

September 9, 2020

Captain Jeffrey Jordon  
City of San Diego  
San Diego Police Department  
1401 Broadway  
San Diego, CA 92101

Ms. Natalie Sidarous  
State Controller's Office  
Local Government Programs and Services  
Division  
3301 C Street, Suite 740  
Sacramento, CA 95816

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Proposed Decision and Parameters and Guidelines**

*Racial and Identity Profiling, 18-TC-02*

Government Code Section 12525.5, as added and amended by Statutes 2015, Chapter 466 (AB 953); Statutes 2017, Chapter 328 (AB 1518); California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229, as added by Register 2017, No. 46<sup>1</sup>

City of San Diego, Claimant

Dear Captain Jordon and Ms. Sidarous:

The Proposed Decision and Parameters and Guidelines for the above-captioned matter is enclosed for your review.

**Hearing**

This matter is set for hearing on **Friday, September 25, 2020** at 10:00 a.m., via Zoom.

In response to COVID-19 and its impact on public meetings under the Bagley-Keene Open Meeting Act, Governor Newsom's Executive Order N-29-20 suspends, on an emergency basis pursuant to California Government Code section 8571, certain requirements for public meetings. Accordingly, requiring the physical presence of board members at meetings and providing a physical space for members of the public to observe and participate have been suspended until further notice, so long as the agency makes it possible for members of the public to observe and address the meeting remotely, for example, via web or audio conferencing such as Zoom.

The Commission on State Mandates (Commission) is committed to ensuring that its public meetings are accessible to the public and that the public has the opportunity to observe the meeting and to participate by providing written and verbal comment on Commission matters.

**If you want to speak during the hearing, you must use the "Raise Hand" feature in order for our moderators to know you need to be unmuted. If you are participating by phone, you may dial \*9 to use the "Raise Hand" feature.**

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<sup>1</sup> Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

There are three options for joining the meeting via Zoom:

1. Through the link below you can listen and view through your desktop, laptop, tablet, or smart phone. This will allow you to view documents being shared as well. **(You are encouraged to use this option.)**

<https://us02web.zoom.us/j/82122689028?pwd=T3BKemZjTG11NS8wRFcwNk9INEVGQT09>

Meeting ID: 821 2268 9028

Password: 567398

2. Through one tap mobile on an iPhone in the US. This process will dial everything for you without having to key in the meeting ID. If you have the Zoom application on your iPhone you can view the meeting and documents being shared as well.

+16699009128,,82122689028#,,,0#,,#,567398# or

+12532158782,,82122689028#,,,0#,,#,567398#

3. Through your landline (or non-smart mobile) phone, any number works. You will be able to listen to the proceedings but will not be able to view the meeting or any documents being shared.

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 312 626 6799 US (Chicago)

+1 646 558 8656 US (New York)

+1 301 715 8592 US (Maryland)

Meeting ID: 821 2268 9028

Password: 567398

During this extraordinary time and as we explore new ways of doing business with new technologies, we ask that you remain patient with us. Please don't hesitate to reach out to us for help with technical problems at [csminfo@csm.ca.gov](mailto:csminfo@csm.ca.gov) or 916 323-3562.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness plan to testify and please specify the names and email addresses of the people who will be speaking for inclusion on the witness list so that detailed instructions regarding how to participate as a party in this meeting on Zoom can be provided to them.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Captain Jordon and Ms. Sidarous  
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**Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Halsey". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Heather Halsey  
Executive Director

## ITEM 4

### PROPOSED DECISION AND PARAMETERS AND GUIDELINES

Government Code Section 12525.5, as added and amended by Statutes 2015, Chapter 466 (AB 953); Statutes 2017, Chapter 328 (AB 1518)

California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229 as added by Register 2017, No. 46<sup>1</sup>

#### *Racial and Identity Profiling*

18-TC-02

The period of reimbursement begins November 7, 2017.

City of San Diego, Claimant

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### EXECUTIVE SUMMARY

#### **I. Summary of the Mandate**

On May 22, 2020, the Commission on State Mandates (Commission) adopted the Test Claim Decision finding that Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, and California Code of Regulations, title 11, sections 999.224- 999.229 (Register 2017, No. 46), constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning November 7, 2017, on city and county law enforcement agencies that employ peace officers (other than probation officers and officers in a custodial setting) to electronically report to the Attorney General, on an annual basis, data on all “stops” within their own jurisdiction, conducted by the agency’s peace officers; and on those city and county law enforcement agencies that contract for peace officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their jurisdictions.

#### **II. Procedural History**

On May 22, 2020, the Commission adopted the Test Claim Decision.<sup>2</sup> On May 22, 2020, Commission staff issued the Draft Expedited Parameters and Guidelines.<sup>3</sup> On June 12, 2020, the claimant filed comments on the Draft Expedited Parameters and Guidelines.<sup>4</sup> On July 6, 2020, Commission staff issued the Draft Proposed Decision and Parameters and Guidelines.<sup>5</sup> On

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<sup>1</sup> Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

<sup>2</sup> Exhibit A, Test Claim Decision.

<sup>3</sup> Exhibit B, Draft Expedited Parameters and Guidelines.

<sup>4</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines.

<sup>5</sup> Exhibit D, Draft Proposed Decision and Parameters and Guidelines.

July 23, 2020, the claimant filed comments on the Draft Proposed Decision and Parameters and Guidelines stating that it had no additional comments to offer.<sup>6</sup>

### **III. Discussion**

#### **A. Eligible Claimants (Section II. of Parameters and Guidelines)**

Consistent with the Test Claim Decision, Section II. of the Proposed Parameters and Guidelines states the following:

Any city, county, city and county is eligible to claim reimbursement for increased costs incurred as a result of this mandate for the city or county's law enforcement agencies that meet the following criteria:

- Employ peace officers (other than probation officers and officers in a custodial setting) to perform the requirements of the test claim statute and regulations for stops within their own jurisdictions; *or*
- Contract for peace officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their jurisdictions.

***K-12 school districts and community college districts are not eligible to claim for this program. Cities and counties may not claim the costs of their peace officer employees that are incurred while they are assigned out to work for other government or private entities based on a contract or memorandum of understanding.***

#### **B. Period of Reimbursement (Section III. of Parameters and Guidelines)**

As determined in the Test Claim Decision, the period of reimbursement begins November 7, 2017.

#### **C. Reimbursable Activities (Section IV. of the Draft Expedited Parameters and Guidelines)**

The Proposed Parameters and Guidelines include all the activities approved by the Commission as reimbursable state-mandated activities in the Test Claim Decision.

The claimant also requests reimbursement for the following activities:

One-time activities:

- a. Update policies and procedures to incorporate the requirements of the Test Claim Statute.
- b. Train staff (peace officers) assigned to perform the reimbursable activities listed in section IV of these Parameters and Guidelines (one-time for each employee).

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<sup>6</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision and Parameters and Guidelines.

- c. Installation and testing of software necessary to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.

Ongoing activities:

- a. As modifications are made to the Test Claim Statute, provide for updated training to meet any new requirements made by the legislature or the Racial and Identity Profiling Act Board.
- b. Update software, as necessary, to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.<sup>7</sup>

Each of these is discussed in turn.

1. The proposed one-time activity to update policies and procedures is not supported by substantial evidence in the record explaining why this activity is reasonably necessary to comply with the mandate.

The claimant requests reimbursement to update policies and procedures. Any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the proposed activity is necessary for the performance of the state-mandated activity in accordance with Government Code sections 17557(a), 17559, and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

The claimant's comments and the Test Claim record are silent as to the specific need for updating local agency policies and procedures, however. Neither Captain Jeffrey Jordon's declaration filed with the comments on the Draft Expedited Parameters and Guidelines, nor Captain Jordon's declaration filed with the Test Claim explain how or why updating policies and procedures is reasonably necessary in complying with the test claim statute. The only reference to this allegedly necessary activity is claimant's assertion that "in order to comply with the test claim statutes, it is necessary for local agencies that employ peace officers to update their policies and procedures, and provide training related to data collection and reporting."<sup>8</sup>

2. The proposed activity to provide one-time training for each peace officer employee and supervisor assigned to perform the reimbursable activities is supported by evidence in the record and is, therefore, reasonably necessary to comply with the mandate.

The claimant requests reimbursement to provide one-time training for peace officer employees and supervisors. Staff finds that this request is supported by the law and evidence in the record.

Captain Jordon declares under the penalty of perjury that it would not be possible for local agencies employing peace officers to collect stop data and report it to the Attorney General

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<sup>7</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>8</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines (Declaration of Captain Jeffrey Jordon), page 3.

without being familiar with how a stop is defined and when it must be reported.<sup>9</sup> The Declaration further states that supervisors were trained to determine if their officers are collecting and submitting the required stop data.<sup>10</sup> The claimant attached training logs to the Test Claim evidencing peace officer and supervisor training on the requirements of the mandate.<sup>11</sup> Furthermore, the legislative history of the test claim statute and regulations demonstrates that training costs were anticipated. In the Economic and Fiscal Impact Statement supporting the Department of Justice (DOJ) regulations, DOJ stated that AB 953 would likely result in increased demand for training.<sup>12</sup> Also, the Senate Committee on Appropriations – in its bill analysis of AB 953 – noted that “[a]dditional costs for training on the process would likely be required.”<sup>13</sup>

Thus, Section IV.A. of the Parameters and Guidelines includes the following reimbursable activity:

One-time training per peace officer employee and supervisor assigned to perform the reimbursable activities listed in Section IV.B. of these Parameters and Guidelines.

3. The proposed one-time activity to install and test software to comply with the mandated requirements to collect and report stop data is supported by evidence in the record and is, therefore, reasonably necessary to comply with the mandate.

The claimant requests one-time reimbursement to install and test software to comply with the mandated requirements to collect and report stop data. Staff finds that this request is consistent with the law and supported by evidence in the record.

The test claim regulations require claimants to submit all required stop data to the system developed by DOJ in an electronic format that complies with the DOJ interface specifications, and that the system is secure from unauthorized access, alteration, deletion or release.<sup>14</sup> In implementing its own reporting system, the claimant was provided with a custom data collection application and submission tool by the San Diego Sheriff’s Office, which the claimant installed and tested before going “live” on June 27, 2018.<sup>15</sup>

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<sup>9</sup> Exhibit F, Excerpt from the Test Claim (Declaration of Captain Jeffrey Jordon), page 2.

<sup>10</sup> Exhibit F, Excerpt from the Test Claim (Declaration of Captain Jeffrey Jordon), page 2.

<sup>11</sup> Exhibit F, Excerpt from the Test Claim (Exhibit 12, Command Training Logs).

<sup>12</sup> Exhibit F, Excerpt from the Test Claim (California Department of Justice, Economic and Fiscal Impact Statement, AB 953 Stop Data Reporting Regulations to Implement Gov. Code Section 12525.5), page 1.

<sup>13</sup> Exhibit F, Excerpt from the Test Claim (Senate Committee on Appropriations, Analysis of AB 953 [2015-2016 Reg. Sess.], August 17, 2015), page 1.

<sup>14</sup> California Code of Regulations, title 11, section 999.228(a), (b), (e) [Register 2017, No. 46].

<sup>15</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines (Declaration of Captain Jeffrey Jordon), page 3.

Accordingly, Section IV.A. of the Parameters and Guidelines includes the following reimbursable activity:

One-time installation and testing of software necessary to comply with the state-mandated requirements for the collection and reporting requirements of data on all applicable stops.

4. The proposed ongoing activity of providing training to meet new requirements imposed by the Legislature or the Racial and Identity Profiling Act (RIPA) Board is not consistent with the law and is therefore denied.

The claimant requests reimbursement for the ongoing activity of providing training to meet any new requirements made by the Legislature or the RIPA Board. This proposed activity is not consistent with the law. In the event the Legislature or DOJ change the law and increase the responsibilities of local government under this program, then new a test claim would have to be filed pursuant to Government Code sections 17551 and 17553. If the Legislature or DOJ repeals one of the activities mandated by the state, or otherwise changes the future liability of the State under article XIII B, section 6, then the State can request that the Parameters and Guidelines be amended under Government Code section 17557(d), or the State can file a request to adopt a new test claim decision under Government Code section 17570. Thus, these Parameters and Guidelines cannot account for future changes in law.

In addition, the RIPA Board is not tasked with, nor have they been given authority to revise or amend the requirements under the test claim statute. Rather, the RIPA Board is tasked with reviewing and analyzing reported data, working with law enforcement to review and analyze racial and identity profiling practices and procedures, issuing a report of their findings, and holding at least three annual public meetings.<sup>16</sup>

5. The proposed ongoing activity of updating software, as necessary, to comply with the requirements of collecting and reporting data, is not supported by substantial evidence in the record explaining why this activity is reasonably necessary to comply with the mandate.

The claimant has also requested ongoing reimbursement for updating software, as necessary, to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.<sup>17</sup> There is nothing in the record demonstrating that this is a reasonably necessary activity. The claimant has not provided or pointed to any evidence in the record demonstrating that the software used to perform the requirements under the Government Code needs consistent updating. Notably, the DOJ Economic and Fiscal Impact Statement does not mention that agencies would likely be subject to ongoing costs related to updating software.<sup>18</sup>

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<sup>16</sup> Exhibit F, Excerpt from the Test Claim (Senate Committee on Appropriations, Analysis of AB 953 [2015-2016 Reg. Sess.], August 17, 2015), page 4.

<sup>17</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>18</sup> Exhibit F, Excerpt from the Test Claim (California Department of Justice, Economic and Fiscal Impact Statement, AB 953 Stop Data Reporting Regulations to Implement Gov. Code Section 12525.5).



## **Claim Preparation and Submission (Section V. of the Draft Expedited Parameters and Guidelines)**

In light of the analysis in the preceding section, the Proposed Parameters and Guidelines add training to Section IV.A. of the Parameters and Guidelines. This section would allow reimbursement for one-time training per each employee and supervisor performing the mandate. Staff also proposes allowing reimbursement for installation and testing of the software necessary to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.

### **IV. Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision and Parameters and Guidelines in accordance to article XIII B, section 6(a) of California Constitution and Government Code section 17514 to provide for reimbursement beginning November 7, 2017.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical changes to the Proposed Decision following the hearing.

BEFORE THE  
 COMMISSION ON STATE MANDATES  
 STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES  
 FOR:

Government Code Section 12525.5 as added and amended by Statutes 2015, Chapter 466 (AB 953); Statutes 2017 Chapter 328 (AB 1518)

California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229; as added by Register 2017, No. 46<sup>19</sup>

The period of reimbursement begins November 7, 2017.

Case No.: 18-TC-02

*Racial and Identity Profiling*

DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.

(Adopted September 25, 2020)

**DECISION**

The Commission on State Mandates (Commission) heard and decided the Decision and Parameters and Guidelines during a regularly scheduled hearing on September 25, 2020. [Witness list will be included in the adopted Decision.]

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified/rejected] the Proposed Decision and Parameters and Guidelines by a vote of [vote count will be in the adopted Decision], as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Jacqueline Wong-Hernandez, Representative of the State Controller	

<sup>19</sup> Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

## **I. Summary of the Mandate**

On May 22, 2020, the Commission on State Mandates (Commission) adopted the Test Claim Decision finding that Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, and California Code of Regulations, title 11, sections 999.224- 999.229 (Register 2017, No. 46), constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning November 7, 2017. Specifically, the Commission found that the mandate was imposed on city and county law enforcement agencies that employ peace officers (other than probation officers and officers in a custodial setting) to electronically report to the Attorney General, on an annual basis, data on all “stops” within their own jurisdiction, conducted by the agency’s peace officers; and on those city and county law enforcement agencies that contract for peace officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their jurisdictions.

## **II. Procedural History**

On May 22, 2020, the Commission adopted the Test Claim Decision.<sup>20</sup> On May 22, 2020, Commission staff issued the Draft Expedited Parameters and Guidelines.<sup>21</sup> On June 12, 2020, the claimant filed comments on the Draft Expedited Parameters and Guidelines.<sup>22</sup> On July 6, 2020, Commission staff issued the Draft Proposed Decision and Parameters and Guidelines.<sup>23</sup> On July 23, 2020, the claimant filed comments on the Draft Proposed Decision and Parameters and Guidelines stating that it had no additional comments to offer.<sup>24</sup>

## **III. Positions of the Parties**

### **A. City of San Diego**

The claimant has requested that the Commission add several activities, which it asserts are reasonably necessary to comply with the mandated program. Claimant asserts that it is necessary that local agencies update their policies and procedures to provide a sufficient level of explanation to its peace officers that must perform the functions of Government Code section 12525.5.<sup>25</sup> The claimant also states that updating information technology, specifically adopting and testing software, which allows local agencies to comply with state-mandated activities is reasonable and necessary.<sup>26</sup> To that end, the claimant requests that Section IV. of the Draft Expedited Parameters and Guidelines be amended to provide for reimbursement of one-time activities to include: update policies and procedures to incorporate the requirements of the test

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<sup>20</sup> Exhibit A, Test Claim Decision.

<sup>21</sup> Exhibit B, Draft Expedited Parameters and Guidelines.

<sup>22</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines.

<sup>23</sup> Exhibit D, Draft Proposed Decision and Parameters and Guidelines.

<sup>24</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision and Parameters and Guidelines.

<sup>25</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>26</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

claim statute; train staff (peace officers) assigned to perform the reimbursable activities listed in Section IV. of the Parameters and Guidelines; and install and test the software necessary to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops. The claimant also requests that Section IV. of the Draft Expedited Parameters and Guidelines authorize ongoing reimbursement for updated training to meet any new requirements made by the Legislature or the Racial and Identity Profiling Act (RIPA) Board; and update software, as necessary, to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.<sup>27</sup> Specifically, the claimant requests that the following activities be added to the Parameters and Guidelines:

One-time activities:

- a. Update policies and procedures to incorporate the requirements of the Test Claim Statute.
- b. Train staff (peace officers) assigned to perform the reimbursable activities listed in section IV of these Parameters and Guidelines (one-time for each employee).
- c. Installation and testing of software necessary to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.

Ongoing activities:

- a. As modifications are made to the Test Claim Statute provide for updated training to meet any new requirements made by the legislature or the Racial and Identity Profiling Act Board.
- b. Update software, as necessary, to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.<sup>28</sup>

The claimant has also filed a Declaration of Captain Jeffrey Jordon, San Diego Police Department, to support these requests.<sup>29</sup>

**B. Department of Finance**

The Department of Finance (Finance) has not filed any comments on the Draft Expedited Parameters and Guidelines.

**IV. Discussion**

**A. Eligible Claimants (Section II. of Parameters and Guidelines)**

In the Test Claim Decision, the Commission found that Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, and Title 11,

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<sup>27</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>28</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>29</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines (Declaration of Captain Jeffrey Jordon), pages 3-6.

California Code of Regulations sections 999-224-999.229 (Register 2017, No. 46), constitutes a state-mandated new program or higher level of service, and imposes costs mandated by the state, *only* on city and county law enforcement agencies that employ peace officers (other than probation officers and officers in a custodial setting) who perform the requirements of the test claim statute and regulations for stops within their own jurisdictions, and cities and counties that contract for officers from other city or county reporting agencies in order to carry out their basic and essential function of providing police protection services in their jurisdictions.<sup>30</sup> The Commission also found that the test claim statutes did not impose a state-mandated program on K-12 school districts and community college districts; and on cities and counties when they assign their peace officers out to work for other government or private entities based on a contract or memorandum of understanding.<sup>31</sup>

Section II. of the Proposed Parameters and Guidelines therefore states the following:

Any city, county, city and county is eligible to claim reimbursement for increased costs incurred as a result of this mandate for the city or county's law enforcement agencies that meet the following criteria:

- Employ peace officers (other than probation officers and officers in a custodial setting) to perform the requirements of the test claim statute and regulations for stops within their own jurisdictions; *or*
- Contract for peace officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their jurisdictions.

***K-12 school districts and community college districts are not eligible to claim for this program. Cities and counties may not claim the costs of their peace officer employees that are incurred while they are assigned out to work for other government or private entities based on a contract or memorandum of understanding.***

#### **B. Period of Reimbursement (Section III. of Parameters and Guidelines)**

Government Code section 17557(e) establishes the period of reimbursement for an approved test claim based on when the test claim is filed; “[a] test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.” Based on the filing date of June 14, 2019 for this Test Claim, the potential period of reimbursement, pursuant to Government Code section 17557(e), would begin July 1, 2017.<sup>32</sup> However, as indicated in the Commission’s Test Claim Decision, the Commission partially approved the claim *only* for the activities mandated by Government Code section 12525.5 and the regulations adopted by DOJ to implement section 12525.5 (Cal. Code Regs., tit. 11, §§ 999.224 through 999.229, Register 2017, No. 46).<sup>33</sup> These regulations became operative and

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<sup>30</sup> Exhibit A, Test Claim Decision, pages 4, 53.

<sup>31</sup> Exhibit A, Test Claim Decision, page 9.

<sup>32</sup> Exhibit A, Test Claim Decision, page 25.

<sup>33</sup> Exhibit A, Test Claim Decision, page 25.

effective on November 7, 2017.<sup>34</sup> The Legislature, in Government Code section 12525.5(a)(2) and (e), delayed local agency compliance with the program to a date after the regulations were required to be adopted.

Accordingly, Section III. of the Parameters and Guidelines states that the period of reimbursement begins November 7, 2017.<sup>35</sup>

### **C. Reimbursable Activities (Section IV. of the Parameters and Guidelines)**

Pursuant to Government Code section 17557(a) and section 1183.7 of the Commission's regulations, the Parameters and Guidelines must identify the activities mandated by the state and "may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program." "Reasonably necessary activities" are defined in the Commission's regulations as follows:

"Reasonably necessary activities" are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of these regulations.<sup>36</sup>

Any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the proposed activity is necessary for the performance of the state-mandated activity in accordance with Government Code sections 17557(a), 17559, and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

Here, Section IV. of the Parameters and Guidelines lists the activities that the Commission approved as reimbursable state-mandated activities. The claimant has filed comments on the Draft Expedited Parameters and Guidelines identifying additional activities alleged to be reasonably necessary to comply with the mandate. Specifically, the claimant requests reimbursement for the following one-time activities: update policies and procedures to incorporate the requirements of the Test Claim statute; train staff (peace officers) assigned to perform the reimbursable activities listed in section IV. of the Parameters and Guidelines; and install and test the software necessary to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.<sup>37</sup>

The claimant also requests that Section IV. of the Parameters and Guidelines provide reimbursement for the following ongoing activities alleged to be reasonably necessary to comply

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<sup>34</sup> Exhibit A, Test Claim Decision, page 25.

<sup>35</sup> Exhibit B, Draft Expedited Parameters and Guidelines, page 6.

<sup>36</sup> California Code of Regulations, title 2, section 1183.7(d).

<sup>37</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

with the mandate: updated training to meet any new requirements made by the Legislature or RIPA; and update software, as necessary, to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.<sup>38</sup> Each of these requests will be discussed in turn.

1. The proposed one-time activity to update policies and procedures is not supported by substantial evidence in the record explaining why this activity is reasonably necessary to comply with the mandate.

The claimant requests reimbursement for the one-time activity of updating policies and procedures to incorporate the requirements of the test claim statute.<sup>39</sup> While the claimant's comments focus on costs associated with training and information technology, the comments are silent as to the specific need for updating local agency policies and procedures. Neither Captain Jordon's declaration filed with the comments, nor Captain Jordon's declaration and exhibits filed with the Test Claim demonstrate why updating policies and procedures is reasonably necessary to comply with the mandate. The only reference to this allegedly necessary activity is the claimant's assertion that "in order to comply with the test claim statutes, it is necessary for local agencies that employ peace officers to update their policies and procedures, and provide training related to data collection and reporting."<sup>40</sup> There is no follow-up to this statement in the comments regarding why updating or adopting policies and procedures is necessary, nor does the record contain any specificity regarding costs incurred or the steps taken in regard to updating agency policy and procedure.

For this activity to be approved as reasonably necessary to comply with the mandate pursuant to Government Code sections 17557 and 17559, and section 1183.7 of the Commission's regulations, the claimant must explain and support, with substantial evidence in the record and in accordance with the Commission's regulations, why updating policies and procedures is reasonably necessary to comply with the mandate. Section 1187.5 of the Commission's regulations requires that oral or written representations of fact shall be under oath or affirmation; that all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so; and that hearsay evidence may only be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

Accordingly, the Commission denies this request.

2. The proposed activity to provide one-time training for each peace officer employee and supervisor assigned to perform the reimbursable activities is supported by evidence in the record and is, therefore, reasonably necessary to comply with the mandate.

The claimant requests reimbursement to provide one-time training to employees and supervisors assigned to perform the reimbursable activities listed in Section IV. of these Parameters and

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<sup>38</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>39</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>40</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines (Declaration of Captain Jeffrey Jordon), page 3.

Guidelines.<sup>41</sup> In support of this request, the claimant contends that the mandate requires law enforcement personnel to learn new definitions, software applications for the collection and submission of data, and extensive rules governing exceptions to data collection during stops.<sup>42 43</sup>

The Commission finds there is substantial evidence in the record to support the finding that one-time training per employee performing the mandate is reasonably necessary to comply with the mandate. Captain Jordon's declaration, signed under the penalty of perjury, and filed with the Test Claim, declares that it would not be possible for local agencies employing peace officers to collect stop data and report it to the Attorney General without being familiar with how a stop is defined and when it must be reported.<sup>44</sup> Captain Jordon notes that prior to the enactment of Government Code 12525.5, no law enforcement agency in California was mandated to collect and report stop data as is now required.<sup>45</sup> As a result, local law enforcement agencies that employ peace officers must be trained and supervised to perform these activities correctly, and the collection and reporting of this data requires specialized expertise in information technologies.<sup>46</sup> As for supervisory training, Captain Jordon declares that supervisors must be trained to determine if their officers are collecting and submitting the required stop data.<sup>47</sup> Captain Jordon attached training logs to his declaration outlining leadership training in 2018, where peace officer managers were trained on AB 953 and RIPA.<sup>48</sup> And he attached a log showing the peace officer staff who were trained on the RIPA requirements.<sup>49</sup> All sworn members of the San Diego Police Department (SDPD) were required to receive at least 15 minutes of training via an online PowerPoint presentation related to new stop data items to be collected and submitted under Government Code 12525.5(a)(1), while supervisors were required to receive an additional hour of training to ensure officers assigned to them were accurately collecting and submitting the data pursuant to the alleged mandate.<sup>50</sup> There is no evidence rebutting these declarations.

In addition, the reporting requirements for this program, and the exceptions to reporting, are detailed and specific, and require that the reports be audited and validated pursuant to the Department of Justice (DOJ) specifications. The legislative history of Government Code section

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<sup>41</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>42</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines (Declaration of Captain Jeffrey Jordon), page 3.

<sup>43</sup> Exhibit F, Excerpt from the Test Claim (Declaration of Captain Jeffrey Jordon), page 2.

<sup>44</sup> Exhibit F, Excerpt from the Test Claim (Declaration of Captain Jeffrey Jordon), page 2.

<sup>45</sup> Exhibit F, Excerpt from the Test Claim (Declaration of Captain Jeffrey Jordon), page 2.

<sup>46</sup> Exhibit F, Excerpt from the Test Claim (Declaration of Captain Jeffrey Jordon), page 2.

<sup>47</sup> Exhibit F, Excerpt from the Test Claim (Declaration of Captain Jeffrey Jordon), page 2.

<sup>48</sup> Exhibit F, Excerpt from the Test Claim (Exhibit 12, Command Training Logs), pages 2, 3.

<sup>49</sup> Exhibit F, Excerpt from the Test Claim (Exhibit 12, Command Training Logs), pages 27-97.

<sup>50</sup> Exhibit F, Excerpt from the Test Claim (Exhibit 12, Command Training Logs), pages 27-97; Exhibit F, Excerpt from the Test Claim (Narrative), pages 2, 8.



12525.5 and the test claim regulations demonstrate that training costs were anticipated by the Legislature and DOJ. In their Economic and Fiscal Impact Statement, DOJ stated that AB 953 would likely result in increased demand for training professionals and support staff to help law enforcement agencies implement the reporting requirements.<sup>51</sup> Also, the Senate Committee on Appropriations – in its report regarding AB 953 – noted that “Additional costs for training on the process would likely be required.”<sup>52</sup>

Accordingly, the Commission finds that the evidence in the record supports the finding that one-time training per employee is reasonably necessary to comply with the mandate. This activity is included in Section IV.A. Reimbursable Activities (One-Time Activities) as follows:

- One-time training per peace officer employee and supervisor assigned to perform the reimbursable activities listed in section IV.B. of these Parameters and Guidelines.
3. The proposed one-time activity to install and test software to comply with the mandated requirements to collect and report stop data is supported by evidence in the record and is, therefore, reasonably necessary to comply with the mandate.

The test claim regulations require claimants to:

- Submit all required stop data to the system developed by the DOJ in electronic format that complies with the DOJ interface specifications via one of the three approved submission methods: (1) a web-browser based application developed by the DOJ; (2) a system-to-system web service; and (3) a secured file transfer protocol. (Cal Code Regs., tit. 11, § 999.228(a), (b) [Register 2017, No. 46].)
- Authorize and remove users to the system as necessary. Automated systems handling stop data and the information derived therein shall be secure from unauthorized access, alteration, deletion or release. (Cal Code Regs., tit. 11, § 999.228(e) [Register 2017, No. 46].)

The claimant contends that the one-time activity to install and test software is necessary to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.<sup>53</sup> In support of this, the claimant states that it has incurred costs to obtain, test, process and validate the collected data through hardware and software applications.<sup>54, 55</sup> The

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<sup>51</sup> Exhibit F, Excerpt from the Test Claim (California Department of Justice, Economic and Fiscal Impact Statement, AB 953 Stop Data Reporting Regulations to Implement Gov. Code Section 12525.5), page 1.

<sup>52</sup> Exhibit F, Excerpt from the Test Claim (Senate Committee on Appropriations, Analysis of AB 953 [2015-2016 Reg. Sess.], August 17, 2015), page 1.

<sup>53</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines (Declaration of Captain Jeffrey Jordon), page 2.

<sup>54</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines (Declaration of Captain Jeffrey Jordon), page 3.

<sup>55</sup> Exhibit F, Excerpt from the Test Claim (Declaration of Captain Jeffrey Jordon), page 1.

claimant noted that its Information Technology costs were relatively minor because the San Diego Sheriff's Department provided a custom data collection application and submission tools free of charge.<sup>56</sup> The application was loaded by Data Systems members on to SDPD's desktop and mobile computers so officers could use the software to submit data.<sup>57</sup> Additional testing was done, however, to make sure the software worked properly and all of these activities were needed to comply with the mandate before going "live" on June 27, 2018.<sup>58</sup> Notably, the Economic and Fiscal Impact Statement for the DOJ regulations indicates that the DOJ was developing a web-based application to provide to the local agencies to assist with submission of data collected pursuant to Government Code section 12525.5.<sup>59</sup>

Accordingly, the Commission finds that the evidence in the record supports the finding that one-time installation and testing of software is reasonably necessary to comply with the mandate. This activity is included in Section IV.A. Reimbursable Activities (One-Time Activities) as follows:

- One-time installation and testing of software necessary to comply with the state-mandated requirements for the collection and reporting requirements of data on all applicable stops.
- 4. The proposed ongoing activity of providing training to meet new requirements imposed by the Legislature or RIPA is not consistent with the law and is therefore denied.

The claimant requests reimbursement for the ongoing activity of providing training to meet any new requirements made by the Legislature or the RIPA Board. This proposed activity is not consistent with the law. In the event the Legislature or DOJ change the law and increase the responsibilities of local government under this program, then new a test claim would have to be filed pursuant to Government Code sections 17551 and 17553. If the Legislature or DOJ repeals one of the activities mandated by the state, or otherwise changes the future liability of the State under article XIII B, section 6, then the State can request that the Parameters and Guidelines be amended under Government Code section 17557(d), or the State can file a request to adopt a new test claim decision under Government Code section 17570. Thus, these Parameters and Guidelines cannot account for future changes in law.

And the RIPA Board is not tasked with, nor have they been given authority to revise or amend the requirements under the test claim statute. Rather, the RIPA Board is tasked with reviewing and analyzing reported data, working with law enforcement to review and analyze racial and

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<sup>56</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines (Declaration of Captain Jeffrey Jordon), page 4.

<sup>57</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines (Declaration of Captain Jeffrey Jordon), page 4.

<sup>58</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines (Declaration of Captain Jeffrey Jordon), page 3.

<sup>59</sup> Exhibit F, Excerpt from the Test Claim (California Department of Justice, Economic and Fiscal Impact Statement, AB 953 Stop Data Reporting Regulations to Implement Gov. Code Section 12525.5), page 11.

identity profiling practices and procedures, issuing a report of their findings, and holding at least three annual public meetings.<sup>60</sup>

The Commission therefore denies the request for ongoing training on the basis of future changes in the law.

5. The proposed ongoing activity of updating software, as necessary, to comply with the requirements of collecting and reporting data is not supported by substantial evidence in the record explaining why this activity is reasonably necessary to comply with the mandate.

The claimant has also requested ongoing reimbursement for updating software, as necessary, to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.<sup>61</sup> There is nothing in the record demonstrating that this is a reasonably necessary activity. The claimant has not provided or pointed to any evidence in the record demonstrating that the software used to perform the requirements under the mandate needs updating. Notably, the DOJ Economic and Fiscal Impact Statement does not mention that agencies would likely be subject to ongoing costs related to updating software.<sup>62</sup>

Accordingly, the Commission denies this request.

#### **D. Claim Preparation and Submission (Section V of the Parameters and Guidelines)**

Consistent with the approval of one-time training, Section V. of the Parameters and Guidelines (Claim Preparation and Submission) includes the boilerplate language for claiming the costs of training as follows:

##### 5. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV. of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

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<sup>60</sup> Exhibit F, Excerpt from the Test Claim (Senate Committee on Appropriations, Analysis of AB 953 [2015-2016 Reg. Sess.], August 17, 2015), page 4.

<sup>61</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>62</sup> Exhibit F, Excerpt from the Test Claim (California Department of Justice, Economic and Fiscal Impact Statement, AB 953 Stop Data Reporting Regulations to Implement Gov. Code Section 12525.5).

## V. Conclusion

Based on the foregoing, the Commission hereby adopts the Decision and Parameters and Guidelines.

### **PARAMETERS AND GUIDELINES<sup>63</sup>**

Government Code Section 12525.5, as added and amended by Statutes 2015, Chapter 466 (AB 953); Statutes 2017, Chapter 328 (AB 1518)

California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229 as added by Register 2017, No. 46<sup>64</sup>

#### *Racial and Identity Profiling*

18-TC-02

Reimbursement for this program begins November 7, 2017.

### **I. SUMMARY OF THE MANDATE**

On May 22, 2020, the Commission on State Mandates (Commission) adopted the Test Claim Decision finding that Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, and California Code of Regulations, title 11, sections 999.224- 999.229 (Register 2017, No. 46), constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning November 7, 2017, on city and county law enforcement agencies that employ peace officers (other than probation officers and officers in a custodial setting) to electronically report to the Attorney General, on an annual basis, data on all “stops” within their own jurisdiction, conducted by the agency’s peace officers; and on those city and county law enforcement agencies that contract for peace officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their jurisdictions.

### **II. ELIGIBLE CLAIMANTS**

Any city, county, city and county is eligible to claim reimbursement for increased costs incurred as a result of this mandate for the city or county’s law enforcement agencies that meet the following criteria:

- Employ peace officers (other than probation officers and officers in a custodial setting) to perform the requirements of the test claim statute and regulations for stops within their own jurisdictions; *or*
- Contract for peace officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their jurisdictions.

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<sup>63</sup> Please note that the Decision and Parameters and Guidelines is a single document and must be read as a whole. It is not intended to be separated and should be posted in its entirety.

<sup>64</sup> Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

***K-12 school districts and community college districts are not eligible to claim for this program. Cities and counties may not claim the costs of their peace officer employees that are incurred while they are assigned out to work for other government or private entities based on a contract or memorandum of understanding.***

## **PERIOD OF REIMBURSEMENT**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on June 14, 2019, establishing eligibility for reimbursement for the 2017-2018 fiscal year, beginning July 1, 2017. However, the regulations adopted by DOJ to implement section 12525.5 (Cal. Code Regs., tit. 11, §§ 999.224 through 999.229, Register 2017, No. 46) became operative and effective on November 7, 2017,<sup>65</sup> establishing the period of reimbursement beginning November 7, 2017.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

## **IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event, or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

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<sup>65</sup> The Legislature, in Government Code section 12525.5(a)(2) and (e), delayed local agency compliance with the program to a date after the regulations were required to be adopted.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, “I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct,” and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

A. One-Time Activities

1. One-time training per peace officer employee and supervisor assigned to perform the reimbursable activities listed in Section IV.B. of these Parameters and Guidelines.
2. One-time installation and testing of software necessary to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.

B. Ongoing Activities

1. Identification of the peace officers required to report stops, and maintenance of a system to match individual officers to their Officer I.D. number.
  - a. On January 1 of each year until the agency begins reporting data to the DOJ, each reporting agency shall count the number of peace officers it employs who are required to report stops to determine the date that agency must start collecting stop data and reporting to the DOJ pursuant to Government Code section 12525.5(a)(1)(2). (Cal. Code Regs, tit. 11, § 999.227(a)(8) [Register 2017, No. 46].)
  - b. Reporting agencies shall create the Officer’s I.D. Number for each officer required to report stops. (Cal. Code Regs, tit. 11, § 999.227(a)(11) [Register 2017, No. 46].)
  - c. Reporting agencies shall maintain a system to match an individual officer required to report stops to his or her Officer’s I.D. Number. (Cal. Code Regs, tit. 11, § 999.227(a)(11) [Register 2017, No. 46].)
2. Collection and reporting data on all stops, as defined,<sup>66</sup> conducted by that agency’s peace officers for the preceding calendar year in accordance with sections 999.226(a) and 999.227 of the regulations.

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<sup>66</sup> See Government Code section 12525.5(g)(2) (Stats.2015, ch.466) and California Code of Regulations, title 11, section 999.224(a)(14) (Register 2017, No. 46), which define a “stop” as “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;” section 999.227(b) and (c) for interactions that

- a. Begin collecting and reporting data on all stops on or before the following dates (Gov. Code, § 12525.5(a)(2), Stats. 2017, ch. 328):
- (1) An agency that employs 1,000 or more peace officers shall begin collecting data on or before July 1, 2018, and shall issue its first round of reports on or before April 1, 2019.
  - (2) An agency that employs 667 or more but less than 1,000 peace officers shall begin collecting data on or before January 1, 2019, and shall issue its first round of reports on or before April 1, 2020.
  - (3) An agency that employs 334 or more but less than 667 peace officers shall begin collecting data on or before January 1, 2021, and shall issue its first round of reports on or before April 1, 2022.
  - (4) An agency that employs one or more but less than 334 peace officers shall begin collecting data on or before January 1, 2022, and shall issue its first round of reports on or before April 1, 2023.

The following are **not** reportable:

- Data elements described in section 999.226(a) for passengers in vehicles subject to a stop who have not been observed or suspected of violating the law, or who have not been subjected to the officer’s actions listed in section 999.226(a)(12)(A), excluding “Vehicle impounded” and “None.”<sup>67</sup>
- Stops made during public safety mass evacuations.<sup>68</sup>
- Stops during an active shooter incident.<sup>69</sup>
- Stops that occur during or as a result of routine security screenings required of all persons to enter a building or special event, including metal detector screenings, including any secondary searches that result from the screening.<sup>70</sup>
- The following interactions are **not** reportable unless a person is detained based upon individualized suspicion or personal characteristics, or the officer engages in the actions described in the data values in section 999.226(a)(12)(A)(1)-(22): Interactions during: traffic control of vehicles due to a traffic accident or emergency situation that requires that vehicles are stopped for public safety purposes; 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; interactions during which persons are detained at a residence so that the officer may check for

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are not reportable as “stops;” and section 999.227(d) for peace officer interactions that are reportable only if the officer takes additional specified actions.

<sup>67</sup> California Code of Regulations, title 11, section 999.227(b) (Register 2017, No. 46).

<sup>68</sup> California Code of Regulations, title 11, section 999.227(c)(1) (Register 2017, No. 46).

<sup>69</sup> California Code of Regulations, title 11, section 999.227(c)(2) (Register 2017, No. 46).

<sup>70</sup> California Code of Regulations, title 11, section 999.227(c)(3) (Register 2017, No. 46).

proof of age for purposes of investigating underage drinking; and checkpoints and roadblocks in which an officer detains a person as the result of a blanket regulatory activity or neutral formula that is not based on individualized suspicion or personal characteristics.<sup>71</sup>

- Interactions that take place with a person in his or her residence who is the subject of a warrant or search condition.<sup>72</sup>
  - Interactions that take place with a person in his or her residence who is the subject of home detention or house arrest while an officer is on home detention or house arrest assignment.<sup>73</sup>
  - Stops in a custodial setting.<sup>74</sup>
  - Stops that occur while the officer is off-duty.<sup>75</sup>
- b. The agency’s peace officers shall collect the following required categories of stop data, and all applicable “data elements,” “data values,” and narrative explanatory fields described in section 999.226(a) for every person stopped, and in accordance with section 999.227(a)(4)-(6), (b) and (d) of the regulations, and complete all stop reports for stops made during the officer’s shift by the end of the officer’s shift, or if exigent circumstances preclude doing so, as soon as practicable: (Gov. Code, §12525.5(b), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, §§999.226(a), 999.227(a)(1)(2)(4)(5)(6)(9), (b) and (d) [Register 2017, No. 46].)
- (1) “ORI number,” which is “the data element that refers to the reporting agency’s Originating Agency Identifier, a unique identification code number assigned by the Federal Bureau of Investigation.” (Cal Code Regs., tit. 11, § 999.226(a)(1) [Register 2017, No. 46].)
  - (2) “Date, Time, and Duration of Stop.” (Gov. Code, §12525.5(b)(1), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(2) [Register 2017, No. 46].)
  - (3) “Location of Stop.” (Gov. Code, §12525.5(b)(1), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(3) [Register 2017, No. 46].)
  - (4) “Perceived Race or Ethnicity of Person Stopped.” (Gov. Code, § 12525.5(b)(6), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(4) [Register 2017, No. 46].)

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<sup>71</sup> California Code of Regulations, title 11, section 999.227(d)(1).

<sup>72</sup> California Code of Regulations, title 11, section 999.227(d)(2) (Register 2017, No. 46).

<sup>73</sup> California Code of Regulations, title 11, section 999.227(d)(3) (Register 2017, No. 46).

<sup>74</sup> California Code of Regulations, title 11, section 999.225(c) (Register 2017, No. 46).

<sup>75</sup> Exhibit A, Test Claim Decision, page 6; Exhibit F, Final Statement of Reasons, Proposed Regulations, Title 11, Sections 999.224-999.229, pages 12-13, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-fsor-revised-110817.pdf> (accessed on November 8, 2019).



- (5) “Perceived Gender of Person Stopped.” (Gov. Code, §12525.5(b)(6), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(5) [Register 2017, No. 46].)
  - (6) “Person Stopped Perceived to be LGBT.” (Cal Code Regs., tit. 11, § 999.226(a)(6) [Register 2017, No. 46].)
  - (7) “Perceived Age of Person Stopped.” (Gov. Code, §12525.5(b)(6), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(7) [Register 2017, No. 46].)
  - (8) “Person Stopped Has Limited or No English Fluency.” (Cal Code Regs, tit. 11, § 999.226(a)(8) [Register 2017, No. 46].)
  - (9) “Perceived or Known Disability of Person Stopped.” (Cal Code Regs., tit. 11, § 999.226(a)(9) [Register 2017, No. 46].)
  - (10) “Reason for Stop.” (Gov. Code, §12525.5(b)(2), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(10) [Register 2017, No. 46].)
  - (11) “Stop Made in Response to a Call for Service.” (Cal Code Regs., tit. 11, § 999.226(a)(11) [Register 2017, No. 46].)
  - (12) “Actions Taken by Officer During Stop.” (Gov. Code, §12525.5(b)(7), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(12) [Register 2017, No. 46].)
  - (13) “Result of Stop.” (Gov. Code, §12525.5(b)(3)(4)(5), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(13) [Register 2017, No. 46].)
  - (14) “Officer's Identification (I.D.) Number.” (Cal Code Regs., tit. 11, § 999.226(a)(14) [Register 2017, No. 46].)
  - (15) “Officer's Years of Experience.” (Cal Code Regs., tit. 11, § 999.226(a)(15) [Register 2017, No. 46].)
  - (16) “Type of Assignment of Officer.” (Cal Code Regs., tit. 11, § 999.226(a)(16) [Register 2017, No. 46].)
- c. The following additional data values shall be reported for stops (as defined in section 999.227(e)(3) of the regulations) at a K-12 school: the name of the school where the stop took place; indicate if the stop is of a student, whether there is a perceived disability related to hyperactivity or impulsive behavior of the student, the possible conduct warranting discipline under the Education Code, whether there was an admission or written statement obtained from the student, whether the student is suspected of violating school policy, and whether the student was referred to a school administrator or counselor. (Cal Code Regs., tit. 11, § 999.227(e)(3)(4) [Register 2017, No. 46].)
3. Electronic submission of data to DOJ and retention of stop data collected
- a. Submit all required stop data to the system developed by the DOJ in electronic format that complies with the DOJ interface specifications via one of the three approved

- submission methods: (1) a web-browser based application developed by the DOJ; (2) a system-to-system web service; and (3) a secured file transfer protocol. (Cal Code Regs., tit. 11, § 999.228(a), (b) [Register 2017, No. 46].)
- b. Authorize and remove users to the system as necessary. Automated systems handling stop data and the information derived therein shall be secure from unauthorized access, alteration, deletion or release. (Cal Code Regs., tit. 11, § 999.228(e) [Register 2017, No. 46].)
  - c. Each reporting agency, *except* those agencies that report stop data via the DOJ web-browser based application, shall keep a record of its source data for three years and to make it available for inspection by DOJ. (Cal Code Regs., tit. 11, § 999.228(h) [Register 2017, No. 46].)
4. Audits and validation of data collected
    - a. Ensure that the technical specifications for data values are consistent with the regulations and follow the data dictionary prepared by DOJ. (Cal Code Regs., tit. 11, § 999.224(a)(5) [Register 2017, No. 46].)
    - b. Ensure that all data elements, data values, and narrative explanatory fields conform to the regulations and correct any errors in the data submission process through the DOJ's error resolution process. (Cal Code Regs., tit. 11, § 999.229(b) [Register 2017, No. 46].)
    - c. Agencies submitting records via the system-to-system web service or the secure file transfer protocol shall include a unique stop record number for each stop, so that DOJ can use the record number to relay information on errors when necessary. (Cal Code Regs., tit. 11, § 999.229(c) [Register 2017, No. 46].)
  5. For stop data collected, ensure that the name, address, social security number, or other unique personally identifiable information of the individual stopped, searched, or subjected to property seizure, and the badge number or other unique identifying information of the peace officer involved, is not transmitted to the Attorney General in an open text field. (Gov. Code, § 12525.5, Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.228(d) [Register 2017, No. 46].)

## **V. CLAIM PREPARATION AND SUBMISSION**

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

### **A. Direct Cost Reporting**

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

#### **1. Salaries and Benefits**

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by

productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

## 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

## 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

## 4. Fixed Assets

Report the purchase price paid for fixed assets necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

## 5. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

## B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 Code of Federal Regulations (CFR) part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10 percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10 percent.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage that the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed pursuant to this chapter<sup>76</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be

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<sup>76</sup> This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other applicable state funds, shall be identified and deducted from any claim submitted for reimbursement.

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local governments in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the decisions on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the eligible claimants to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of an eligible claimant, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.17.

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The decisions adopted for the test claim and parameters and guidelines are legally binding on all parties and interested parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

## DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 9, 2020, I served the:

- **Proposed Decision and Parameters and Guidelines issued September 9, 2020**


*Racial and Identity Profiling*, 18-TC-02

Government Code Section 12525.5, as added and amended by Statutes 2015, Chapter 466 (AB 953); Statutes 2017, Chapter 328 (AB 1518); California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229, as added by Register 2017, No. 46<sup>1</sup>

City of San Diego, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 9, 2020 at Sacramento, California.



Jill L. Magee  
Commission on State Mandates  
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<sup>1</sup> Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 8/4/20

**Claim Number:** 18-TC-02

**Matter:** Racial and Identity Profiling

**Claimant:** City of San Diego

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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