

TITLE 11. DEPARTMENT OF JUSTICE

Notice published December 9, 2016

NOTICE OF PROPOSED RULEMAKING ACTION

Notice is hereby given that the California Department of Justice (Department of Justice) proposes to adopt sections §§ 999.224-999.229 of Title 11, Division 1, Chapter 19, of the California Code of Regulations (CCR) concerning California’s Racial and Identity Profiling Act of 2015 (Act or AB 953).

PUBLIC HEARING

The Department of Justice will hold three public hearings to provide all interested persons with an opportunity to present statements or comments, either orally or in writing, with respect to the proposed regulations, as follows:

January 12, 2017
6:00 p.m. – 8:00 p.m.
California State University, Los Angeles
Student Union Building
5154 State University Drive, Room 308 (Los Angeles Rm.)
Los Angeles, CA 90032

January 18, 2017
6:00 p.m. – 8:00 p.m.
Chabot Elementary School
Auditorium/Multi-Purpose Rm.
6686 Chabot Road
Oakland, CA 94618

January 26, 2017
2:30 p.m. – 4:30 p.m.
Downtown Business Hub
Fresno Area Hispanic Foundation
1444 Fulton Street
Fresno, CA 93721

The locations of these hearings will be wheelchair accessible. At the hearing, any person may present statements or comments orally or in writing relevant to the proposed action described in the Informative Digest. The Department of Justice requests but does not require that persons who make oral statements or comments at the hearing also submit a written copy of the comments made at the hearing.

WRITTEN COMMENT PERIOD

Any interested party, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action to the contact persons listed below. Comments may also be submitted by facsimile (FAX) at (213) 897-7605 or by e-mail to AB953@doj.ca.gov. The written comment period closes at 5:00 p.m. on January 27, 2017. The Department of Justice will consider only comments received by that time. Please address comments to:

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AUTHORITY AND REFERENCE

Government Code section 12525.5, subdivision (e) authorizes the Department of Justice to adopt these proposed regulations, which implement, interpret, and make specific the provisions of Government Code section 12525.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws

Last year Governor Brown signed the Racial and Identity Profiling Act of 2015 (AB 953). Among other things, AB 953 enacted Government Code section 12525.5, which requires state and local law enforcement agencies, as specified, to collect detailed data regarding stops of individuals, including perceived demographic information on the person stopped, and to report this data to the California Attorney General, whose duty is to issue regulations regarding this data collection and submission.

Specifically, Government Code section 12525.5, subdivision (a)(1) provides that “[e]ach state and local agency that employs peace officers shall annually report to the Attorney General data on all stops conducted by that agency’s peace officers for the preceding calendar year.” Government Code section 12525.5, subdivision (g)(1) limits “peace officer” to “members of the California Highway Patrol, a city or county law enforcement agency, and California state or university educational institutions,” and excludes probation officers and officers in a custodial setting from the definition of “peace officer.”

Government Code section 12525.5, subdivision (g)(2) defines “stops” to mean “any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person’s body or property in the person’s possession or control.”

Government Code section 12525.5, subdivision (b) provides a non-exclusive list of the information that must be reported for each stop:

The reporting shall include, at a minimum, the following information for each stop:

- (1) The time, date, and location of the stop.
- (2) The reason for the stop.
- (3) The result of the stop, such as, no action, warning, citation, property seizure, or arrest.
- (4) If a warning or citation was issued, the warning provided or violation cited.
- (5) If an arrest was made, the offense charged.
- (6) The perceived race or ethnicity, gender, and approximate age of the person stopped, provided that the identification of these characteristics shall be based on the observation and perception of the peace officer making the stop, and the information shall not be requested from the person stopped. For motor vehicle stops, this paragraph only applies to the driver, unless any actions specified under paragraph (7) apply in relation to a passenger, in which case the characteristics specified in this paragraph shall also be reported for him or her.
- (7) Actions taken by the peace officer during the stop, including, but not limited to, the following:
 - (A) Whether the peace officer asked for consent to search the person, and, if so, whether consent was provided.
 - (B) Whether the peace officer searched the person or any property, and, if so, the basis for the search and the type of contraband or evidence discovered, if any.

(C) Whether the peace officer seized any property and, if so, the type of property that was seized and the basis for seizing the property.

(Gov. Code, § 12525.5, subd. (b).)

Government Code section 12525.5, subdivision (e) requires the Attorney General, in consultation with stakeholders, to “issue regulations for the collection and reporting of data required under subdivision (b).” The statute requires that these regulations “shall specify all data to be reported, and provide standards, definitions, and technical specifications to ensure uniform reporting practices across all reporting agencies. To the best extent possible, such regulations should be compatible with any similar federal data collection or reporting program.” (Gov. Code, § 12525, subd. (e).)

Accordingly, the Office of the Attorney General submits these proposed regulations to fulfill this mandate, and to provide clarity and guidance to affected law enforcement agencies and their officers regarding their reporting obligations under AB 953.

Effect of the Proposed Rulemaking

These proposed regulations set forth the information required to be reported by officers, definitions of terms used in the regulations, and specific guidance regarding the reporting required under Government Code section 12525.5, subdivision (b). Below is a summary of key provisions of the proposed regulations.

Agencies Subject to the Proposed Regulations

The regulations provide guidance regarding the agencies subject to this reporting, and specifically define certain terms, such as “California state or university educational institutions” and “officers in a custodial setting.” The regulations specify that “California state or university educational institutions” means the University of California, the California State University, the California Community Colleges, and Kindergarten through 12th grade (K-12) public school districts. The regulations also provide guidance on the applicability of these regulations to peace officers of a city or county law enforcement agency who work on a public school campus or in other settings.

Data Required to be Collected and Submitted to the Attorney General

Government Code section 12525.5, subdivision (b) specifies the minimum categories of information, or data elements, that must be collected by law enforcement agencies and reported to the Department of Justice for each stop. Thus, the categories listed in the statute constitute the floor, and not the ceiling, of data to be collected and reported, giving the Department of Justice discretion to determine what additional information should be collected to further the policy objectives of AB 953. These proposed regulations set forth the categories of information officers will be required to collect. This data will provide significant insight regarding current policing practices to the Department of Justice, the Racial and Identity Profiling Advisory Board (“RIPA Board” or “Board”) and other researchers, members of the public, and the law enforcement community, all of which can use this information to improve policing practices across the state.

Simultaneously, it is critical that the time it takes an officer to complete this data collection does not undermine his or her ability to promote public safety.

The proposed regulations also provide definitions regarding the information to be collected, including specific data values associated with each data element. For example, the statute requires that law enforcement agencies report the perceived race or ethnicity of the individual stopped, but leaves it to the regulations to specify the exact racial or ethnic categories from which peace officers can select.

Further, Government Code section 12525.5, subdivision (e) specifies that the Attorney General's regulations should be issued in "consultation with stakeholders, including the Racial and Identity Profiling Advisory Board ... federal, state, and local law enforcement agencies and community, professional, academic, research, and civil and human rights organizations." It is for this reason that beginning in March 2016, the Department of Justice began consulting with a wide range of stakeholders reflective of the groups listed above.

The data collection proposed by Government Code section 12525.5 and these regulations will provide law enforcement, the RIPA Board, advocates, academics and other members of the community with the ability to analyze, not only information regarding the number of stops by officers, reasons for stops, and perceived demographics of individuals stopped, but also information about the actions taken by officers during a stop, all of which can reveal patterns to illuminate whether racial or identity profiling has or has not occurred.

The proposed regulations will establish a uniform system for collecting and reporting data on detentions and searches of individuals by law enforcement. This data will, in turn, allow the RIPA Board to serve its functions specified by law, including: "analyz[ing] the data[,]" producing "detailed findings on the past and current status of racial and identity profiling" in California, "mak[ing] policy recommendations for eliminating" profiling, and working with "state and local law enforcement agencies to review and analyze racial and identity profiling policies and practices across geographic areas in California." (Pen. Code, § 13519.4, subd. (j)(3).)

Importantly, if the specific information collected pursuant to the proposed regulations reveals potential disparities in who peace officers stop, how these persons are treated during stops, and the outcomes of these stops, law enforcement agencies, the RIPA Board, researchers, and the public can use this and other data to determine why those disparities are occurring. For example, they can explore whether these disparities are attributed to a systemic problem or the result of stops by a small percentage of officers; whether any part of these disparities can be explained by legitimate policing activities; and what can and should be done to address the disparities observed. Indeed, collecting stop data will be invaluable not only to the RIPA Board, researchers, and the public, but will also provide critical guidance to the law enforcement agencies, particularly with respect to training of their officers if this stop data suggests patterns of discriminatory treatment or implicit biases. Increased transparency, including the publication of this data, as required by AB 953, will be an important step in facilitating dialogue between the public and law enforcement agencies, which will ultimately promote overall public safety for officers and the communities they serve.

Specifically, the proposed regulations provide that the following data shall be collected, for each stop:

- (1) Originating agency identifier (“ORI number”)
- (2) Date, time, and duration of stop
- (3) Location and type of stop
- (4) Reason for presence at scene of stop
- (5) Reason for stop
- (6) Actions taken by officer during stop, including whether a person and/or his/her property was searched; whether the officer asked for consent to search, and whether consent was given; the basis for the search; type of contraband or evidence discovered and property seized, if any; and the basis for seizing the property
- (7) Result of stop
- (8) The perceived race or ethnicity of the person stopped
- (9) The perceived gender of the person stopped
- (10) The perceived age of the person stopped
- (11) Whether the person stopped has limited English fluency or a pronounced accent
- (12) Whether the person stopped has a perceived or known disability
- (13) A unique identifier assigned to the officer who made the stop
- (14) The officer’s years of experience as a peace officer
- (15) The officer’s type of assignment

Additional data elements that the Department of Justice has also considered based on input from stakeholders, including the RIPA Board, but which are **NOT** included in the proposed regulations include:

- (1) Perceived sexual orientation of individual stopped
- (2) Perceived religious orientation of individual stopped
- (3) Perceived homeless status of individual stopped
- (4) Whether the stop was officer-initiated
- (5) Whether the officer had previous contact with individual
- (6) Whether the officer inquired regarding the individual’s immigration status
- (7) The number of officers present at the scene of the stop
- (8) Whether the officers were in uniform and/or in patrol cars
- (9) The number of civilians present during the stop
- (10) Race or ethnicity of the officer
- (11) Age of the officer
- (12) Gender of the officer
- (13) Open narrative field for the officer to explain, in his or her own words, the reason for the stop

The Department of Justice’s decision not to include the above categories as reporting requirements in the regulations was made after careful consideration and the balancing of a variety of factors, including the potential impact on both civilians and officers, caselaw, statutes, the federal and state Constitutions, and the length of reporting time that additional categories would require. The Department of Justice, however, will further consider all recommendations provided during the public comment period.

Specific Reporting Requirements for Certain Settings

In addition to providing the specific categories of information that must be submitted in reporting stops, the proposed regulations set forth specific requirements for certain settings where, for practical or public safety reasons, officers are not required to report specified interactions unless the following additional actions (which are the data values identified as responses to the category of “Actions Taken by Officer During Stop”) are taken toward the individual:

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

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

(1) *Interactions with passengers in motor vehicle stops.* These interactions are to be reported if (1) a passenger is observed or suspected of violating the Vehicle Code or any other applicable law or ordinance; or (2) if the passenger is subject to any actions listed in the “Actions by Officer During Stop” data element above.

(2) *Witness interviews and interactions that potentially involve large numbers of persons.* These are limited to the following:

- (A) Traffic control of vehicles due to a traffic accident or emergency situation that requires that vehicles are stopped for public safety purposes
- (B) Mass evacuations, including those involving bomb threats
- (C) Active shooter events
- (D) Any type of crowd control in which pedestrians are made to remain in a location or routed to a different location for public safety purposes

(E) Witness interviews

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

(3) *Searches and arrests inside a home pursuant to a warrant or search condition.* Interactions with persons who are the subject of the warrant or search condition are not reportable, but interactions with others in the home are reportable, if the officer engages in any of the “Actions by Taken by Officer During Stop” data element set forth in section 999.226, subdivision (a)(6).

(4) *Interactions that take place while an officer is on home detention or house arrest assignment.* Interactions with persons who are subject to the home detention or house arrest are not reportable, but interactions with others in the house are reportable, if the officer engages in any of the “Actions by Taken by Officer During Stop” data element set forth in section 999.226, subdivision (a)(6). Interactions with persons not in the residence or not the subject of the home detention or house arrest will be reported pursuant the reporting requirements of section 999.227, subdivision (a)(1).

(5) *Programmatic searches or seizures.* These are interactions in which the officer stops a person as the result of a blanket regulatory activity or neutral formula without regard to personal characteristics of the individual. These include checkpoints, roadblocks, and routine security screening. Such interactions shall only be reported if the person is subjected to any of the “Actions Taken by Officer During Stop” data element set forth in section 999.226(a)(6), except that the interaction shall not be reported if the officer’s interaction consists solely of any or all of the following, and is not based on individualized suspicion or the personal characteristics of the individual: (1) the officer asks for consent to search the person or person’s property; (2) the officer searches the person or person’s property; or (3) the officer seizes property from the person.

(6) *Interactions in a K-12 public school between an officer and a non-student.* If the sole purpose of detaining the person is to determine whether that person is authorized to be on the school campus, that interaction is not reportable. In all other instances, the interaction is subject to the reporting requirements of this chapter.

(7) *Interactions in a K-12 public school between an officer and a student.* Interactions between an officer and a student in a K-12 public school setting are only subject to the reporting requirements of this chapter if the interaction:

(A) results in a temporary custody under Welfare and Institutions Code section 625, citation, arrest, permanent seizure of property as evidence of a criminal offense, or referral to a school administrator because of suspected criminal activity.

(B) is one in which the student is being questioned for the purpose of investigating whether the student committed a violation of law.

(C) is one in which the student is being questioned for the purpose of investigating to determine whether the student violated Education Code sections 48900, 48900.2, 48900.3, 48900.4, and 48900.7.

(D) results in an officer engaging in one or more of the actions listed above in the “Actions Taken by Officer During Stop” data element. This includes searches and seizures conducted under individualized suspicion, but excludes suspicionless searches and seizures provided that the search or seizure is conducted without regard to individualized suspicion or personal characteristics, including searches conducted at the entries and exits of school facilities by screening devices.

Comparable Federal Regulations

There are no existing federal regulations or statutes comparable to the proposed regulations.

Policy Statement Overview and Anticipated Benefits of Proposed Regulations

The California Legislature, in its findings regarding AB 953’s amendments to California’s prohibition on racial and identity profiling, set forth in Penal Code section 13519.4, succinctly explained the broad objectives of AB 953, which these proposed regulations seek to advance.

Specifically, AB 953: (1) creates the stop data reporting program that is the subject of these regulations (Gov. Code, § 12525.5); (2) requires the Department of Justice to receive and report on citizen complaints that allege racial or identity profiling, as part of its annual reporting on citizen complaints (Pen. Code, § 13012); and (3) amends Penal Code section 13519.4 to expand the definition of racial and identity profiling and ensure that officers receive adequate training regarding how to recognize and prevent racial and identity profiling. As the Legislature explained, “racial or identity profiling alienates people from law enforcement, hinders community policing efforts, and causes law enforcement to lose credibility and trust among the people whom law enforcement is sworn to protect and serve.” (Gov. Code, § 13519.4, subd. (d)(3).)

AB 953 expands the definition of racial or identity profiling, and specifically provides that the consideration of a person’s personal characteristics cannot be a basis for deciding which persons to stop or how to treat a person who has been stopped:

“Racial or identity profiling,” for purposes of this section, is the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop or in deciding upon the scope or substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description.

(Pen. Code, § 13519.4, subd. (e).)

AB 953 further identifies the types of activities that are subject to California’s ban on racial and identity profiling, noting that “[these] activities include, but are not limited to, traffic or pedestrian stops, or actions during a stop, such as asking questions, frisks, consensual and nonconsensual searches of a person or any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest.” (Pen. Code, § 13519.4, subd. (e).)

The specific benefits that can be anticipated from the issuance of these proposed regulations are numerous. Government Code section 12525.5, which these regulations implement (and which mandates that these regulations be issued), provides law enforcement, the Racial and Identity Profiling Advisory Board, advocates, academics and other members of the community with the ability to analyze, not only stops by officers, but their actions during a stop, all of which can reveal whether racial or identity profiling exists. This data is essential to understanding whether there are biases (either implicit or explicit) in law enforcement activities, including stops and actions that take place during a stop, and are an important first step in addressing these biases if they exist.

With the information specified in the proposed regulations, if disparities are apparent, law enforcement agencies, the RIPA Board, and researchers can determine why those disparities are occurring—whether they are attributed to a systemic problem or a small percentage of officers—what, if any part of those disparities can be explained by legitimate policing activities, and what can and should be done to address the disparities observed. Indeed, collecting stop data will be invaluable not only to researchers and the public, but will also provide critical guidance to law enforcement agencies, particularly with respect to training of their officers, if this stop data suggests patterns of discriminatory treatment or implicit biases.

And increased transparency, including the publication of this data, as required by AB 953, will be an important step in building bridges between the community and law enforcement agencies. Building these bridges will ultimately promote public safety for both the public and law enforcement.

Determination of Inconsistency/Incompatibility with Existing State Regulations

Government Code section 11346.5(a)(3)(D) requires the Department of Justice to evaluate whether the proposed regulations are inconsistent or incompatible with existing state regulations. The Department has determined these proposed regulations are not inconsistent or incompatible with any existing state regulations, because there are no existing regulations that address the specific subject matter of the proposed regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department of Justice has made the following initial determinations:

Fiscal Impact On Local And State Government

Among other things, AB 953 requires the Department of Justice to draft and issue regulations to implement the stop data reporting requirements of Government Code section 12525.5. This new

program requires specified state and local agencies, including school districts that employ peace officers, to collect and report to the Department of Justice data regarding stops of their officers.

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

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

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

(Legis. Counsel's Dig., Assem. Bill No. 953, Stats. 2015, ch. 466, pp. 4153-4154.) Further, Section 5 of AB 953 provides: "If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code." (Stats. 2015, ch. 466, § 5, p. 4159.)

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

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

Estimates Regarding Fiscal Impact on Local and State Government

Although the full fiscal impact on local and state government is unknown because agencies have yet to design and develop their data collection programs in response to AB 953's stop data mandate, the Department of Justice has attempted to estimate some of this information to obtain a sense of the potential costs Government Code section 12525.5 will impose upon state and local agencies.

As discussed below, the Department of Justice requested estimates from law enforcement agencies regarding the fiscal impact to state and local government in reporting the stop data required under AB 953. Based on those responses and other information that the Department has reviewed, specified below, it appears that the costs to local and state government will be no less than \$81 million in one-time costs. These one-time projected costs included purchasing

equipment and implementing technical changes to local dispatch and/or record management systems. There will also be ongoing costs for personnel, training, and maintenance; most agencies, however, did not provide those costs. This also does not include state funds already allocated to the Department of Justice for implementation of AB 953 through the approved budget change proposal.

Agencies Impacted By Government Code Section 12525.5

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

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

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

Fiscal Impact to Local Agencies, Including School Districts

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

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

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

Fiscal Impact:

Data collection, reporting, retention, and training: Major one-time and ongoing costs, potentially in the tens of millions of dollars annually to local law enforcement agencies for data collection, reporting, and retention requirements specified in the bill. Additional costs for training on the process would likely be

required. There are currently 482 cities and 58 counties in California. To the extent local agency expenditures qualify as a reimbursable state mandate, agencies could claim reimbursement of those costs (General Fund). While costs could vary widely, for context, the Commission on State Mandates' statewide cost estimate for *Crime Statistics Reports for the DOJ* reflects eligible reimbursement of over \$13.6 million per year for slightly over 50 percent of local agencies reporting.

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

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

Estimates Provided by Law Enforcement Agencies Following Passage of AB 953

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

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

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

Estimates Regarding Impact on School Districts

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

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

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

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

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

Fiscal Impact on State Government

Fiscal Estimates Provided in AB 953's Legislative History

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

CHP impact: Potentially significant one-time costs of about \$1 million (Motor Vehicle Account) to modify its existing database, create the program to generate the report, and train personnel. Ongoing increase in workload costs potentially in the range of \$250,000 to \$500,000 (Motor Vehicle Account) for data collection

and reporting activities. Data for 2013-14 from the CHP indicates approximately 3.1 million enforcement actions potentially subject to the data collection and reporting provisions of this bill.

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

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

Estimates Provided by State Agencies Following Passage of AB 953

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

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

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

Methodology in Analyzing Survey Responses

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

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

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

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

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

Local Agencies

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

State Agencies

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

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

currently unable to provide cost estimates regarding the implementation of Government Code section 12525.5.

Cost or Savings in Federal Funding to the State

None.

Significant, Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States.

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

Cost impacts on representative private person or businesses

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

Adoption of these regulations will not:

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

Impact on Small Businesses

The Department has determined that these proposed regulations will not affect small businesses. These regulations impose mandates only upon local and state agencies, and not upon small businesses. Small businesses are not legally required to comply with or enforce these proposed regulations. Nor will they derive a benefit or detriment from the enforcement of these regulations. Only law enforcement agencies subjected to the reporting requirements of Government Code section 12525.5 will be required to incur costs as a result of Government Code section 12525.5. Although it is anticipated that agencies may purchase additional software and/or systems from vendors to assist in their compliance with these regulations, with respect to the collection and submission of this data electronically to the Department, these transactions will not materially impact small businesses.

Significant effect on housing costs

None.

Business Report

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

Results of Economic Impact Analysis

The proposed regulations will not create or eliminate jobs in California nor will they create, eliminate or affect the expansion of California businesses. The proposed regulations will not adversely impact the health and welfare of California residents, worker safety, nor the State's environment. The proposed regulations benefit the public and California's peace officers by establishing clear guidance on stop reporting requirements of AB 953. Reporting law enforcement contacts with individuals will provide law enforcement agencies, the public and researchers with the opportunity to uncover, address, and eradicate racial and identity profiling.

CONSIDERATION OF ALTERNATIVES

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

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

In order to ensure accurate and uniform reporting, the information collected must be uniform both in its categories of information collected and in the responses to these categories, in order for this information to be submitted electronically and for the data to be accessible to law enforcement agencies, the RIPA Board, researchers and the public, and so that meaningful review and analysis of this data is possible. As a result, the Department has preliminarily determined that there are no reasonable alternatives that would be more effective in carrying out the intent of AB 953.

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

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

CONTACT PERSONS

General or substantive comments concerning this proposed rulemaking, including requests for copies of documents associated with this action such as the text of the proposed regulations, initial statement of reasons, and related forms, should be directed to:

Catherine Z. Ysrael
Deputy Attorney General
California Department of Justice
Civil Rights Enforcement Section
300 S. Spring St., Suite 1702
Los Angeles, CA 90013
Phone: (213) 897-2039
Email: AB953@doj.ca.gov

or

Kathleen V. Radez
Deputy Attorney General
California Department of Justice
Civil Rights Enforcement Section
P.O. Box 70550
Oakland, CA 94612
Phone: (510) 897-2039
Email: AB953@doj.ca.gov

AVAILABILITY OF INITIAL STATEMENT OF REASONS, PROPOSED TEXT, RELATED FORMS, AND RULEMAKING FILE

The Department of Justice will make copies of the following documents available on the Department of Justice's website at www.oag.ca.gov/AB953: this notice, the text of the proposed regulations, the initial statement of reasons, the economic and fiscal impact statement (STD 399) and addendum, and the notice of publication/regulations submission (STD 400). The entire rulemaking file is available for inspection and copying throughout the rulemaking process during business hours at the following locations:

California Department of Justice
Civil Rights Enforcement Section
300 S. Spring St., Suite 1702
Los Angeles, CA 90013

California Department of Justice
Civil Rights Enforcement Section
1515 Clay Street, Suite 2000
Oakland, CA 94612

Copies of these documents are also available upon request by contacting Catherine Z. Ysrael or Kathleen V. Radez, Deputy Attorneys General, at the contact information above (Contact Persons).

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Department of Justice may adopt the proposed regulations substantially as described in this notice. If the Department of Justice makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before it adopts the proposed regulations, as revised. Copies of any modified text will be available on the Department of Justice's website at www.oag.ca.gov/AB953. Please send requests for copies of any modified regulations to Catherine Z. Ysrael or Kathleen V. Radez, Deputy Attorneys General, at the contact information above (Contact Persons). The Department of Justice will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the final statement of reasons may be obtained by contacting Catherine Z. Ysrael or Kathleen V. Radez, Deputy Attorneys General, at the contact information above (Contact Persons), or by visiting the Department of Justice's website at www.oag.ca.gov/AB953.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this notice, the initial statement of reasons, the text of the proposed regulations, and related forms will be posted and available for downloading on the Department of Justice's website at: www.oag.ca.gov/AB953.