected even if the search was consensual.

996.226, subd. (a)(12)(A)(19). *Asked for consent to search property*. This provision, which was previously located at section 999.226, subdivision (a)(6)(A)(12), was modified nonsubstantively to provide an additional check box to indicate if consent was *not* given. This was done for clarity, to ensure that officers indicate affirmatively whether or not consent was given, if consent was requested.

996.226, subd. (a)(12)(A)(20). *Search of property was conducted*. This provision, which was previously located at section 999.226, subdivision (a)(6)(A)(13), was amended for clarity. An explanatory sentence was added to ensure that officers understand this data value should be selected even if the search was consensual.

(new) 996.226, subd. (a)(12)(A)(22). *Vehicle impounded*. This provision was added in response to comments to more fully capture the types of actions an officer may take during a stop.

996.226, subd. (a)(12)(A)(23). *None*. This provision, which was previously located at section 999.226, subdivision (a)(6)(A)(15), was amended nonsubstantively with the addition of a sentence to explain that if “None” is selected, no other data values can be selected. This was done for clarity, to ensure that an officer who selects “none” understand that he or she is indicating that none of the data values listed in (1) – (22) apply.

996.226, subd. (a)(12)(B). *Basis for Search*. This provision, which was previously located at section 999.226, subd. (a)(6)(B)(1), has been revised to consolidate the reporting required for searching a person and the reporting required for searching property into one entry, instead of two separate entries. This revision was done to streamline the reporting requirements and ease the burden on officers in reporting this data. In addition, several of the data values of this provision have been amended as follows:

- (1)(b) “*Officer safety*” was revised to include “officer safety/safety of others.” This revision will more closely align this choice with the legal standard for a pat-down search permitted under *Terry v. Ohio* (1968) 392 U.S. 1.
- (1)(k) “*Incident to pat-down search (for search of person only)*” was deleted to streamline the reporting and because the regulations define “search” to include pat-down searches; this data value – “incident to pat-down search” -- is thus not likely to reveal the underlying basis for the pat-down search.

- *(deleted)*(1)(n). “Abandoned property (for search of property only)” was deleted because abandoned property is not under the control of any person and thus its confiscation does not fall within the scope of these reporting requirements.

(new) 996.226, subd. (a)(12)(B)(2). *Required brief narrative explanation for basis for search.* The regulations have been revised to require an officer to complete a brief mandatory field (250-character maximum) in addition to selecting all of the data values in section 999.226, subdivision (a)(12)(B) that apply. This provision requires the officer to provide additional detail beyond the data values selected, and further provides that the officer shall not include any personally identifying information regarding the person stopped or the officer in this field.

The provision further states that this open explanatory field is not to be completed if the basis for search is “condition of parole/probation/PRCS/mandatory supervision,” because that basis is self-explanatory. The open narrative was included here for the same reason it was included for “Reason for Stop.” (See explanation for section 999.226, subd. (a)(10)(B) above.) In addition, during the field testing, officers were only required to complete this explanatory field in one out of five stops on average, as searches occurred in only approximately 20% of the stops conducted.

996.226, subd. (a)(12)(C). *Contraband or Evidence Discovered, If Any.* This provision, which previously was located at section 999.226, subdivision (a)(6)(B)(2), has been revised to be a self-contained data element, separate from “Basis for Search.” This amendment was done: (1) to capture instances when contraband or evidence may be discovered in plain view, and not as part of a search; and (2) to further streamline reporting, by requiring the officer to report this data only once, instead of in separate categories for search of property and search of person.

The choices for this data element were amended as follows:

- (D)(1). *None.* This data value was amended nonsubstantively with an explanatory statement that if this value is selected, no other values can be selected.
- (D)(7). *Money.* This provision previously required the officer to indicate the amount of money discovered. It has been revised to no longer require officers to report the amount of money, in an effort to streamline the reporting requirements and lessen the burden on officers.
- (D)(11). *Other contraband or evidence.* This provision previously had separate entries for “other contraband” and “other evidence.” These provisions were consolidated into one choice in an effort to streamline the reporting requirements and lessen the burden on officers.

996.226, subd. (a)(12)(D)(1). *Basis for Property Seizure.* This provision, which was previously located at section 999.226, subdivision (a)(6)(C)(1), has been revised to eliminate “forfeiture” as a choice, in an effort to streamline the reporting requirements.

996.226, subd. (a)(12)(D)(2). *Type of Property Seized*. This provision has been revised to delete “None” as a choice, because this data element is only selected if property *has been* seized, so “none” is not an appropriate choice. The choices for this data element were further amended as follows:

- (E)(2)(g). *Money*. This provision previously required the officer to indicate the amount of money discovered. It has been revised to delete the requirement that the officer report the amount of money seized, in an effort to streamline the reporting requirements and lessen the burden on officers.
- (E)(2)(k). *Other contraband or evidence*. This provision previously had separate entries for “other contraband” and “other evidence.” These provisions were consolidated into one choice, in an effort to streamline the reporting requirements and lessen the burden on officers.

996.226, subd. (a)(13). *Result of Stop*

Requirement to Identify Offense Code for Certain Results. This provision was amended to clarify that an arrest that was the result of an outstanding warrant does not require the officer to provide the specific code section, including the section number and appropriate subdivision, that was the basis for the arrest. The provision previously required officers to provide the applicable code sections for “warnings, citations, cite and release, and custodial arrests.”

The provision was amended to exclude “arrests pursuant to outstanding warrants” from this requirement. This amendment was made because there are several code sections that provide that an outstanding warrant is the basis for an arrest, but those sections are not all-inclusive. For example, there is no California code section that can be referenced for arrests that are the result of an out-of-state or federal warrant. As a result, because an arrest pursuant to an outstanding warrant can be sufficiently identified by the description “arrest pursuant to outstanding warrant,” the provision was amended to distinguish those types of arrests from warrantless arrests.

This provision was also amended to clarify that the Department will provide the list of offense codes to use in reporting the specific offense for warnings, citations, cite and release, and warrantless arrests, using its standard CJIS Offense Table, where applicable. The provision was further amended to specify that if the result of the stop was based upon a local ordinance, the officer does not need to specify the specific ordinance number but rather need only select “local ordinance viol” from CJIS Offense Table.

These amendments were designed to streamline the reporting requirements of these regulations, and to ease the burden on officers, by providing an easily-accessible drop down list of offenses that officers typically use in other reporting programs, and by not requiring officers to report the specific local ordinance. As noted above, the Department’s CJIS Offense Table does not contain specific local ordinances, but rather only a category entitled “local ordinance viol.”

Check Box Categories to Select for Result of Stop. This provision previously had seven options to select from in describing the result of the stop:

- (A) No action
- (B) Warning
- (C) Citation for infraction
- (D) Cite and release
- (E) Custodial arrest
- (F) Person taken into custody (other than for arrest), referred to another agency, or transported. Within this data value were eight subcategories from which to select.
- (G) Person stopped died during encounter with officer.

The following choices from this list were amended as follows:

- (A) *No action*. This data value was amended nonsubstantively with an explanatory statement that if this value is selected, no other values can be selected.
- (B) *Warning*. This data value was amended to remove the requirement that the officer indicate whether the warning was verbal or written. This was done to streamline the reporting requirements of these regulations, and to ease the burdens on officers in reporting the data.
- (D) *Cite and release*. This was revised to “in-field cite and release” in response to comments regarding more accurate terminology.

(new) (E) Custodial arrest pursuant to outstanding warrant and (F) Custodial arrest without warrant. In the original version of the regulations, there was only one entry for “custodial arrest.” (See former section 996.226, subd. (a)(7)(E).) In response to comments from law enforcement and upon further review, “custodial arrest” was separated into two categories: “custodial arrest pursuant to outstanding warrant,” and “custodial arrest without warrant.” This amendment was necessary in order to reflect that officers may arrest a person based solely on an outstanding warrant, and to create consistency with the Reason for Stop data value entitled “Knowledge of outstanding arrest warrant/wanted person.”

(new)(G) Field interview card completed. This data value was added as a choice for “Result of Stop” in response to comments from law enforcement that completing field interview cards is a common outcome of a stop.

(former) (F) Person taken into custody (other than for arrest), referred to another agency, or transported. This data value originally contained eight subcategories, and has been revised to delete all subcategories and instead include four distinct data values. This revision was in response to comments regarding more accurate terminology and suggestions regarding how best to capture the circumstances in which a person may be taken into custody (other than for arrest), referred to another agency, or transported, and is an effort to streamline the reporting requirements and lessen the burden on officers in selecting from a multitude of categories, by including only the most significant categories. Accordingly, former (F) and its eight subcategories (including a category for “other,” which has been deleted) have been replaced with the four following distinct data values:

(H) *Noncriminal transport or caretaking transport, including transport by an officer, transport by ambulance, or transport by another agency.* This provision is intended to replace former (F)(2) (“civil protective custody”), (F)(3) (“transported for medical treatment”), (F)(5) (“transported to custody of family member”), and (F)(6) (“community caretaking support”), and was revised to streamline officer reporting.

(I) *Contacted parent/legal guardian or other person responsible for the minor.* This category was added based on comments regarding the importance of capturing outcomes specifically associated with stops of minors.

(J) *Psychiatric hold (pursuant to Welfare & Institutions Code sections 5150 and/or 5585.20).* This category was reflected at former (F)(1), and has not been amended.

(K) *Contacted U.S. Department of Homeland Security (e.g. Immigration and Customs Enforcement, Customs and Border Protection).* This data value was previously listed as (prior) (F)(7), and was amended to correct the name of the federal agency identified, replacing U.S. Citizenship and Immigration Services with U.S. Department of Homeland Security. The term “referred” was also replaced with “contacted” because “referred” is a term of art and did not accurately reflect the intent of the provision, which is to select this category anytime that federal agency has been contacted by the officer as a result of the stop, and not necessarily limited to instances when the officer has formally “referred” the individual stopped to that federal agency.

(prior) (G) *Person stopped died during encounter with officer.* The original version of the regulations contained a choice for “person stopped died during encounter with officer.” This data value has been deleted as a choice because of the potential for confusion. Having a category that the person died during the encounter listed as a choice for “result of stop” may give rise to the impression that the death resulted from the stop, which may or may not be the case.

(former) 996.226, subd. (a)(8)-(12). These data elements for “Perceived Race or Ethnicity of Person Stopped, Perceived Gender of Person Stopped, Perceived Age of Person Stopped, Person Stopped Had Limited English Fluency or Pronounced Accent,” and “Perceived or Known Disability of Person Stopped” have been moved to section 996.226, subdivision (a)(4)-(9) (with the addition of the new element for “Person Stopped Perceived to be LGBT,” which is now at subdivision (a)(6)). Please see pp. 7-10, above, for a discussion of the amendments to those provisions.

996.226, subd. (a)(14). *Officer’s Identification (I.D.) Number.* This provision, which was previously entitled “Officer’s Unique Identifier” (see former § 996.226, subd. (a)(13)) has been amended nonsubstantively to change the title of the element, and to clarify that it is to be used for all reporting to the *Department* required under this chapter, i.e., and not for all reports an officer may submit to his/her agency or to other agencies for different data collection programs. This provision was further revised to clarify that, for purposes of these regulations, an Officer’s Identification Number will be considered to be “Unique Identifying Information,” as referenced in Government Code section 12525.5, subdivision (d) and defined in section 999.224, subdivision (a)(17), above.

996.226, subd. (a)(15). *Officer's Years of Experience.* This provision previously required an officer to report years of experience using a range of years (less than four, 4-10, and more than 10 years). In response to comments, and upon further review, this provision was revised to require the officers to input their actual years of experience. In addition, this data element will be much more useful and informative if actual years of experience of each officer are collected and analyzed, to help assess how years of experience may impact officer behavior across different agencies. For example, an officer with six months' experience has vastly different experience than one with three and a half years of experience, yet would be considered the "same" if officers only reported ranges of years (in this case, by selecting the category of "less than four years").

This provision was also amended nonsubstantively to replace "sworn peace officer" with a reference to the statutory provisions that define "peace officer" for purposes of counting years of experience.

The provision has also been amended to clarify if an officer is working part-time, he/she shall only count time actually worked as an officer. The original provision only provided this instruction if officers worked "intermittently," which is not synonymous with "part-time." For example, "intermittently" refers to a situation where an officer works two years as an officer, followed by one year as security guard, and then two years (and counting) in her/her present position as an officer. In that scenario, the officer should report that he/she has four years of experience. The provision was amended to clarify that an officer working part-time should count his/her years of experience the same way. For example, if the officer has been working half-time for four years, he/she should report that he/she has two years of experience.

999.226, subd. (a)(16). *Type of Assignment of Officer.* This provision, which reports the officer's assignment at the time of stop, has been amended in response to comments from law enforcement to reflect the most representative assignments of officers. These amendments are as follows:

- (A) The category for "Patrol" was amended to include "traffic enforcement" and "field operations."
- (*prior*) (B) The category for "Traffic" was deleted because it has been incorporated into "Patrol, traffic enforcement, field operations."
- (B) The category for "gang" was revised to "gang enforcement" for clarity.
- (C) A new category of assignment was added, entitled "compliance check (e.g., parole/PRCS/probation/mandatory supervision)."
- (D) The category for "special assignment" was revised to "special events (e.g., sports, concerts, protests)."
- (E) A new category was added entitled "Roadblock or DUI sobriety checkpoint."

- (F) The categories of “narcotics” and “vice” were combined into one choice entitled “Narcotics/vice.”
- (G) A new category was added entitled “Task force.”
- (*former*) (G) The category for “violence suppression/crime suppression” was deleted.
- (H) The category for “K-12 Public School Setting” was revised to “K-12 Public School, including school resource officer or school police officer.”
- (I) A new category was added entitled “Investigative/detective.”

D. Article 4. Section 999.227 (Reporting Requirements)

Article 4 of the proposed regulations describes general reporting requirements, as well as specific reporting requirements that are unique to certain settings. After extensive review and comments from the public and law enforcement, these provisions have been amended as follows.

999.227, subd. (a). *General Reporting Requirements.*

999.227, subd. (a)(1). This provision states that officers subject to these regulations must submit the data elements described in Article 3, unless the stops occur within certain enumerated settings. The original text set forth three settings subject to special reporting requirements: passengers in vehicles; specific types of interactions; and K-12 Public Schools. The provisions regarding these settings were identified in (a)(1), except that the subdivision regarding K-12 Public School settings was inadvertently omitted from this listing. Subdivision (a)(1) has thus been amended to include that provision [*new* subdivision (e)].

In addition, a new category of interactions that are not subject to the general reporting requirements has been added to the regulations (see new subdivision (c) discussed below). Accordingly, this provision has been amended nonsubstantively for formatting purposes, to conform to the amended numbering of the provisions in the regulations and the addition of new section 999.227, subdivision (c), as discussed below, and references the special reporting requirements set forth in subdivisions (b)-(e).

999.227, subd. (a)(4). This provision, which describes the reporting requirements if more than one agency is involved in a stop, has been amended nonsubstantively to clarify that, if a stop is done in conjunction with an agency that is not required to report stops, the agency that is subject to these regulations must submit a stop report, even if that agency is not the primary agency. The purpose of this amendment is to eliminate any confusion that may result if a non-reporting agency is considered the “primary agency.” In those instances, a reporting agency must submit a report because the non-reporting agency, even if it is the “primary agency,” will not be submitting a report because it is not subject to these regulations.

999.227, subd. (a)(5). This provision, which describes the reporting requirements when one or more officers are involved in a stop, has been amended nonsubstantively to clarify that if more than one officer conducts a stop, the officer with the highest level of engagement shall submit the

full report, and must include all actions taken even if he/she did not perform the specific act reported (e.g., if another officer took the action). The provision has also been amended to provide an example of a stop involving two officers.

999.227, subd. (a)(6). This provision, which describes the reporting requirements if multiple persons are stopped during one incident, has been revised substantively to require officers to submit stop data for multiple persons stopped during one incident in one single report. (The previous version of this provision required that stop forms shall be submitted for each person stopped during one incident (unless the person was a passenger in a vehicle, in which case the officer is to report on passengers pursuant to the requirements set forth in section 999.227, subdivision (b).)

This amendment is designed to streamline the reporting requirements for officers and ease their burden in complying with these requirements, by ensuring an officer uses one report form, but records the required data elements for each person stopped individually in this report form. This will facilitate easier reporting, when applicable, because certain elements (e.g., date, time, location) may be the same for multiple persons involved in an incident. This revision was also made in response to comments that for data analysis it will be important to distinguish multi-person stops, where actions and outcomes are likely to be correlated, from distinct individual stops made in similar locations. The instructions regarding the reporting of passengers in vehicles remain unchanged.

999.227, subd. (a)(8). This provision, which sets forth how an agency shall calculate its size in order to comply with Government Code section 12525.5, subdivision (a)(2), has been amended to clarify that on January 1st of each year until an agency begins reporting data to the Department, it must count the number of the peace officers it employs to determine its size. This amendment was in response to comments questioning when an agency is required to count its officers in order to determine when to first submit their reports.

999.227, subd. (a)(9). This provision previously required that stop data shall be completed and submitted to the officer's agency by the end of the officer's shift. It has been amended because (1) officers who submit data directly to the Department, through the Department's web-based portal system, would not be reporting the data directly to their own agency; and (2) there may be emergencies or other exigent circumstances that make it impracticable to submit the data by the end of the shift. Accordingly, this provision has been amended to provide flexibility by eliminating the requirement that officers submit all stop reports to the officer's agency and providing that the data shall be completed by the end of the shift, unless there are exigent circumstances, in which case officers should complete stop data reports as soon as practicable.

999.227, subd. (a)(10). This provision previously permitted an agency, its officers, or both to revise stop data that was submitted to the agency for up to 96 hours after the officer submitted the data internally to the agency. In order to give agencies more flexibility to review stop data reports and monitor for quality control, the provision was amended to provide that an agency, its officers, or both, can review data internally to correct errors at any time (removing the 96-hour limitation), in order to ensure compliance with these regulations. However, an agency cannot revise data once it is submitted to the Department, unless the revisions are done through the Department's error resolution process.

999.227, subd. (a)(11). This provision, which requires reporting agencies to create an Officer Identification Number to be included with stop reports submitted to the Department, has been revised nonsubstantively to reflect the amendment of the term “Officer’s Unique Identifier” to “Officer’s Identification (I.D.) Number,” set forth at section 996.226, subdivision (a)(14) above. It has also been revised substantively to require the reporting agency to maintain a system matching an individual officer to his or her Officer I.D. Number. Previously, the agency was required to match an individual officer to his or her stop data. Because agencies are not required to maintain stop data if they use the Department’s web-browser based application, this provision was amended to require only that the reporting agency maintain a system to match the officer with his or her Officer I.D. Number used for reporting.

999.227, subd. (b) *Reporting Requirements for Passengers in Vehicle Stops.* This provision, which describes the reporting requirements for stops of passengers in vehicles, has been amended in response to internal review and comments from law enforcement and the public. The examples in subdivisions (b)(1)(A)(1) and (b)(1)(B)(1) have been amended nonsubstantively for clarity.

Subdivision (b)(1)(B) has been amended to exclude “vehicle impound” from the list of actions taken by an officer that will trigger a reporting requirement for passengers of vehicles subject to a stop. The list of actions that will trigger reporting are those data values for “Actions Taken During Stop.” However, “vehicle impounded” will frequently affect passengers without indicating that the officer has taken any additional action with respect to the passenger. For that reason, requiring reporting on passengers for every vehicle impound is unlikely to generate informative data. A new example is provided at (b)(1)(B)(2) to clarify this provision.

999.227, subd. (new)(c) *Peace Officer Interactions That Are Not Reportable.*

In the original proposed regulations, interactions that took place in certain settings were subject to different reporting requirements. Specifically, reporting was limited for stops that take place in certain settings:

- Traffic control of vehicles due to a traffic accident or emergency
- Mass evacuations
- Active shooter events
- Crowd control
- Witness interviews
- Searches and arrests made in the home pursuant to a warrant or search condition, and specifically interactions with persons who are not the subject of the warrant
- Stops that take place while officer is on home detention or house arrest assignment
- Routine security screenings
- K-12 public school settings

In the original regulations, stops in these circumstances were only to be reported if the individual was detained based upon individualized suspicion or personal characteristics and/or an officer takes an *additional* action among those specified in the “actions taken by officer” section,

beyond the original detention or search. In addition, if an interaction was the result of a blanket regulatory activity, it was to be reported only if the interaction was based on individualized suspicion or personal characteristics *and* did not consist solely of (1) officer asking for consent to search; (2) officer searching; or (3) officer seizing property.

Following extensive review and comments, the regulations have been revised to provide that, in certain of these settings, interactions with officers are not subject to the reporting requirements of these regulations. Specifically, the regulations have been revised to add a new provision, entitled “Peace Officer Interactions that are Not Reportable,” located at section 999.227, subdivision (c). These settings were exempted from reporting because in these circumstances the officer’s actions are largely non-discretionary, involve public safety, and are not the types of interactions contemplated by AB 953. The settings in which stops are exempt from these regulations are as follows:

- 999.227, subd. (c)(1). Stops during mass evacuations (including bomb threats including bomb threats, gas leaks, flooding, earthquakes, and other similar critical incidents)
- 999.227, subd. (c)(2). Stops during an active shooter incident. The original version of this provision did not define “active shooter event.” This provision has been amended to define “Active shooter incident,” in order to provide guidance to law enforcement, using the definition provided by the Federal Bureau of Investigation. (“Active Shooter Resources,” Federal Bureau of Investigation, available at <https://www.fbi.gov/about/partnerships/office-of-partner-engagement/active-shooter-resources> [“An active shooter is an individual actively engaged in killing or attempting to kill people in a populated area . . . “].)
- 999.227, subd. (c)(3). Stops that occur during or that are the result of routine security screenings required of all persons at entrances of buildings or special events (including metal detector screenings). This includes any secondary searches or stops that are the result of this screening, whether they are secondary searches that result from activation of metal detector or wands, or any searches or detention that result from this screening.

999.227, subd. (d). *Peace Officer Interactions That Are Reportable Only If the Officer Takes Additional Specified Actions.* This provision, which was previously located at 999.227, subdivision (c), has been renumbered to 999.227, subdivision (d). As discussed above, this provision previously limited the reporting requirements for interactions that take place in certain circumstances where the individual is detained based upon individualized suspicion or personal characteristics, if the officer took certain actions during the stop, namely, the data values listed for the data element “Actions Taken by Officer During Stop.” This provision has been amended, as follows.

- 999.227, subd. (*former*)(1)(B) and (C). The categories for mass evacuations and active shooter incidents have been deleted from this provision because they are now wholly exempted, as set forth in 999.227, subdivision (c).

- 999.227, subd. (*former*)(1)(E). The category for witness interview has been deleted because an officer does not detain a witness during an interview.
- 999.227, subd. (*new*)(1)(C). A new category has been added, to capture circumstances when a person is detained at a residence when the sole purpose of the detention is so that officers may check for proof of age. In this situation, the interaction is only reported if the officer took any action listed in any of the data values identified for “Actions Taken During Stop.” An example was added at (1)(C)(1) to provide guidance to an officer for such a scenario. This amendment was in response to comments from law enforcement that when officers are called to a party at a residence and suspect underage drinking, they detain all persons at the party, and unless these interactions are included in this section, a stop report will be required on all persons at the party. To prevent undue burden on law enforcement and capture only interactions that AB 953 was intended to capture, officers will only be required to report these interactions if they take any of the actions identified in “Actions Taken by Officer During Stop.”
- 999.227, subd. (*former*)(4)(A). This provision, which limited the reporting requirements for stops that take place at a checkpoint or roadblock, has been amended and relocated to (d)(1)(D). In the original proposed regulations, these interactions were included under “programmatic searches or seizures,” which included checkpoints as well as routine security screenings at building and special event entrances.

Because the category of “programmatic searches and seizures” has been deleted, “checkpoints or roadblocks” have been moved to (d)(1)(D), specifying that detentions that occur at checkpoints or roadblocks as the result of a blanket regulatory activity or neutral formula and not based on individualized suspicion or personal characteristics are only reported if the officer took any action listed in any of the data values identified for “Actions Taken by Officer During Stop.”

- 999.227, subd. (*former*)(c)(2). This provision, which limited the reporting requirement for searches and arrests of a person inside a home, pursuant to a warrant or search condition, if the person is not the subject of the warrant or search condition, has been amended and relocated to (d)(2). The original version required an officer to report interactions with persons inside of the home if the person is not subject to warrant/search condition, if the officer takes any of the “Actions Taken by Officer During Stop” data values.

The revised provision provides that interactions in such a setting is only reportable if the officer handcuffs or flex cuffs the person; points a firearm at the person; or discharges or uses a firearm, electronic control device, impact projectile, baton or other impact weapon, or chemical spray, or if a police canine bit/held the person. Although this setting was listed in the original version, the triggering offenses have been amended to be limited to those listed above.

This amendment was in response to comments from law enforcement that officers typically search everyone when they enter a home pursuant to a warrant or search condition, which would require reporting stops on all of these persons. To prevent undue burden on law enforcement and capture only interactions that are the result of an officer's discretion (as opposed to a routine policy or practice), the amended version further narrows the circumstances under which officers must report on interactions with persons not the subject of a warrant.

- 999.227, subd. *(prior)(c)(3)*. For interactions with persons not subject to home detention or house arrest that take place while an officer is on home detention or house arrest assignment, such an interaction is only reportable if the officer handcuffs or flex cuffs the person; points a firearm at the person; or discharges or uses a firearm, electronic control device, impact projectile, baton or other impact weapon, or chemical spray, or if a police canine bit/held the person. Although this setting was listed in the original version, the triggering offenses have been amended to be limited to those listed above.

This amendment was in response to comments from law enforcement that in these circumstances, officers typically search everyone when they enter a home, which would require reporting stops on all of these persons. The amended version narrows the circumstances under which officers must report on interactions with persons not subject to home detention or house arrest for the same reasons as provided above.

999.228, subd. (e). *Reporting Requirements for Stops of Students at a K-12 Public School.*

The following changes were made to simplify the reporting requirements for interactions that occur in a K-12 public school setting:

999.228, subd. (e)(1). This subdivision provides that interactions with persons who are not students (as that term is defined in Article 1) are subject to the general reporting requirements set forth in Article 3. This provision has been modified to remove the exception for incidental contact to determine whether the person is authorized to be on campus and the corresponding examples. This amendment is intended to simplify the reporting requirements by applying a single, uniform standard to all stops of non-students (on or off campus) and to limit the special reporting requirements only to students.

999.228, subd. (e)(2). This provision was added to clarify that the exceptions to reporting set forth at section 999.227, subdivisions (b)-(d) apply to stops that take place at a K-12 Public school, regardless of whether the stops are of student or non-students. This amendment was necessary to clarify that those reporting exceptions (for example, active shooter incidents, mass evacuations, etc.) apply even if those events take place at a K-12 Public School.

999.228, subd. (e)(3)(B). This subdivision specifies those interactions with students that are reportable as stops. This subdivision has been re-formatted nonsubstantively, and has been revised substantively to add a provision requiring that “any interaction in which student is questioned to determine whether student is truant” shall be reported as a stop.

This modification is intended to fill a gap in the original text based on comments received during the public comment period that truancy investigations, while common in the school as well as general setting, would not be captured in the existing data values for investigations for violations of law or Education Code sections 48900, 48900.2, 48900.4, and 48900.7.

999.228, subd. (e)(3)(C). This subdivision provides that any interaction in which the officer engages in one or more of the data values set forth in Article II for the data element “Actions Taken by Officer During Stop” shall be reported as stops of students in a K-12 school. This subdivision has been edited nonsubstantively to conform with renumbering in Article II and to exclude the data value “none.”

This subdivision has also been edited substantively to provide that a detention or search that is conducted of all persons as part of a neutrally applied formula that is not based upon personal characteristics is not reportable. This includes searches conducted at the entries and exits of school facilities by screening devices, and secondary screenings that result from that initial screening. The examples have been modified accordingly. This amendment responds to comments that reporting on searches and seizures conducted as part of a uniform screening at building entrances and exits would significantly increase the reporting burden on officers without adding meaningful data.

999.228, subd. (e)(4). This subdivision sets forth specific data values applicable to stops and searches of students in a K-12 public school. This subdivision has been modified nonsubstantively to clarify that the subdivision sets forth only additional data values (not additional data elements) and to incorporate other technical and grammatical edits.

Paragraph (A) has been amended substantively to provide that the Department shall provide a list of the names of K-12 public schools from the Department of Education in order to ensure uniformity in reporting the name of the institution, as required by Government Code section 12525.5, subdivision (d). The paragraph has been further edited to incorporate technical and grammatical edits.

Paragraph (B) has been added to this subdivision, and the remainder of the subdivision has been renumbered accordingly. Paragraph (B) sets forth a new data value for the data value “Perceived or Known Disability”: “Disability related to hyperactivity or impulsive behavior.” This data value was added in response to comments during the public comment period—including recommendations from the RIPA Board—that the existing data values did not sufficiently account for situations in which the officer perceives (or knows) the student stopped to be an individual with a disability for reasons related to hyperactivity or impulsive behavior, and that this data value would provide important insights regarding interactions in the K-12 public school setting.

Paragraph (C) (formerly paragraph (B)) has been amended substantively to eliminate the prior data value “investigation to determine unauthorized presence on campus” based on further analysis that such interactions are encompassed within the data value “determine whether the student violated school policy.” The prior data value “Investigation to determine whether the student stopped was engaged in other unlawful conduct” was deleted because it is redundant with the data value “reasonable suspicion that the person was engaged in criminal activity” set forth in

Article III, subdivision (a)(10)(A)(2). The data value regarding conduct warranting discipline was amended to clarify that it applies to “possible conduct warranting discipline,” as the officer reporting the stop will not be in a position to make a determination of whether the student has, in fact, engaged in conduct warranting discipline and to specify the specific code sections that should be presented to the officer for selection.

In addition, the data value “student violated school policy” has been amended to clarify that this data value should only be selected if other options related to violations of law did not apply because data concerning violations of law is likely to be more specific, carries greater consequences for students, and is likely to be more probative of potential disparities. The remaining data values have been edited nonsubstantively to simplify the language.

Paragraph (D) has been added to the subdivision, and the remainder of the subdivision has been renumbered accordingly. This subdivision specifies one additional data value for “actions taken by officer during stop” that applies only to stops of students in a K-12 public school: “admission or written statement obtained from student.” This data value was added in response to comments submitted during the public comment period that this is an action that is frequently taken in the K-12 public school setting and may illuminate potential disparities, but which is not encompassed in any of the data values applicable set forth in Article III, section 999.226, subdivision (a)(12)(A).

Paragraph (G) (formerly paragraph (E)) has been amended substantively to eliminate the prior data value “referral to non-school agency or organization (e.g., mental health service provider)” because referral to a non-school agency or organization is most often made by the school administrator, counselor, or other support staff—not the reporting officer.

E. Article 5. Section 999.228 (Technical Specifications and Uniform Reporting Practices)

999.228, subd. (a). *Electronic System.* Subdivision (a) was amended nonsubstantively to replace the term “automated” with “electronic.” This change is intended to conform to the original intent of the provision, which was to require electronic versus paper submission of data in order to ensure data is both accurate and accessible (consistent with the intent of Government Code section 12525.5) and to make clear that agencies can use any form of electronic data submission—including secure file transfer of spreadsheets or other common file formats—to comply with the reporting requirements.

999.228, subd. (b). *Submission of Data.* This subdivision was amended to clarify that the DOJ will accept data in any electronic format that complies with the Department’s interface specifications. Specifically, the Department will accept data (1) via a web-browser based application developed by the Department; (2) via system-to-system web service for agencies that collect data in a local system and then submit it to the Department; and (3) via a secured file transfer protocol for agencies that collect data in a local repository and then submit it to the Department.

This provision was further amended to make clear that agencies can submit batch uploads of stop data in Excel spreadsheets and other types of text formats, provided they comply with the Department’s interface specifications.

These amendments respond to comments received during the public comment period that the original text could be read to preclude agencies from using certain types of data collection (e.g., paper data collection) or from using common formats to transmit data to the DOJ (e.g., Excel spreadsheets and other delimited text formats of electronic documentation). The amendment is intended to make clear that the regulations do not specify any particular method of data collection and that the Department will accept data in common electronic file formats.

999.228, subd. (c). *Reporting Schedule.* This subdivision was amended nonsubstantively to make it clear that the minimum reporting interval is that which is set forth in Government Code section 12525.5, subdivision (d) and that, while the DOJ must accept data more frequently if the agencies choose to so report, the regulations do not require more frequent reporting.

These amendments respond to confusion expressed during the public comment period about the required reporting frequency. The subdivision retains the DOJ's recommendation that the agency submit stop data on a monthly or quarterly basis due to the anticipated volume of data required by Government Code section 12525.5, but this is not required. Former paragraph (2) has been deleted and replaced with subdivision (d), as explained below.

999.228, subd. (d). *Reporting Responsibilities.* This subdivision replaces former subdivision (c)(2), which provided that law enforcement agencies must redact any personally identifiable information with respect to the person stopped and officer, except for the Officer's Unique Identifier, prior to transmission of stop data. The remainder of Article 5 has been renumbered accordingly.

New subdivision (d) clarifies that the reporting agencies are solely responsible to ensure that neither personally identifiable information of the individual stopped nor any other information exempt from disclosure pursuant to Government Code section 12525.5, subdivision (d), is transmitted to the Department in the data element for "Location of Stop" required by section 999.226, subdivision (a)(3) and the brief explanatory fields required by section 999.226, subdivisions (a)(10)(B) and (12)(B)(2) for reason for stop and reason for search, respectively. The provision also states that, unless otherwise provided, all stop data is subject to public disclosure consistent with Government Code section 12525.5, subdivision (d). This provision is intended to make clear that the reporting agencies are responsible to ensure—through training, supervisory review, or any other methodology—that these fields do not contain information that is exempt from public disclosure.

999.228, subd. (g). *Data Publication (formerly subdivision (f)).* This subdivision has been amended substantively to clarify the circumstances in which the Department shall publish or otherwise disclose stop data. As amended, subdivision (g) provides that the Attorney General shall publish the stop data that agencies submit to the Department on the Department's OpenJustice website, at the Attorney General's discretion and consistent with Government Code section 12525.5, subdivision (d).

This provision has also been amended to clarify that the Department will not release to the public the Officer's Identification Number or Unique Identifying Information. Together, these provisions are necessary to clarify what information may be published on OpenJustice.

In addition, subdivision (g) provides that the DOJ is not prohibited from confidentially disclosing all stop data reported to the Department to advance public policy through scientific study and pursuant to the Department's data security protocols, which will ensure that the publication of any data, analyses, or research will not result in the disclosure of an individual officer's identity.

This provision is necessary to make clear the limited circumstances in which the DOJ is permitted to provide access to complete stop data and to address concerns expressed during the public comment period that potentially re-identifying information might be published or otherwise disclosed to the public.

999.228, subd. (h). *Retention Period (formerly subdivision (g))*. This subdivision has been substantively amended to reduce the retention period provided in the original regulations from five years to three, because the Department will retain all stop data indefinitely and a retention period of three years by the reporting agency will be sufficient for error resolution and auditing purposes. This subdivision was also substantively amended to add a provision that "If a reporting agency elects to use the Department's web-browser based application, the Department shall host the data for the agency for the requisite retention period of three years or transfer this data back to the agency for storage, at the agency's election." This addition is necessary to provide agencies with the option to rely on the DOJ to host data submitted via the web-browser application or to receive the data back from the DOJ for storage at their election.

F. Article 6. Section 999.229 (Audits and Valuation)

The following provisions within this section have been modified, for the reasons set forth below:

999.229, subd. (b). This subdivision has been amended substantively to clarify that reporting agencies are responsible for ensuring that all data elements, data values, and narrative explanatory fields conform to these regulations and for correcting any errors in the data submission process, through the Department's error resolution process.

The subdivision was amended to remove the prior requirement that errors in the submission process must be resolved "prior to submission of data to the Department." Agencies remain responsible to correct errors in the data submission process—errors which are most likely to occur during (and not prior to) the submission of data.

V. Technical Theoretical, and/or Empirical Study, Reports, or Documents

The following documents have been added to the rulemaking file:

The following document was included in the rulemaking file as of the date of the original Notice of Proposed Rulemaking Activity (December 6, 2017), but was inadvertently omitted from the list of materials relied upon that was provided in the Initial Statement of Reasons:

24. California Police Chiefs Association, *AB 953: CPCA Concerns and Cost Estimates* (Aug. 4, 2015).

A copy of this document can be found at pages Z-2016-1129-03-00161 through -00179 of the rulemaking file.

The following documents have been added to the rulemaking file pursuant to Government Code section 11347.1:

25. ACLU, Letter to Department of Justice (Apr. 19, 2017).
26. ACLU of North Carolina, Road Work Ahead (May 2014), available at http://acluofnorthcarolina.org/files/Road_Work_Ahead_-_Data_collection_report_2014.pdf.
27. Department of Justice, Field Test Results (May 2017).
28. Department of Justice, Letter to Department of Finance (Jan. 25, 2017).
29. Department of Justice, Survey to Law Enforcement Agencies: Summary of Responses (June 2016).
30. Department of Justice, Use of Force Incident Reporting (Dec. 21, 2016).
31. Emily Owens (University of California, Irvine), Letter to Department of Justice (Apr. 28, 2017).
32. *Floyd v. City of New York* (S.D.N.Y. 2013) 959 F. Supp. 2d 668.
33. New York Civil Liberties Union, Stop-and-Frisk Data, at <http://www.nyclu.org/content/stop-and-frisk-data>.
34. Peace Officers Research Association of California, Letter to the RIPA Board (Jan. 26, 2017).
35. Phillip Reese, *See What California Cities Pay Police, Firefighters*, Sacramento Bee (Feb. 27, 2016), at <http://www.sacbee.com/site-services/databases/article2573210.html>.
36. The President's Task Force on 21st Century Policing, *Final Report* (May 2015), at https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.
37. Racial and Identity Profiling Advisory Board, Meeting Minutes (Oct. 24, 2016).
38. Racial and Identity Profiling Advisory Board, Meeting Minutes (Jan. 26, 2017).
39. Sharad Goel (Stanford University), Letter to Department of Justice (June 10, 2017).
40. Sunlight Foundation, The Benefits of data in Criminal Justice: Improving Police-Community Relations (Apr. 30, 2015), at <https://sunlightfoundation.com/2015/04/30/the-benefits-of-data-in-criminal-justice-improving-police-community-relations/>.
41. Sunlight Foundation, The Benefits of data in Criminal Justice: Beyond Policing (May 1, 2015), at <https://sunlightfoundation.com/2015/05/01/the-benefits-of-criminal-justice-data-beyond-policing/>.
42. Susanna Capelouto, CNN.com, *Racial profiling costs Arizona county \$22 million* (Jan. 3, 2014), at <http://www.cnn.com/2014/01/03/us/racial-profiling-payments/index.html>.
43. U.S. Census Bureau, The Asian Population: 2010 (Mar. 2012), at <https://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf>.
44. U.S. Census Bureau, The Native Hawaiian and Other Pacific Islander Population: 2010 (May 2012), at <https://www.census.gov/prod/cen2010/briefs/c2010br-12.pdf>.

In addition, the Department of Justice has added copies of the following rulemaking documents to the rulemaking file:

- Addendum to the Initial Statement of Reasons (August 1, 2017).
- Revised STD 399 and Addendum (July 27, 2017).

Copies of the Addendum to the Initial Statement of Reasons, the Revised STD 399 and Addendum, and all comments received during the prior public comment period are available for inspection at the addresses noted in the Notice of Availability of Modified Text of Proposed Regulations and Related Materials, provided on August 1, 2017. They are also available at <https://oag.ca.gov/ab953/regulations>.

VI. Economic Impact Assessment

As noted above, the Department has issued a new economic and fiscal impact assessment in the form of an addendum to the STD 399. The new analysis is intended to supplant the analysis set forth in pages 32 through 41 of the original ISOR. The new analysis does not change the Department's prior findings that (1) the proposed regulations will have no significant statewide adverse economic impact directly affecting business; (2) the proposed regulations will not affect small businesses; and (3) the proposed regulations will have no significant effect on housing costs.

As noted above, copies the Revised STD 399 and Addendum are available for inspection at the addresses noted in the Notice of Availability of Modified Text of Proposed Regulations and Related Materials, provided on August 1, 2017. They are also available at <https://oag.ca.gov/ab953/regulations>.