

May 6, 2020

Mr. Jeffrey Jordan  
City of San Diego  
San Diego Police Department  
1401 Broadway  
San Diego, CA 92101

Ms. Erika Li  
Department of Finance  
915 L Street, 10th Floor  
Sacramento, CA 95814

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

**Re: Proposed Decision**

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

Government Code Section 12525.5 and Penal Code Sections 13012 and 13519.4; 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, Register 2017, No. 46, effective November 7, 2017<sup>1</sup>

City of San Diego, Claimant

Dear Mr. Jordan and Ms. Li:

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

**Hearing**

This matter is set for hearing on **Friday, May 22, 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> Although the claimant incorrectly pled Notice Register Number 2016, 50-2 regarding changes to California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229 with a file and effective date of November 7, 2017, the Commission can take judicial notice of Register 2017, No. 46. In this case, Westlaw incorrectly indicates in the history of each of these sections that the update appears in Register 2017, No. 45 when in fact the adoption of these changes appears in 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://zoom.us/j/97291554772?pwd=SGd6VmIrbU9EMzNKQ0VHcS9iSm1Mdz09>

Meeting ID: 972 9155 4772

Password: 375815

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,,97291554772#,,#,375815# or

+13462487799,,97291554772#,,#,375815#

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.

+1 301 715 8592 US

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US

Meeting ID: 972 9155 4772

Password: 375815

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.

Mr. Jordan and Ms. Li

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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 3**  
**TEST CLAIM**  
**PROPOSED DECISION**

Government Code Section 12525.5 and Penal Code Sections 13012 and 13519.4; as added or 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

City of San Diego, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This Test Claim addresses the Racial and Identity Profiling Act of 2015 and the 2017 amendments thereto (Stats. 2015, ch. 466; Stat. 2017, ch. 46), which added and amended Government Code section 12525.5, and amended Penal Code sections 13012 and 13519.4; and California Code of Regulations, title 11, sections 999.224-999.229 adopted by the Department of Justice (DOJ) to implement Government Code section 12525.5. The Act and implementing regulations require, with respect to local governments, that each reporting agency, as defined, that employs peace officers to electronically report to the Attorney General, on an annual basis, data on all “stops” conducted by the agency’s peace officers.<sup>2</sup> The data required to be reported includes the following: the time, date, and location of the stop; the reason for the stop; the perceived race or ethnicity, gender, LGBT status, approximate age and English fluency of the person stopped; the actions taken by the officer during the stop; and the result of the stop. Also required to be reported are the officer’s identification number, years of experience, and type of assignment.

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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> For purposes of local government, agencies required to report stop data include any city or county law enforcement agency that employs peace officers and the police departments of all California Community Colleges established pursuant to Education Code section 72330 and K-12 school districts that employ peace officers pursuant to the authority provided by Education Code section 38000(b). (California Code of Regulations, title 11, section 999.224(a)(11), Register 2017, No. 46.)

For the reasons stated below, staff recommends that the Commission partially approve this Test Claim.

### **Procedural History**

Statutes 2015, chapter 466 (AB 953), adding Government Code section 12525.5, and amending Penal Code sections 13012 and 13519.4, became effective on January 1, 2016. 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, became effective November 7, 2017. Statutes 2017, Chapter 328 (AB 1518), amending Government Code section 12525.5 and Penal Code section 13012, became effective on January 1, 2018. The City of San Diego (claimant) filed the Test Claim on June 14, 2019, alleging that it first incurred costs under the test claim statute and regulations on June 15, 2018, when it began providing training to its peace officers on the stop data collection requirements.<sup>3</sup> The Test Claim was deemed complete and issued for comment on August 20, 2019. The Department of Finance (Finance) filed comments on the Test Claim on September 19, 2019.<sup>4</sup> The San Bernardino County Sheriff's Department filed comments on the Test Claim on September 19, 2019.<sup>5</sup> The Riverside County Sheriff's Department filed comments on the Test Claim on September 19, 2019.<sup>6</sup> The Peace Officers' Research Association of California (PORAC) filed late comments on the Test Claim on September 20, 2019.<sup>7</sup> The San Diego County Sheriff's Department filed late comments on the Test Claim on September 27, 2019.<sup>8</sup> The claimant filed rebuttal comments on October 16, 2019.<sup>9</sup> Commission staff issued the Draft Proposed Decision on December 31, 2019.<sup>10</sup> No comments were filed on the Draft Proposed Decision.

The Proposed Decision was issued and set for the March 27, 2020 Commission meeting. However, that meeting was postponed to May 22, 2020 due to scheduling conflicts.

### **Commission Responsibilities**

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or

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<sup>3</sup> Exhibit A, Test Claim, pages 1, 20 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

<sup>4</sup> Exhibit B, Finance's Comments on the Test Claim.

<sup>5</sup> Exhibit C, San Bernardino County Sheriff's Department's Comments on the Test Claim.

<sup>6</sup> Exhibit D, Riverside County Sheriff's Department's Comments on the Test Claim.

<sup>7</sup> Exhibit E, Peace Officers Research Association of California's (PORAC's) Comments on the Test Claim.

<sup>8</sup> Exhibit F, San Diego County Sheriff's Department's Late Comments on the Test Claim.

<sup>9</sup> Exhibit G, Claimant's Rebuttal Comments.

<sup>10</sup> Exhibit H, Draft Proposed Decision.

executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>11</sup>

**Claims**

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

<b>Issue</b>	<b>Description</b>	<b>Staff Recommendation</b>
Was the Test Claim timely filed?	Government Code section 17551(c) states: “test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations defines “12 months” as 365 days. <sup>12</sup>	<i>Timely Filed</i> – The Test Claim filing alleges costs were first incurred on June 15, 2018, when claimant began providing training to its peace officers on stop data collection requirements. <sup>13</sup> The Test Claim was filed on June 14, 2019, within 12 months of first incurring costs, and is, therefore, timely pursuant to the second prong of the Government Code section 17551(c).
When does the potential period of reimbursement begin?	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	<i>The Potential Period of Reimbursement Begins November 7, 2017</i> – 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. However, staff

<sup>11</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 46 Cal.App.4th 1802, 1817.

<sup>12</sup> California Code of Regulations, title 2, section 1183.1(c), Register 2018, No. 18 (eff. April 1, 2018).

<sup>13</sup> Exhibit A, Test Claim, pages 2, 20 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

Issue	Description	Staff Recommendation
	reimbursement for that fiscal year.”	recommends that the Commission partially approve this Test Claim <i>only</i> for the activities mandated by Government Code section 12525.5 and California Code of Regulations, title 11, sections 999.224-999.229, adopted by DOJ to implement section 12525.5 (Register 2017, No. 46, eff. November 7, 2017). 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, the period of reimbursement for this Test Claim begins November 7, 2017.
Do Penal Code sections 13012 and 13519.4 as amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, impose a reimbursable state-mandated program on local government?	<p>Penal Code sections 13012 and 13519.4, as amended by the test claim statutes, impose requirements only on state agencies and the Racial and Identity Profiling Advisory Board (RIPA), whose membership does not include local government.<sup>14</sup></p> <p>The claimant states that “An explanation of these [P]enal [C]odes is being provided for informational purposes only.”<sup>15</sup></p>	<i>Deny</i> – Penal Code sections 13012 and 13519.4 do not impose any activities on local government and, thus, do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.
Do 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 through 999.229, as	Government Code section 12525.5 and sections 999.224 through 999.229 as added and amended by the test claim regulations require each state and local agency that employs peace officers to electronically	<i>Partially Approve</i> – Government Code section 12525.5 and sections 999.224 through 999.229 as added and amended by the test claim statutes and regulations constitute a state-mandated

<sup>14</sup> Penal Code section 13519.4(j)(2) (Stats. 2015, ch. 466).

<sup>15</sup> Exhibit A, Test Claim, page 7.

Issue	Description	Staff Recommendation
<p>added by Register 2017, No. 46, impose a reimbursable state-mandated program on local government?.</p>	<p>report to the Attorney General, on an annual basis, specified data on all “stops” conducted by the agency’s peace officers.</p> <p>Section 999.224(a)(11) of the test claim regulations refers to these agencies as “reporting agencies” which it defines, for purposes of local government, as any city or county law enforcement agency that employs peace officers (other than probation officers and officers in a custodial setting), <i>including</i> those who are contracted to work at other government agencies or private entities (such as housing or transit agencies and state educational institutions); K-12 school districts that employ peace officers pursuant to the authority provided by Education Code section 38000(b); and community college districts that employ peace officers pursuant to the authority provided by Education Code section 72300.</p>	<p>new program or higher level of service, and impose costs mandated by the state, <i>only</i> 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 statutes and regulations for stops within their own jurisdictions, and on 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>16</sup> for the new activities required by the test claim statutes and regulations.</p> <p>However, the test claim statutes and regulations do <i>not</i> impose a reimbursable state-mandated program for K-12 school districts or community college districts that are authorized, but not required, to employ peace officers, and for which the provision of police protection services is not an essential and basic function. Thus, K-12 school districts or community college districts are not eligible for reimbursement.<sup>17</sup></p>

<sup>16</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 888.

<sup>17</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1357-1367.



Issue	Description	Staff Recommendation
		<p>In addition, the test claim statutes and regulations do <i>not</i> impose a reimbursable state-mandated program when a city or county assigns their peace officer employees <i>out</i> to work for other government or private entities based on a contract or memorandum of understanding. The courts have made it clear that activities required by state law, but triggered by a local discretionary decision, do not result in a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.<sup>18</sup></p>

**Staff Analysis**

**A. This Test Claim Was Timely Filed Pursuant to Government Code Section 17551.**

Government Code section 17551(c) provides that test claims “shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.”<sup>19</sup> Section 1183.1(c) of the Commission’s regulations defines “12 months” as 365 days.<sup>20</sup>

This Test Claim was filed on June 14, 2019, with a declaration signed under penalty of perjury by Lieutenant Jordan, the program manager overseeing the claimant’s implementation of the test claim statutes, which states that the claimant first incurred costs as a result of the test claim statutes and regulations on June 15, 2018, when initial training was provided to the claimant’s officers.<sup>21</sup> There is no evidence in the record rebutting Lieutenant Jordan’s declaration. Since the Test Claim was filed on June 14, 2019, within 12 months of first incurring costs, the Test Claim is timely filed pursuant to the second prong of Government Code section 17551(c).

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<sup>18</sup> *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 742.

<sup>19</sup> Government Code section 17551(c) (Stats. 2007, ch. 329).

<sup>20</sup> California Code of Regulations, title 2, section 1183.1(c), Register 2018, No. 18 (eff. April 1, 2018).

<sup>21</sup> Exhibit A, Test Claim, page 20 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

**B. The Potential Period of Reimbursement Begins November 7, 2017.**

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. However, as indicated in the Proposed Decision, staff recommends that the Commission partially approve this Test 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). These regulations became operative and effective on November 7, 2017. 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, the period of reimbursement for this Test Claim begins November 7, 2017.

**C. Penal Code Sections 13012 and 13519.4 as Amended by Statutes 2015, Chapter 466 and Statutes 2017, Chapter 328, Do Not Impose Any Activities on Local Government, and Thus, Do Not Constitute a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution.**

The claimant states that an explanation of Penal Code sections 13012 and 13519.4 “is being provided for informational purposes only.”<sup>22</sup>

Penal Code sections 13012 and 13519.4, as amended by the test claim statutes, impose requirements on state agencies and the Racial and Identity Profiling Advisory Board (RIPA), whose membership does not include local government.<sup>23</sup> Penal Code sections 13012 and 13519.4, however, do not impose any activities on local government and, thus, do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

**D. 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) Impose a Reimbursable State-Mandated Program on Cities and Counties, as Specified.**

Government Code section 12525.5 and the test claim regulations require each state and local agency that employs peace officers to electronically report to the Attorney General, on an annual basis, data on all “stops” conducted by the agency’s peace officers. The data required to be reported includes the following: the time, date, and location of the stop; the reason for the stop; the perceived race or ethnicity, gender, LGBT status, approximate age and English fluency of the person stopped; the actions taken by the officer during the stop; and the result of the stop. Also required to be reported are the officer’s identification number, years of experience, and type of assignment.

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<sup>22</sup> Exhibit A, Test Claim, page 7.

<sup>23</sup> Penal Code section 13519.4(j)(2) (Stats. 2015, ch. 466).

Section 999.224(a)(11) of the test claim regulations refers to these agencies required to submit reports on stop data as “reporting agencies” which it defines, for purposes of local government, as any city or county law enforcement agency that employs peace officers (other than probation officers and officers in a custodial setting), including those who are contracted to work at other government agencies or private entities (such as housing or transit agencies and state educational institutions); K-12 school districts that employ peace officers pursuant to the authority provided by Education Code section 38000(b); and community college districts that employ peace officers pursuant to the authority provided by Education Code section 72300. Special districts are excluded from the definition of “reporting agencies.”

Staff finds that Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, and sections 999-224-999.229 of the test claim regulations (Register 2017, No. 46), constitute a state-mandated new program or higher level of service, and impose costs mandated by the state, beginning November 7, 2017, *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 on 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, for the stop data collection and reporting requirements, as specified.

These activities are mandated by the state to the extent that cities and counties’ peace officers perform the requirements of the test claim statute and regulations for stops within their own jurisdictions. In addition, there are many cities that, by law, provide police protection services within their jurisdictions as a part of their core governmental function<sup>24</sup> through a contract with other city or county reporting agencies (such as a county sheriff’s department providing services within the city), and may therefore incur costs as a result of the mandate. As indicated by the court in *Department of Finance v. Commission on State Mandates (POBRA)*, cities and counties have as an ordinary, principal, and mandatory duty the provision of policing services *within their* territorial jurisdiction.<sup>25</sup> And in *San Diego Unified*, the court recognized that reimbursement under article XIII B, section 6 should not be foreclosed under the *City of Merced* and *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* cases based on local decisions, such as the number of people to hire for example, in order to carry out the agency’s core government function.<sup>26</sup> Therefore, staff finds that the test claim statute and regulations impose a state-mandated program on cities and counties that contract for officers

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<sup>24</sup> Article XI, section 5 of the California Constitution specifies that "It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force . . . ." Government Code section 36501 further provides that “[t]he government of a general law city is vested in: . . . (d) A chief of police.”

<sup>25</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367, emphasis added.

<sup>26</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 888.

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.

Staff finds, however, that the test claim statutes and regulations do *not* impose a reimbursable state-mandated program for K-12 school districts or community college districts that are authorized, but not required, to employ peace officers, and for which the provision of police protection services is not an essential and basic function. Thus, K-12 school districts or community college districts are not eligible for reimbursement.<sup>27</sup>

In addition, the test claim statutes and regulations do *not* impose a reimbursable state-mandated program when a city or county assigns their peace officer employees *out* to work for other government or private entities based on a contract or memorandum of understanding. The courts have made it clear that activities required by state law, but triggered by a local discretionary decision, do not result in a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.<sup>28</sup>

### **Conclusion**

Based on the forgoing analysis, staff finds 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) impose a reimbursable state-mandated program, beginning November 7, 2017, as specified in the Proposed Decision.

All other activities and costs alleged in the Test Claim are not mandated by the plain language of the test claim statute, but may be proposed by claimant for inclusion in the Parameters and Guidelines, and must be supported with evidence, pursuant to Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

### **Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision to partially approve the Test Claim and authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

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<sup>27</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1357-1367.

<sup>28</sup> *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 742.

BEFORE THE  
 COMMISSION ON STATE MANDATES  
 STATE OF CALIFORNIA

**IN RE TEST CLAIM**

Government Code Section 12525.5 and Penal Code Sections 13012 and 13519.4; as added or amended by Statutes 2015, Chapter 466 (AB 953) and 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>29</sup>

Filed on June 14, 2019

City of San Diego, Claimant

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 May 22, 2020)

**DECISION**

The Commission in State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on May 22, 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] the Proposed Decision to [approve/partially approve/deny] the Test Claim by a vote of [vote will be included 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>29</sup> Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

## **Summary of the Findings**

This Test Claim addresses the Racial and Identity Profiling Act of 2015 and the 2017 amendments thereto (Stats. 2015, ch. 466; Stat. 2017, ch. 46), which added and amended Government Code section 12525.5, and amended Penal Code sections 13012 and 13519.4; and the regulations adopted by the Department of Justice (DOJ) to implement Government Code section 12525.5, California Code of Regulations, title 11, sections 999-224-999.229 (Register 2017, No. 46). The test claim statutes and regulations, with respect to local governments, require that each reporting agency, as defined, that employs peace officers to annually report to the Attorney General data in electronic format on all “stops” conducted by the agency’s peace officers. The data required to be reported includes the following: the time, date, and location of the stop; the reason for the stop; the perceived race or ethnicity, gender, LGBT status, and approximate age and English fluency of the person stopped; the actions taken by the officer during the stop; and the result of the stop. Also required to be reported are the officer’s identification number, years of experience, and type of assignment.

The Commission finds that Test Claim is timely filed pursuant to Government Code section 17551(c).

The Commission further finds that Penal Code sections 13012 and 13519.4, as amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, do not impose any activities on local government, and thus, do not constitute a reimbursable state-mandated program within the meaning of article XIII B, Section 6 of the California Constitution.

The Commission also finds that Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, and Title 11, California Code of Regulations sections 999-224-999.229 (Register 2017, No. 46), constitute a state-mandated new program or higher level of service, and impose costs mandated by the state, beginning November 7, 2017, *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, for the following mandated stop data collection and reporting 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>30</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.
  - a. Begin collecting and reporting data on all stops on or before the following dates:
    - (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.

(Gov. Code, § 12525.5(a)(2), Stats. 2017, ch. 328).

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 actions listed in section 999.226(a)(12)(A), excluding "Vehicle impounded" and "None."<sup>31</sup>
- Stops made during public safety mass evacuations,<sup>32</sup> and
- Stops during an active shooter incident.<sup>33</sup>

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<sup>30</sup> Government Code section 12525.5(g)(2) (Stats. 2015, ch. 466); see also, California Code of Regulations, title 11, section 999.224(a)(14), which defines 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."

<sup>31</sup> California Code of Regulations, title 11, section 999.227(b), Register 2017, No. 46.

<sup>32</sup> California Code of Regulations, title 11, section 999.227(c)(1), Register 2017, No. 46.

<sup>33</sup> California Code of Regulations, title 11, section 999.227(c)(2), Register 2017, No. 46.

- 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>34</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 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>35</sup>
  - Interactions that take place with a person in his or her residence who is the subject of a warrant or search condition.<sup>36</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>37</sup>
  - Stops in a custodial setting.<sup>38</sup>
  - Stops that occur while the officer is off-duty.<sup>39</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.

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<sup>34</sup> California Code of Regulations, title 11, section 999.227(c)(3), Register 2017, No. 46.

<sup>35</sup> California Code of Regulations, title 11, section 999.227(d)(1).

<sup>36</sup> California Code of Regulations, title 11, section 999.227(d)(2), Register 2017, No. 46.

<sup>37</sup> California Code of Regulations, title 11, section 999.227(d)(3), Register 2017, No. 46.

<sup>38</sup> California Code of Regulations, title 11, section 999.225(c), Register 2017, No. 46.

<sup>39</sup> Exhibit I, 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).



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].)
- (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 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; or (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].)

The test claim statutes and regulations do not impose a state-mandated program for K-12 school districts or community college districts that are authorized, but not required, to employ peace officers, and for which the provision of police protection services is not an essential and basic function. Thus, K-12 school districts or community college districts are not eligible for reimbursement.<sup>40</sup>

In addition, the test claim statutes and regulations do not impose a state-mandated program when a city or county assigns their peace officer employees *out* to work for other government or private entities based on a contract or memorandum of understanding. The courts have made it clear that activities required by state law, but triggered by a local discretionary decision, do not result in a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.<sup>41</sup> There is no requirement in law that a city or county contract *out* their law enforcement officers and any costs resulting from the discretionary decision to do so are not mandated by the State.

Accordingly, the Commission partially approves this Test Claim.

## COMMISSION FINDINGS

### I. Chronology

01/01/2016	Effective date of Statutes 2015, chapter 466.
11/17/2017	Effective date of 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.
01/01/2018	Effective date of Statutes 2017, chapter 328.
06/15/2018	The date that claimant alleges that it first incurred costs to implement the test claim statutes and regulations. <sup>42</sup>
06/14/2019	The claimant filed the Test Claim. <sup>43</sup>

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<sup>40</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1357-1367.

<sup>41</sup> *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 742.

<sup>42</sup> Exhibit A, Test Claim, page 20 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

<sup>43</sup> Exhibit A, Test Claim.

08/20/2019	Commission staff issued the Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date.
09/19/2019	The Department of Finance (Finance) filed comments on the Test Claim. <sup>44</sup>
09/19/2019	The San Bernardino County Sheriff's Department filed comments on the Test Claim. <sup>45</sup>
09/19/2019	The Riverside County Sheriff's Department filed comments on the Test Claim. <sup>46</sup>
09/20/2019	The Peace Officers' Research Association of California (PORAC) filed late comments on the Test Claim. <sup>47</sup>
09/27/2019	The San Diego County Sheriff's Department filed late comments on the Test Claim. <sup>48</sup>
10/16/2019	The claimant filed rebuttal comments. <sup>49</sup>
12/31/2019	Commission staff issued the Draft Proposed Decision. <sup>50</sup>
03/12/2020	Commission staff issued the Proposed Decision, setting the matter for the March 27, 2020 Commission meeting. <sup>51</sup>

## II. Background

This Test Claim addresses the Racial and Identity Profiling Act of 2015 and the 2017 amendments thereto (Stats. 2015, ch. 466; Stats. 2017, ch. 328), which added and amended Government Code section 12525.5, and amended Penal Code sections 13012 and 13519.4; and title 11, California Code of Regulations sections 999-224-999.229 (Register 2017, No. 46), adopted by the Department of Justice (DOJ) that implement Government Code section 12525.5. The Act and implementing regulations require, with respect to local government, each reporting agency, as defined, that employs peace officers to annually report to the Attorney General data in electronic format on all "stops" conducted by the agency's peace officers.<sup>52</sup> The data required to

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<sup>44</sup> Exhibit B, Finance's Comments on the Test Claim.

<sup>45</sup> Exhibit C, San Bernardino County Sheriff's Department's Comments on the Test Claim.

<sup>46</sup> Exhibit D, Riverside County Sheriff's Department's Comments on the Test Claim.

<sup>47</sup> Exhibit E, PORAC's Comments on the Test Claim.

<sup>48</sup> Exhibit F, San Diego County Sheriff's Department's Late Comments on the Test Claim.

<sup>49</sup> Exhibit G, Claimant's Rebuttal Comments.

<sup>50</sup> Exhibit H, Draft Proposed Decision.

<sup>51</sup> The March 27, 2020 Commission meeting was postponed to May 22, 2020 due to scheduling conflicts.

<sup>52</sup> For purposes of local government, agencies required to report stop data include any city or county law enforcement agency that employs peace officers and the police departments of all California Community colleges established pursuant to Education Code section 72330 and K-12

be reported includes the following: the time, date, and location of the stop; the reason for the stop; the perceived race or ethnicity, gender, LGBT status, approximate age and English fluency of the person stopped; the actions taken by the officer during the stop; and the result of the stop. Also required to be reported are the officer's identification number, years of experience, and type of assignment.

#### **A. Prior law**

Since 1955, Penal Code section 13010(g) has required DOJ to present to the Governor an annual report containing the criminal statistics of the preceding calendar year.<sup>53</sup> The contents of the annual report are described in Penal Code section 13012, which requires the report to contain statistics showing the amount and type of offenses known to the public authorities; the personal and social characteristics of criminals and delinquents; the administrative actions taken by law enforcement; and the number of citizen complaints received.<sup>54</sup> State and local law enforcement agencies are required to report statistical data to DOJ at those times and in the manner that the Attorney General prescribes.<sup>55</sup> In addition, the Legislature has required local law enforcement agencies to report to the Attorney General certain specified information, including demographic information (age, gender, race, and ethnic background) about the victim and the person charged with homicide;<sup>56</sup> information that may be required relative to hate crimes;<sup>57</sup> and profiles by race, age, gender, and ethnicity of any person charged with a felony or misdemeanor for carrying a concealed firearm or carrying a loaded firearm in a public place.<sup>58</sup>

In 1999, the Legislature approved Senate Bill 78, which directed the California Highway Patrol (CHP) and local law enforcement agencies to begin collecting data on the race and ethnicity of all motorists stopped for traffic enforcement or investigation, and required DOJ to include in its annual report on criminal justice statistics specified information regarding all motorists stopped by law enforcement officers. The Governor vetoed the bill, but directed CHP to begin collecting race, gender, and age data from all traffic stops made by its officers from 2000 through 2002 and to submit its findings to the Governor and the Legislature in three annual reports.<sup>59</sup>

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school districts that employ peace officers pursuant to the authority provided by Education Code section 38000. (California Code of Regulations, Title 11, Section 999.224(a)(11), Register 2017, No. 46.) Special districts are not included.

<sup>53</sup> Statutes 1955, chapter 1128.

<sup>54</sup> As last amended by Statutes 2001, chapter 468.

<sup>55</sup> Penal Code section 13020, as last amended by Statutes 1996, chapter 872.

<sup>56</sup> Penal Code section 13014, as last amended by Statutes 2004, chapter 405.

<sup>57</sup> Penal Code section 13023, as last amended by Statutes 2004, chapter 700.

<sup>58</sup> Penal Code sections 12025 and 12031, as amended by Statutes 1999, chapter 571.

<sup>59</sup> Exhibit I, Governor's Veto Message (SB 78, 1999-2000 Reg. Sess.) [http://www.leginfo.ca.gov/pub/99-00/bill/sen/sb\\_0051-0100/sb\\_78\\_vt\\_19990928.html](http://www.leginfo.ca.gov/pub/99-00/bill/sen/sb_0051-0100/sb_78_vt_19990928.html) (accessed on December 6, 2019); Exhibit A, Test Claim, page 59 (Senate Committee on Appropriations Analysis of SB 953, 2015-2016 Reg. Sess., as amended August 27, 2015).

Statutes 2000, chapter 684 amended Penal Code section 13519.4 to prohibit law enforcement officers from engaging in racial profiling and to require every law enforcement officer in the state to participate in expanded mandatory training approved by the Commission on Peace Officer Standards and Training (POST) that examines the patterns, practices, and protocols that prevent racial profiling.<sup>60</sup> “Racial profiling” was defined by Statutes 2000, chapter 684 as “the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped.”<sup>61</sup> This legislation was enacted based on findings that racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society, is abhorrent and cannot be tolerated.<sup>62</sup> The Legislature further found that motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.<sup>63</sup> POST developed a five-hour approved curriculum to meet the initial racial profiling training required by Penal Code section 13519.4, as amended by Statutes 2000, chapter 684, for peace officer applicants through the Basic Training Course, and for incumbent officers as well. A refresher racial profiling course for all officers was then required every five years.<sup>64</sup>

In fiscal year 2000-2001, the Legislature established a \$5 million grant program for local law enforcement agencies to collect racial composition data with respect to their public contacts. Many local law enforcement agencies participated in the program in order to determine whether their officers engaged in racial profiling.<sup>65</sup> The Legislature, in former Penal Code section 13519.4(j), also charged the Legislative Analyst’s Office (LAO) with analyzing the data collected through these volunteer efforts and with preparing a report to the Legislature with recommendations.<sup>66</sup>

The Legislative Analyst shall conduct a study of the data being voluntarily collected by those jurisdictions that have instituted a program of data collection

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<sup>60</sup> Penal Code section 13519.4(e), (f), and (h) (Stats. 2000, ch. 684).

<sup>61</sup> Penal Code section 13519.4(d) (Stats. 2000, ch. 684).

<sup>62</sup> Penal Code section 13519.4(c)(1) (Stats. 2000, ch. 684).

<sup>63</sup> Penal Code section 13519.4(c)(2) (Stats. 2000, ch. 684).

<sup>64</sup> Penal Code section 13519.4(i) (Stats. 2000, ch. 684).

<sup>65</sup> According to the LAO Report “To provide an incentive for local law enforcement agencies to collect racial composition data on their public contacts, the Legislature established a grant program in 2000-01. Funds were provided to local agencies to cover their costs of data collection. The 2000-01 budget provided a \$5 million appropriation for this purpose. Agencies were eligible for grants between \$5,000 and \$75,000, depending on their number of sworn officers, as well as supplemental allocations. . . In total, 16 sheriffs, 75 police departments, and 1 community college district were collecting data as of 2001.” (Exhibit I, LAO Report, *An Evaluation of Racial Profiling Data Collection and Training* (2002), page 9, [https://lao.ca.gov/2002/racial\\_profiling/8-02\\_racial\\_profiling.html](https://lao.ca.gov/2002/racial_profiling/8-02_racial_profiling.html) (accessed on October 22, 2019)).

<sup>66</sup> Penal Code section 13519.4(j) (Stats. 2000, ch. 684).

with regard to racial profiling, including, but not limited to, the California Highway Patrol, the City of San Jose, and the City of San Diego, both to ascertain the incidence of racial profiling and whether data collection serves to address and prevent such practices, as well as to assess the value and efficacy of the training prescribed with respect to preventing local profiling; and required the Legislative Analyst to provide to the Legislature a report and recommendations with regard to racial profiling by July 1, 2002.<sup>67</sup>

On August 27, 2002, LAO released its report, titled “An Evaluation of Racial Profiling Data Collection and Training,” concluding that even though nearly 100 law enforcement agencies were collecting stop data, “the manner in which the data are gathered and analyzed remains fragmented.”<sup>68</sup> As relevant here, LAO recommended that the Legislature take the following actions:

- Revisit the definition of racial profiling and develop one which more explicitly defines what activities are acceptable under state law.
- Require all participating agencies to use the same standard format and definitions (for example, what racial categories to use and what constitutes a search) for the data collection.
- For any future program, select a state department better equipped to collect and analyze the data in a standardized manner.<sup>69</sup>

#### **B. Prior Test Claims**

Several test claims relating to this prior law have been filed with the Commission. In 2006, the Commission adopted its Decision in *Racial Profiling: Law Enforcement Training*, 01-TC-01, finding that Penal Code section 13519.4, as amended by Statutes 2000 chapter 684, imposed a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution with respect to the initial racial profiling training for incumbent law enforcement officers, as specified in the decision. The Commission denied reimbursement for the training in the Basic Training Course and for refresher training every five years on the ground that such costs did not result in costs mandated by the state.<sup>70</sup>

In 2008, the Commission adopted its Test Claim Decision for *Crime Statistics Reports for the Department of Justice*, 02-TC-04 and 02-TC-11, finding that the following statutes imposed a reimbursable state-mandated program:

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<sup>67</sup> Penal Code section 13519.4(j) (Stats. 2000, ch. 684).

<sup>68</sup> Exhibit I, LAO Report, *An Evaluation of Profiling Data Collection and Training* (2002), available at [https://lao.ca.gov/2002/racial\\_profiling/8-02\\_racial\\_profiling.html](https://lao.ca.gov/2002/racial_profiling/8-02_racial_profiling.html) (accessed on October 22, 2019).

<sup>69</sup> Exhibit I, LAO Report, *An Evaluation of Profiling Data Collection and Training* (2002), available at [https://lao.ca.gov/2002/racial\\_profiling/8-02\\_racial\\_profiling.html](https://lao.ca.gov/2002/racial_profiling/8-02_racial_profiling.html) (accessed on October 22, 2019).

<sup>70</sup> Exhibit I, Commission on State Mandates, Test Claim Decision, *Racial Profiling: Law Enforcement Training*, 01-TC-01, <https://csm.ca.gov/decisions/01tc01sod.pdf>.

- A local government entity responsible for the investigation and prosecution of a homicide case to provide DOJ with demographic information about the victim and the person or persons charged with the crime, including the victim's and person's age, gender, race, and ethnic background. (Pen. Code, §13014, Stats. 1992, ch. 1338.)
- Local law enforcement agencies to report, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability, or gender or national origin. (Pen. Code, §13023, Stats. 1989, ch. 1172.)
- For district attorneys to report annually on or before June 30, to the Attorney General, on profiles by race, age, gender, and ethnicity any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information. The Commission finds that this is a reimbursable mandate from July 1, 2001 (the beginning of the reimbursement period for this test claim) until January 1, 2005. (Pen. Code, §§ 12025(h)(1) & (h)(3) & 12031(m)(1) & (m)(3), Stats. 1999, ch. 571.)
- For local law enforcement agencies to support all domestic-violence related calls for assistance with a written incident report (Pen. Code, § 13730(a), Stats. 1993, ch. 1230).<sup>71</sup>

In 2009, the Commission adopted its Test Claim Decision for *Crime Statistics Reports for the Department of Justice*, 07-TC-10, finding that Penal Code section 13023 (Stats. 2004, ch. 700) imposes a reimbursable state-mandated program, within the meaning of article XIII B, section 6 of the California Constitution, on local law enforcement agencies beginning January 1, 2004, to report the following in a manner to be prescribed by the Attorney General:

- Any information that may be required relative to hate crimes, as defined in Penal Code section 422.55 as criminal acts committed, in whole or in part, because of one or more of the following perceived characteristics of the victim: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation.
- Any information that may be required relative to hate crimes, defined in Penal Code section 422.55 as criminal acts committed, in whole or in part, because of association with a person or group with one or more of the following actual or

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<sup>71</sup> Exhibit I, Commission on State Mandates, Test Claim Decision, *Crime Statistics Reports for the Department of Justice*, 02-TC-04 and 02-TC-11, <https://csm.ca.gov/matters/02-TC-04/doc1.pdf>.



perceived characteristics: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation.<sup>72</sup>

### C. **Test Claim Statutes and Regulations**

The Legislature enacted Statutes 2015, chapter 466 (AB 953), the Racial and Identity Profiling Act of 2015, to: “1) modify the definition of ‘racial profiling;’ 2) require local law enforcement agencies to report specified information on stops to the Attorney General's office; and, 3) establish the Racial and Identity Profiling Advisory Board (RIPA).”<sup>73</sup>

The Senate Floor analysis of the bill states:

Although racial profiling is prohibited, studies show that racial profiling by law enforcement does occur. For example, according to a report by the Oakland Police Department, African-Americans, who compose 28 percent of Oakland’s population, accounted for 62 percent of police stops from last April to November. The figures also showed that stops of African-Americans were more likely to result in felony arrests. And, while African-Americans were more likely to be searched after being stopped, police were no more likely to find contraband from searching African-Americans than members of other racial groups.<sup>74</sup>

The Senate Public Safety Committee analysis, quoting the author of the bill, states:

AB 953 will help eliminate the harmful and unjust practice of racial and identity profiling, and improve the relationship between law enforcement and the communities they serve. AB 953 promotes equal protection and prevents unreasonable searches and seizures.

[¶] . . . [¶]

AB 953 would prevent profiling by, among other things, clarifying and modernizing California's current prohibition against profiling to better account for the ways in which profiling occurs, establishing a uniform system for collecting and analyzing data on law enforcement-community interactions, and establishing

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<sup>72</sup> Exhibit I, Commission on State Mandates, Test Claim Decision, *Crime Statistics Reports for the Department of Justice*, 07-TC-10, <https://csm.ca.gov/matters/02-TC-04/doc2.pdf>. (Emphasis in original.) The Corrected Statement of Decision was issued on April 12, 2010, to correct the operative and effective date of the test claim statute. (Exhibit I, Notice of Corrected Statement of Decision, *Crime Statistics Reports for the Department of Justice (Amendment to 02-TC-04 and 02-TC-11)*, 07-TC-10, <https://csm.ca.gov/matters/02-TC-04/07-tc-10correctedsodtrans041210.pdf>.)

<sup>73</sup> Exhibit I, Senate Committee on Public Safety Analysis of AB 953 (2015-2016 Reg. Sess.) as amended June 30, 2015, page 2.

<sup>74</sup> Exhibit I, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 953 (2015-2016 Reg. Sess.), as amended August 31, 2015, page 5.

an advisory board that investigates profiling patterns and practices and provides recommendations on how to curb its harmful impact.<sup>75</sup>

Accordingly, the Act added section 12525.5 to the Government Code and amended Penal Code sections 13012 and 13519.4. Subsequent amendments were made by Statutes 2017, chapter 328 to Government Code section 12525.5 and Penal Code section 13012. In addition, DOJ adopted regulations to implement the Act (Cal. Code Regs., tit. 11, §§ 999.224 - 999.228, Register 2017, No. 46), which became effective on November 7, 2017. These code sections and regulations are described below.

### **1. Penal Code section 13519.4, as amended by Statutes 2015, chapter 466**

Penal Code section 13519.4 was amended by the 2015 Act to declare:

- (1) The working men and women in California law enforcement risk their lives every day. The people of California greatly appreciate the hard work and dedication of peace officers in protecting public safety. The good name of these officers should not be tarnished by the actions of those few who commit discriminatory practices.
- (2) Racial or identity profiling is a practice that presents a great danger to the fundamental principles of our Constitution and a democratic society. It is abhorrent and cannot be tolerated.
- (3) 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.
- (4) Pedestrians, users of public transportation, and vehicular occupants who have been stopped, searched, interrogated, and subjected to a property seizure by a peace officer for no reason other than the color of their skin, national origin, religion, gender identity or expression, housing status, sexual orientation, or mental or physical disability are the victims of discriminatory practices.<sup>76</sup>

The Legislature renamed “racial profiling” as “racial or identity profiling” and redefined it in Penal Code section 13519.4(e) as:

. . . 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 and substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description. The 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

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<sup>75</sup> Exhibit I, Senate Committee on Public Safety Analysis of AB 953 (2015-2016 Reg. Sess.), as amended June 30, 2015, page 7.

<sup>76</sup> Penal Code section 13519.4(d) (Stats. 2015, ch. 466).

any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest.<sup>77</sup>

In addition, Statutes 2015, chapter 466 amended Penal Code section 13519.4(j) to require the Attorney General to establish the Racial and Identity Profiling Advisory Board (RIPA) beginning July 1, 2016, for the purpose of eliminating racial and identity profiling, and improving diversity and racial sensitivity in law enforcement.<sup>78</sup> The members of RIPA include the Attorney General; the President of the California Public Defenders Association; the President of the California Police Chiefs Association; the President of the California State Sheriff's Association; the President of the Peace Officers Research Association of California; the Commissioner of the CHP; a university professor who specializes in policing and racial and identity profiling; two representatives of human or civil rights tax exempt organizations; two representatives of community organizations who specialize in civil or human rights and criminal justice and work with victims of racial and identity profiling; two religious clergy members; and appointees of the Governor, the President Pro Tempore of the Senate, and the Speaker of the Assembly.<sup>79</sup>

RIPA is directed to analyze the racial and identity data provided under Government Code section 12525.5 (racial and identity stop data reported to the Attorney General by state and local agencies that employ peace officers) and Penal Code section 13012 (DOJ's annual report to the Governor), and issue an annual report that includes detailed findings and policy recommendations for eliminating racial and identity profiling.<sup>80</sup>

Penal Code section 13519.4(h) was also amended to require that POST training for peace officers on racial profiling prescribe evidence-based patterns, practices, and protocols that prevent racial and identity profiling, and directed POST to consult with RIPA in developing that training.<sup>81</sup>

## **2. Penal Code section 13012, as amended by Statutes 2015, chapter 466, and Statutes 2017, chapter 328**

Penal Code section 13012 was amended by Statutes 2015, chapter 466, to expand the content of the DOJ annual report to the Governor on criminal statistics to include citizen complaints alleging racial or identity profiling. These statistics are required to be disaggregated by the specific type of racial or identity profiling alleged.<sup>82</sup> In addition, section 13012(c) was added to require RIPA to analyze the statistics reported by DOJ.<sup>83</sup>

Section 13012 was further amended by Statutes 2016, chapter 99 and Statutes 2016, chapter 418, neither of which have been pled in this Test Claim, to require that criminal

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<sup>77</sup> Penal Code section 13519.4(e) (Stats. 2015, ch. 466).

<sup>78</sup> Penal Code section 13519.4(j) (Stats. 2015, ch. 466).

<sup>79</sup> Penal Code section 13519.4(j)(2) (Stats. 2015, ch. 466).

<sup>80</sup> Penal Code section 13519.4(j)(3) (Stats. 2015, ch. 466).

<sup>81</sup> Penal Code section 13519.4(h) (Stats. 2015, ch. 466).

<sup>82</sup> Penal Code section 13012(a)(5)(iii) (Stats. 2015, ch. 466).

<sup>83</sup> Penal Code section 13012(c) (Stats. 2015, ch. 466).

statistics collected by DOJ and the RIPA's annual report be made available to the public through the DOJ's OpenJustice Web portal.

Finally, section 13012 was again amended by Statutes 2017, chapter 328 to delete references to "*citizen*" complaints and instead include reference to "*civilian*" complaints, and to make several minor changes.

### **3. Government Code section 12525.5, as added by Statutes 2015, chapter 466, and amended by Statutes 2017, chapter 328**

Statutes 2015, chapter 466 added section 12525.5 to the Government Code to require the CHP, city or county law enforcement agencies, and California state or university educational institutions that employ peace officers to annually report to the Attorney General data on all stops by peace officers for the preceding calendar year.<sup>84</sup> Each agency that employs 1,000 or more peace officers shall issue its first round of reports on or before April 1, 2019. Each agency that employs 667 or more but less than 1,000 peace officers shall issue its first round of reports on or before April 1, 2020. Each agency that employs 334 or more but less than 667 peace officers shall issue its first round of reports on or before April 1, 2022. And each agency that employs one or more but less than 334 peace officers shall issue its first round of reports on or before April 1, 2023.<sup>85</sup>

Section 12525.5(g) defines 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."<sup>86</sup> Peace officers subject to these requirements include "members of the California Highway Patrol, a city or county law enforcement agency, and California state or university educational institutions," but "does not include probation officers and officers in a custodial setting."<sup>87</sup>

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.
- (7) Actions taken by the peace officer during the stop, including, whether the peace officer asked for consent to search the person, and, if so, whether

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<sup>84</sup> Government Code section 12525.5(a)(1), (g)(1) (Stats. 2015, ch. 466).

<sup>85</sup> Government Code section 12525.5(a)(2) (Stats. 2015, ch. 466).

<sup>86</sup> Government Code section 12525.5(g)(2) (Stats.2015, ch.466).

<sup>87</sup> Government Code section 12525.5(g)(1) (Stats.2015, ch.466).

consent was provided, whether the officer searched the person or any property, and whether any property was seized and the basis for seizing the property.<sup>88</sup>

Section 12525.5(f) further provides that all data and records required by the code section are public records. However, subdivision (d) states that law enforcement agencies shall not report the name, address, social security number, or other unique personal identifying information of persons stopped, searched, or subjected to a property seizure.<sup>89</sup>

Finally, section 12525.5(e) requires the Attorney General, in consultation with RIPA and other stakeholders, to issue regulations for the collection and reporting of data required by section 12525.5. The 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, the regulations should be compatible with any similar federal data collection or reporting program.<sup>90</sup>

Statutes 2017, chapter 328 amended section 12525.5 (e) to extend the date by which the Attorney General is required to issue regulations for the collection and reporting of data to January 1, 2018, and to identify the dates in section 12525.5(a)(2) for law enforcement agencies to begin collecting data after the regulations are adopted as follows (amendments are indicated in underline and strikeout):

Each 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. Each 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. Each 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. Each 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.

In addition, Statutes 2017, chapter 328 amended Section 12525.5(d) to clarify that law enforcement agencies are solely responsible for ensuring that personally identifiable information of the individual stopped or any other information that is exempt from disclosure is not transmitted to the Attorney General in an open text field, as follows:

State and local law enforcement agencies shall not report the name, address, social security number, or other unique personal identifying information of persons stopped, searched, or subjected to a property seizure, for purposes of this section. Notwithstanding any other law, the data reported shall be available to the public, except for the badge number or other unique identifying information of the peace officer involved, ~~which shall be released to the public only to the extent the~~

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<sup>88</sup> Government Code section 12525.5(b) (Stats. 2015, ch. 466).

<sup>89</sup> Government Code section 12525.5(d)(f) (Stats. 2015, ch. 466).

<sup>90</sup> Government Code section 12525.5(e) (Stats. 2015, ch. 466).

release is permissible under state law. Law enforcement agencies are solely responsible for ensuring that personally identifiable information of the individual stopped or any other information that is exempt from disclosure pursuant to this section is not transmitted to the Attorney General in an open text field.

The Senate Floor Analysis for AB 953, Statutes 2017, chapter 328, indicates an expectation that the statute may result in reimbursable state-mandated costs as follows:

Data collection, reporting, retention, and training: Major future one-time and ongoing costs, potentially in the millions to tens of millions of dollars annually, once fully phased in, 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.<sup>91</sup>

**4. Regulations adopted by DOJ (Cal. Code Regs., tit. 11, §§ 999.224 through 999.229, Register 2017, No. 46)**

As required by Government Code section 12525.5(e), DOJ adopted regulations for the collection and reporting of racial and identity data, which became effective and operative on November 7, 2017.<sup>92</sup> These regulations define the scope of the collection and reporting requirements and generally do the following:

- Define the reporting agencies required to comply with the Act.
- Identify the “stop data,” which consists of specified “data elements” and “data values,” required to be collected by peace officers during a stop and reported to DOJ.
- Provide standards, definitions, and technical specifications for collection and reporting of stop data.
- Require the electronic submission of the data to DOJ.
- Require data validation, retention, and audits.

In the Final Statement of Reasons for these regulations, DOJ made the following determination with respect to whether the regulations impose a reimbursable state-mandated program:

The Department has determined that the proposed regulations do impose a reimbursable mandate on local government. City and county law enforcement

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<sup>91</sup> Exhibit I, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 953, (2015-2016), as amended August 31, 2015, page 5.

<sup>92</sup> California Code of Regulations, title 11, sections 999.224 through 999.229 (Register 2017, No. 46).

agencies subject to the reporting requirements of Government Code section 12525.5 shall provide officers with the means to collect the additional data elements and data values set forth in these proposed regulations (in addition to the requirements set forth in Government Code section 12525.5 itself). They shall also obtain the necessary personnel and/or technology to report the required stop data to the Department as provided in proposed Section 999.228, subdivisions (a) and (b).

These provisions may require additional investments in technology and/or personnel time, as detailed in the Revised STD 399 and STD 399 Addendum.<sup>93</sup>

### **III. Positions of the Parties and Interested Persons**

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

The claimant states that it pled Penal Code sections 13012 and 13519.4, as amended by the test claim statutes, for “informational purposes only.”<sup>94</sup> The claimant asserts, however, that Government Code section 12525.5 (Stats. 2015, ch. 466; Stats. 2017, ch. 328) and Title 11, Sections 999.224-999.229 (Register 2017, No. 46) constitute a reimbursable state-mandated program for the following new activities:<sup>95</sup>

1. Training, and Updating Policies and Procedures. The claimant alleges 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. The claimant states that all sworn members of the San Diego Police Department 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, 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>96</sup>
2. Data Collection. Law enforcement personnel are now required to document and submit information on every stop they make.<sup>97</sup>
3. Information Technology. Costs were incurred to obtain, test, process, and validate the collected data through hardware and software applications. Different contingency methods, such as paper data collection, also have to be in place in case of computer system failures. The claimant states that information technology costs were relatively minor for the San Diego Police

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<sup>93</sup> Exhibit I, Final Statement of Reasons, Proposed Regulations, Title 11, Sections 999.224-999.229, page 4, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-fsor-revised-110817.pdf> (accessed on November 8, 2019).

<sup>94</sup> Exhibit A, Test Claim, page 7.

<sup>95</sup> Exhibit A, Test Claim, pages 7-9.

<sup>96</sup> Exhibit A, Test Claim, page 8.

<sup>97</sup> Exhibit A, Test Claim, page 8.

Department, because the San Diego Sheriff's Department provided it with substantial technical support and assistance. Specifically, the Sheriff's Department provided its custom data collection application and submission tools free of charge, as well as to other law enforcement agencies required to collect data under the statutory mandate. The data collection application was loaded by Data Systems members onto the San Diego Police Department's desktop and mobile computers so officers could use it to submit the data they collected. Additional testing was done to make sure the software worked properly.<sup>98</sup>

4. Reporting to DOJ. Reporting to DOJ is required by Government Code section 12525.5. However, before data can be reported, it must be reviewed and validated. Also, that data has to be accurate and free of personal identifying information (PII). It took the claimant's personnel approximately 240 hours to ensure collected stop data was reported correctly to DOJ.<sup>99</sup>
5. Data Storage and Release. The claimant alleges that the data collected under the test claim statutes and regulations is constantly being requested through the California Public Records Act. The claimant is not requesting reimbursement for the costs related to storing stop data locally or releasing it publicly, but the claimant alleges that these activities will undoubtedly be performed by local agencies and costs will be incurred as a result of Government Code section 12525.5. Claimant states that data storage can possibly be mitigated by the type of application used to collect and submit data; for instance if data is submitted directly to DOJ, instead of being stored at a local law enforcement agency first to allow for validation and review.<sup>100</sup>

The claimant alleges that it first incurred costs on June 15, 2018, when it began providing training to its peace officers on stop data collection requirements.<sup>101</sup> The claimant began collecting data on June 27, 2018 "to test the functionality of its data collection application, as well as to ensure it would be in compliance with the alleged statutory mandate GC 12525.5(a)(1) by July 1, 2018."<sup>102</sup>

The total increased costs alleged by the claimant in a declaration filed under penalty of perjury by Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, for the 2017-2018 fiscal year amounted to \$97,367.95, including the costs for training, software update and testing, and collection of stop data.<sup>103</sup> Lieutenant Jordan's declaration further states that total costs for

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<sup>98</sup> Exhibit A, Test Claim, page 9.

<sup>99</sup> Exhibit A, Test Claim, page 9.

<sup>100</sup> Exhibit A, Test Claim, page 9.

<sup>101</sup> Exhibit A, Test Claim, pages 2, 20 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

<sup>102</sup> Exhibit A, Test Claim, page 12.

<sup>103</sup> Exhibit A, Test Claim, pages 11, 16, 20-21 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).



the 2018-2019 fiscal year amounted to \$871,675.56, including the costs for training, compliance, reporting, management, and collection of stop data.<sup>104</sup> The majority of the fiscal year 2018-2019 costs (\$744,005.98) were for officers collecting stop data.<sup>105</sup> The claimant notes that there could be some potential grants and funding sources to partially offset the cost of complying with the mandate; for example, for purchasing equipment to facilitate data collection. However, the claimant “is not aware of any current State, Federal, or other non-local agency funds to pay for its substantial costs already incurred and those anticipated going forward from the alleged statutory mandate in Government Code 12525.5(a)(1), which was enacted by AB 953.”<sup>106</sup>

The claimant filed rebuttal comments on October 16, 2019, in response to Finance’s argument that “the training provided by the SDPD to its sworn personnel in 2017-2018 and 2018-2019 was not required under the relevant statutes, and the associated costs are not reimbursable.”<sup>107</sup> The claimant states that:

. . . training members of SDPD on the 22 pages of regulations developed by the DOJ to implement AB 953 and its alleged mandates, along with updating its orders, procedures and training materials to reflect them, is a standard and expected practice for law enforcement agencies. It should also be considered a very reasonable method of implementing this alleged mandate.<sup>108</sup>

The claimant did not file comments on the Draft Proposed Decision.

#### **B. Department of Finance**

Finance does not dispute that the test claim statutes and implementing regulations require local law enforcement agencies to collect data and annually report to DOJ data on all stops conducted by the agency's peace officers for the preceding calendar year.<sup>109</sup> Finance, however, argues that the training provided by the claimant’s police department “was not required under the relevant statutes, and the associated costs are therefore not reimbursable.”<sup>110</sup> According to Finance, the law enforcement agencies made a discretionary decision to provide training, and should therefore absorb the associated costs.<sup>111</sup>

Finance did not file comments on the Draft Proposed Decision.

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<sup>104</sup> Exhibit A, Test Claim, pages 14, 16, 20-21 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

<sup>105</sup> Exhibit A, Test Claim, page 20 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

<sup>106</sup> Exhibit A, Test Claim, page 17.

<sup>107</sup> Exhibit G, Claimant’s Rebuttal Comments, page 2.

<sup>108</sup> Exhibit G, Claimant’s Rebuttal Comments, page 2.

<sup>109</sup> Exhibit B, Finance’s Comments on the Test Claim, page 1.

<sup>110</sup> Exhibit B, Finance’s Comments on the Test Claim, page 2.

<sup>111</sup> Exhibit B, Finance’s Comments on the Test Claim, page 2.

### **C. Interested Persons**

The San Bernardino County Sheriff's Department expresses support for the Test Claim and states that "all the affected first wave law enforcement agencies in California, including the San Bernardino County Sheriff's Department, have incurred similar one-time and reoccurring costs as well."<sup>112</sup> The Department asserts that the test claim statute mandates the following activities:

In addition to the time spent by each officer filling out RIPA forms (lost **FTE** productivity), this mandate also requires ongoing training of sworn personnel, Information Technology equipment and support, administrative oversight, manual auditing of the data to ensure compliance before final submission to the Department of Justice, and considerable project management time. These required functions are staff intensive and have created increased workload demands for both safety and professional staff throughout the organization.<sup>113</sup>

The Riverside County Sheriff's Department asserts that AB 953, which enacted the Racial and Identity Profiling Act of 2015, "contains a statutory mandate that requires local agencies that employ peace officers to provide an enhanced-level of service by performing new activities related to the collection and reporting of stop data," and requests that the Commission approve the Test Claim filed by the [City] of San Diego.<sup>114</sup> The Department states that to implement the mandate it incurred \$79,828 in fiscal year 2018-2019; and estimates that its costs will exceed \$80,000 in fiscal year 2019-2020.<sup>115</sup> In addition, the Department estimates that it incurred "approximately \$31,000 in associated training and information technology related costs." The Department filed documents evidencing its costs, including a declaration of Zachary Hall, Captain for the Riverside County Sheriff's Department, which details the costs and describes the activities performed to implement the mandate.<sup>116</sup> With respect to training activities, the declaration states that "the regulations created per 12525.5(e) consist of 22 pages of information and instruction on how to meet the mandated requirements. It would not be possible to accurately collect stop data and report it to the Attorney General, per the legislative mandate without formal training."<sup>117</sup>

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<sup>112</sup> Exhibit C, San Bernardino County Sheriff's Department's Comments on the Test Claim, page 1.

<sup>113</sup> Exhibit C, San Bernardino County Sheriff's Department's Comments on the Test Claim, page 1.

<sup>114</sup> Exhibit D, Riverside County Sheriff's Department's Comments on the Test Claim, page 1.

<sup>115</sup> Exhibit D, Riverside County Sheriff's Department's Comments on the Test Claim, page 1.

<sup>116</sup> Exhibit D, Riverside County Sheriff's Department's Comments on the Test Claim, pages 3-8.

<sup>117</sup> Exhibit D, Riverside County Sheriff's Department's Comments on the Test Claim, pages 3-4 (Declaration of Zachary Hall, Captain for the Riverside County Sheriff's Department, September 19, 2019).

The San Diego County Sheriff's Department expresses support for the Test Claim and requests that the Commission approve the claim.<sup>118</sup> The Department asserts that the Racial and Identity Profiling Act (AB 953) constitutes a mandate which resulted in "both one-time and reoccurring costs" for the Department:

In addition to the time spent by each deputy/officer filling out RIPA forms, which currently is about 7422 hours of time spent by San Diego County Sheriff's Deputies, the state mandate also requires departments to provide ongoing training of personnel, computer hardware and software, along with ongoing administrative oversight, auditing and review of the data before submission to the Attorney General's Office. All of these tasks require reassigning and/ or additional staffing and funding.<sup>119</sup>

The Peace Officers' Research Association of California (PORAC) represents 75,000 public safety members and 930 public safety associations, and supports the Test Claim, stating that:

Under AB 953 by Assemblywoman Shirley Weber (D-San Diego) in 2015, the state mandated each local agency that employs peace officers to perform a new set of activities that consisted of the collection and reporting of stop data. The new activities required additional training of all officers to comply with the stop date requirements and additional training in the area of reporting and submission of that data. Furthermore, the time spent in acquiring the data created additional costs for the department, and was tracked by a software application. To fulfill the mandate presented in AB 953, the City of San Diego and the SDPD also incurred costs with the information technology implementation and testing, as well as reporting, and data storage and release.<sup>120</sup>

No comments have been filed by any of the interested persons on the Draft Proposed Decision.

#### **IV. Discussion**

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service...

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that

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<sup>118</sup> Exhibit F, San Diego County Sheriff's Department's Late Comments on the Test Claim, page 1.

<sup>119</sup> Exhibit F, San Diego County Sheriff's Department's Late Comments on the Test Claim, page 1.

<sup>120</sup> Exhibit E, PORAC's Late Comments on the Test Claim, page 1.

articles XIII A and XIII B impose.”<sup>121</sup> Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”<sup>122</sup>

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.<sup>123</sup>
2. The mandated activity constitutes a “program” that either:
  - a. Carries out the governmental function of providing a service to the public; or
  - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.<sup>124</sup>
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.<sup>125</sup>
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.<sup>126</sup>

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>127</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>128</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>129</sup>

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<sup>121</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>122</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>123</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

<sup>124</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

<sup>125</sup> *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

<sup>126</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

<sup>127</sup> *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

<sup>128</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

<sup>129</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

**A. This Test Claim Was Timely Filed Pursuant to Government Code Section 17551.**

Government Code section 17551(c) provides that test claims “shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.”<sup>130</sup> Section 1183.1(c) of the Commission’s regulations defines “12 months” as 365 days.<sup>131</sup>

This Test Claim was filed on June 14, 2019, with a declaration signed under penalty of perjury by Lieutenant Jordan, the program manager overseeing the claimant’s implementation of the test claim statutes, which states that the claimant first incurred costs as a result of the test claim statutes and regulations on June 15, 2018, when initial training was provided to the claimant’s officers.<sup>132</sup> Pursuant to Government Code section 12525.5(a)(2), as amended by Statutes 2017, chapter 328, the claimant, as an agency that employs 1,000 or more peace officers, was required to begin collecting data on or before July 1, 2018.<sup>133</sup> There is no evidence rebutting Lieutenant Jordan’s declaration.

Since the Test Claim was filed on June 14, 2019, within 12 months of first incurring costs, the Test Claim is timely filed pursuant to the second prong of Government Code section 17551(c).

**B. The Potential Period of Reimbursement Begins November 7, 2017.**

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. However, as indicated in this Decision, the Commission partially approves this Test 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). These regulations became operative and effective on November 7, 2017. 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, the period of reimbursement for this Test Claim begins November 7, 2017.

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<sup>130</sup> Government Code section 17551(c) (Stats. 2007, ch. 329).

<sup>131</sup> California Code of Regulations, title 2, section 1183.1(c), Register 2018, No. 18 (eff. April 1, 2018).

<sup>132</sup> Exhibit A, Test Claim, page 20 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

<sup>133</sup> Exhibit A, Test Claim, page 7.

**C. Penal Code Sections 13012 and 13519.4 as Amended by Statutes 2015, Chapter 466 and Statutes 2017, Chapter 328, Do Not Impose Any Activities on Local Government, and Thus, Do Not Constitute a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution.**

The claimant states that Penal Code sections 13012 and 13519.4 were included in the Test Claim because they “provide additional details regarding who is required to analyze the data, the frequency of that analysis, and the manner in which the collected data shall be reported and published. An explanation of these [P]enal [C]odes is being provided for informational purposes only.”<sup>134</sup>

Penal Code sections 13012 and 13519.4, as amended by the test claim statutes, impose requirements on state agencies and RIPA (whose membership does not include local government).<sup>135</sup> Penal Code sections 13012 and 13519.4, however, do not impose any activities on local government and, thus, do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Penal Code section 13012 was amended by Statutes 2015, chapter 466, to expand the content of the DOJ annual report to the Governor on criminal statistics to include citizen complaints alleging racial or identity profiling.<sup>136</sup> In addition, Statutes 2015, chapter 466 added subdivision (c) to section 13012 to require RIPA to analyze the statistics reported by DOJ.<sup>137</sup> Section 13012 was again amended by Statutes 2017, chapter 328 to delete references to “*citizen*” complaints and instead include reference to “*civilian*” complaints, and to make several non-substantive changes that do not require local government to do anything.

Similarly, Penal Code section 13519.4 was amended by Statutes 2015, chapter 466, to define “racial or identity profiling”;<sup>138</sup> require the Attorney General to establish RIPA for the purpose of eliminating racial and identity profiling, and improving diversity and racial sensitivity in law enforcement;<sup>139</sup> direct RIPA to analyze the racial and identity data provided under Government Code section 12525.5 (racial and identity stop data reported to the Attorney General by state and local agencies that employ peace officers) and Penal Code section 13012 (DOJ’s annual report to the Governor), and issue an annual report that includes detailed findings and policy recommendations for eliminating racial and identity profiling;<sup>140</sup> and require POST to consult

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<sup>134</sup> Exhibit A, Test Claim, page 7.

<sup>135</sup> Penal Code section 13519.4(j)(2) (Stats. 2015, ch. 466).

<sup>136</sup> Penal Code section 13012(a)(5)(iii) (Stats. 2015, ch. 466).

<sup>137</sup> Penal Code section 13012(c) (Stats. 2015, ch. 466).

<sup>138</sup> Penal Code section 13519.4(e) (Stats. 2015, ch. 466).

<sup>139</sup> Penal Code section 13519.4(j) (Stats. 2015, ch. 466).

<sup>140</sup> Penal Code section 13519.4(j)(3) (Stats. 2015, ch. 466).

with RIPA in developing an updated racial profiling training for peace officers that prescribes evidence-based patterns, practices, and protocols that prevent racial and identity profiling.<sup>141</sup>

Penal Code sections 13012 and 13519.4, as amended by the test claim statutes, do not impose any activities on local government and, thus, do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

**D. 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) Impose a Reimbursable State-Mandated Program on Cities and Counties.**

As described below, the Commission finds that Government Code section 12525.5, as added and amended by the test claim statutes (Stats. 2015, ch 466 and Stats. 2017, ch. 328), and California Code of Regulations, title 11, sections 999.224-999.229 (Register 2017, No. 46), impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution on cities and counties, as specified below.

**1. 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) impose requirements on local governments.**

Government Code section 12525.5(a)(1),(g)(1), as added and amended by the test claim statutes, requires city and county law enforcement agencies, and the California Highway Patrol and California state and university educational institutions that employ peace officers to annually report to the Attorney General data on all stops conducted by that agency's peace officers for the preceding calendar year. Section 12525.5 and the test claim regulations describe how to comply with this reporting requirement and the scope of the requirement, as described below.

**a. Identify the peace officers required to report stops, and maintain a system to match individual officers to their Officer I.D. Number**

California Code of Regulations, title 11, section 999.227(a)(8) requires that "[o]n January 1 of each year until the agency begins reporting to the Department, each reporting agency shall count the number of peace officers it employs who are subject to this chapter to determine the date that agency must start collecting stop data and reporting to the Department pursuant to Government Code section 12525.5, subdivisions (a)(1) and (a)(2)."

Section 999.227(a)(11) then requires the reporting agencies to "create the Officer's I.D. Number . . . for each officer required to report stops . . ." <sup>142</sup> "Officer I.D. Number" is defined in section 999.226(a)(14), as "a permanent identification number assigned by the reporting agency to the reporting officer, which shall be used for all reporting to the Department . . ." and "shall be considered Unique Identifying Information." <sup>143</sup> The stop reports submitted to DOJ "shall"

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<sup>141</sup> Penal Code section 13519.4(h) (Stats. 2015, ch. 466).

<sup>142</sup> California Code of Regulations, title 11, section 999.227(a)(11).

<sup>143</sup> California Code of Regulations, title 11, section 999.226(a)(14). "Unique Identifying Information" is defined in section 999.224(a)(17) to mean "personally identifying information, the release of which, either alone or in combination with other data reported, is reasonably likely

include the Officer's I.D. Number, but shall not include the officer's name or badge number.<sup>144</sup> However, each reporting agency "shall maintain a system to match an individual officer to his or her Officer's I.D. Number."<sup>145</sup>

b. Collect and report stop data.

Government Code section 12525.5(g) defines 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."<sup>146</sup>

Agencies are required to begin collecting and reporting data on all stops on or before the following dates:

- (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.<sup>147</sup>

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to reveal the identity of the individual officer who collected the stop data information. It does not include the minimum information that is specified in Government Code section 12525.5, subdivision (b)."

<sup>144</sup> California Code of Regulations, title 11, section 999.227(a)(11).

<sup>145</sup> California Code of Regulations, title 11, section 999.227(a)(11).

<sup>146</sup> Government Code section 12525.5(g)(2) (Stats.2015, ch.466); see also, California Code of Regulations, title 11, section 999.224(a)(14).

<sup>147</sup> Government Code section 12525.5(a)(2) (Stats. 2017, ch. 328).



The minimum “data elements”<sup>148</sup> required to be collected and reported are described in Government Code section 12525.5(b), and sections 999.226(a)(1)-(16) and 999.227(a)(2) of the regulations as follows:<sup>149</sup>

- (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.”<sup>150</sup>
- (2) “Date, Time, and Duration of Stop.”<sup>151</sup>
- (3) “Location of Stop”<sup>152</sup>
- (4) “Perceived Race or Ethnicity of Person Stopped”<sup>153</sup>
- (5) “Perceived Gender of Person Stopped”<sup>154</sup>
- (6) “Person Stopped Perceived to be LGBT”<sup>155</sup>
- (7) “Perceived Age of Person Stopped”<sup>156</sup>
- (8) “Person Stopped Has Limited or No English Fluency”<sup>157</sup>
- (9) “Perceived or Known Disability of Person Stopped”<sup>158</sup>

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<sup>148</sup> “Data element” is defined as “a category of information the peace officer must report regarding a stop. For example, “perceived gender of person stopped” is a data element that must be collected under Government Code section 12525.5.” (Cal. Code Regs., tit. 11, § 999.224(a)(4).)

<sup>149</sup> Section 999.227(a)(2) of the regulations states that “[t]he data elements described in section 999.226, subdivision (a) are the minimum that a reporting agency shall collect and report. Nothing in this section prohibits a reporting agency from voluntarily collecting additional data.”

<sup>150</sup> California Code of Regulations, title 11, section 999.226(a)(1).

<sup>151</sup> Government Code section 12525.5(b)(1) (Stats. 2015, ch. 466); California Code of Regulations, title 11, section 999.226(a)(2).

<sup>152</sup> Government Code section 12525.5(b)(1) (Stats. 2015, ch. 466); California Code of Regulations, title 11, section 999.226(a)(3).

<sup>153</sup> Government Code section 12525.5(b)(6) (Stats. 2015, ch. 466); California Code of Regulations, title 11, section 999.226(a)(4).

<sup>154</sup> Government Code section 12525.5(b)(6) (Stats. 2015, ch. 466); California Code of Regulations, title 11, section 999.226(a)(5).

<sup>155</sup> California Code of Regulations, title 11, section 999.226(a)(6).

<sup>156</sup> Government Code section 12525.5(b)(6) (Stats. 2015, ch. 466); California Code of Regulations, title 11, section 999.226(a)(7).

<sup>157</sup> California Code of Regulations, title 11, section 999.226(a)(8).

<sup>158</sup> California Code of Regulations, title 11, section 999.226(a)(9).

- (10) “Reason for Stop”<sup>159</sup>
- (11) “Stop Made in Response to a Call for Service.”<sup>160</sup>
- (12) “Actions Taken by Officer During Stop”<sup>161</sup>
- (13) “Result of Stop”<sup>162</sup>
- (14) “Officer's Identification (I.D.) Number”<sup>163</sup>
- (15) “Officer's Years of Experience”<sup>164</sup>
- (16) “Type of Assignment of Officer”<sup>165</sup>

For each “data element” the officer must select all applicable “data values” in accordance with the instructions provided in section 999.226 of the regulations.<sup>166</sup> For example, for data element “Location of Stop” the officer “shall report one of the following options, which are provided in order of preference:

1. Block number and street name;
2. Closest intersection; or
3. Highway and closest highway exit.
4. If none of these options are applicable, the officer may report a road marker, landmark, or other description, except that the officer shall not provide a street address if the location is a residence.”<sup>167</sup>

Reporting some of the data elements requires multiple steps. For example, when reporting data element “(10) ‘Reason for Stop,’” the officer must do all of the following:

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<sup>159</sup> Government Code section 12525.5(b)(2) (Stats. 2015, ch. 466); California Code of Regulations, title 11, section 999.226(a)(10).

<sup>160</sup> California Code of Regulations, title 11, section 999.226(a)(11).

<sup>161</sup> Government Code section 12525.5(b)(7) (Stats. 2015, ch. 466); California Code of Regulations, title 11, section 999.226(a)(12).

<sup>162</sup> Government Code section 12525.5(b)(3) (Stats. 2015, ch. 466); California Code of Regulations, title 11, section 999.226(a)(13).

<sup>163</sup> California Code of Regulations, title 11, section 999.226(a)(14).

<sup>164</sup> California Code of Regulations, title 11, section 999.226(a)(15).

<sup>165</sup> California Code of Regulations, title 11, section 999.226(a)(16).

<sup>166</sup> “Data value” defined as “a component or characteristic of a data element to be used in reporting each data element. For example, “male,” “female,” “transgender man/boy,” “transgender woman/girl,” and “gender nonconforming” are each data values to use in reporting the data element “perceived gender of person stopped.” (Cal. Code Regs., tit. 11, § 999.224(a)(5).)

<sup>167</sup> California Code of Regulations, title 11, section 999.226(a)(3)(A).

- a. Report the primary reason for stopping a person and select one applicable data value from the list of six possible reasons for stop; for example, “2. *Reasonable suspicion that the person was engaged in criminal activity*”;<sup>168</sup>
- b. Select all applicable circumstances that gave rise to the officer's reasonable suspicion from the list provided;<sup>169</sup>
- c. “[U]sing the Department's standard CJIS Offense Table, the officer shall identify the primary code section and subdivision of the suspected violation of law that formed the basis for the stop, if known to the officer”;<sup>170</sup> and
- d. “[T]he officer shall also provide a brief explanation (250-character maximum) regarding the reason for the stop. This explanation shall include additional detail beyond the general data values selected for the ‘Reason for Stop.’”<sup>171</sup>

In addition, data element “(12) ‘Actions Taken by Officer During Stop’” includes several additional reportable data elements, which are triggered when corresponding data values are selected.<sup>172</sup> For example, to report this data element the officer must select all applicable data values from the list of twenty three values describing the officer’s actions during the stop, such as, “1. *Person removed from vehicle by order*” and “8. *Firearm pointed at person.*”<sup>173</sup> If during the stop the officer’s actions included a search of the person, the person's property, or both, the officer is also required to report the “Basis for Search,” by selecting all applicable data values that describe the reason for the search from the list of twelve data values; and, in addition, “provide a brief explanation (250-character maximum) regarding the basis for the search. This explanation shall include additional detail beyond the general data values selected for ‘Basis for Search.’”<sup>174</sup>

Similarly, if the officer’s actions included action “21. *Property was seized,*” the officer is further required to report the “Basis for Property Seizure” by selecting all applicable data values that describe the basis for the property seizure from the list of five data values; for example “a. *Safekeeping as allowed by law/statute*” or “c. *Evidence*”; and to report the type of property seized by selecting all of the data values that apply from the provided list of eleven types of property, such as “a. *Firearm(s)*” or “k. *Other contraband or evidence.*”<sup>175</sup>

In addition to the data elements and corresponding data values set forth in section 999.226(a), section 999.227(e) specifies additional data that must be collected for reportable peace officer

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<sup>168</sup> California Code of Regulations, title 11, section 999.226(a)(10)(A).

<sup>169</sup> California Code of Regulations, title 11, section 999.226(a)(10)(A)(2).

<sup>170</sup> California Code of Regulations, title 11, section 999.226(a)(10)(A)(2).

<sup>171</sup> California Code of Regulations, title 11, section 999.226(a)(10)(B).

<sup>172</sup> California Code of Regulations, title 11, section 999.226(a)(12).

<sup>173</sup> California Code of Regulations, title 11, section 999.226(a)(12)(A).

<sup>174</sup> California Code of Regulations, title 11, section 999.226(a)(12)(B).

<sup>175</sup> California Code of Regulations, title 11, section 999.226(a)(12)(D).

interactions with students at a K-12 public school. Under these circumstances, the following situations constitute a reportable stop:

- a. Any interaction that 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. Any interaction in which the student is questioned for the purpose of investigating whether the student committed a violation of law, including violations of Education Code sections 48900, 48900.2, 48000.4, and 48000.7 (addressing the suspension and expulsion of students), or to determine whether the student is truant.
- c. Any interaction in which an officer engages in one or more data values identified in section 999.226(a), excluding “none.” However, this does not include a detention or search that is conducted of all persons as part of a neutrally applied formula that is not based upon personal characteristics (such as searches conducted at the entries and exits of school facilities by screening devices).<sup>176</sup>

The following additional data values shall be reported for stops at a K-12 school: the name of the school where the stop took place, whether 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.

c. Scope of reporting requirements

Section 999.227(a)(4) explains that when two or more reporting agencies are involved in a stop, only the primary agency shall submit the report. The primary agency is the agency with investigative jurisdiction based on local, county, or state law or interagency agreement or memoranda of understanding. If there is uncertainty as to the primary agency, the agencies shall agree on which agency is the primary agency for reporting purposes. If, however, a stop is done in conjunction with a reporting agency and an agency that is not subject to the reporting requirements, the reporting agency is required to submit data on the stop even if it is not the primary agency responsible for the stop.

Section 999.227(a)(5) states that if more than one peace officer of the agency conducts the stop, the officer with the highest level of engagement with the person stopped shall submit the full report.

Section 999.227(a)(6) states that if multiple persons are stopped during one incident, the stop data shall be submitted for each person within a single report.

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<sup>176</sup> California Code of Regulations, title 11, section 999.227(e)(3).

And section 999.227(a)(9) requires peace officers to complete their stop data report by the end of their shift, unless exigent circumstances preclude doing so. In such circumstances, the data shall be completed as soon as practicable.

In addition, section 999.227(a)(1) requires peace officers to submit the data elements described in section 999.226(a) for every person stopped by the officer, *except* as provided in subdivisions (b), (c), (d) and (e) of this section. Accordingly, reports are not required to be submitted in the following circumstances described in section 999.227(b) and (c):

- (1) Peace officers shall not submit data elements for passengers in vehicles to a stop, unless the passenger is observed or suspected of violating the law or the passenger is subjected to any of the actions identified as data values in section 999.226(a)(12), “Actions Taken by Officer During Stop, excluding “Vehicle impounded” and “None.”<sup>177</sup>
- (2) Peace officers shall not submit data elements for stops during public safety mass evacuations, active shooter incidents, or routine security screenings of all persons entering a building or special event.<sup>178</sup>

In addition, section 999.227(d) states there are some peace officer interactions that are reportable only if the officer takes certain actions:

- (1) Interactions that take place during the following circumstances shall only be reported if the 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 officers may check for 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>179</sup>
- (2) Interactions that take place with a person in his or her residence who is the subject of a warrant or search condition is not subject to the reporting requirements. However, a peace officer shall report any interactions with persons in the home who are not the subject of a warrant or search condition if the officer handcuffs the person; arrests the person; points a firearm at the person; discharges or uses a

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<sup>177</sup> California Code of Regulations, title 11, section 999.227(b).

<sup>178</sup> California Code of Regulations, title 11, section 999.227(c).

<sup>179</sup> California Code of Regulations, title 11, section 999.227(d)(1).

firearm, electronic control device, impact projectile, baton or other impact weapon, or chemical spray on the person; or if a canine bit or held the person.<sup>180</sup>

- (3) 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 are not subject to the reporting requirements. However, the officer shall report any interactions with person in the home who are not under home detention or house arrest if the officer takes the following actions: the officer handcuffs the person; arrests the person; points a firearm at the person; discharges or uses a firearm, electronic control device, impact projectile, baton or other impact weapon, or chemical spray on the person; or if a canine bit or held the person.<sup>181</sup>

Finally, section 999.225(d) states that peace officers shall not report stops that occur in a custodial setting.<sup>182</sup>

d. Electronically submit data to DOJ and retain stop data.

California Code of Regulations, title 11, section 999.228 requires, that all stop data be transmitted to the DOJ electronically. Section 999.228(a) specifically states that “[t]he system developed by the Department *shall require the electronic submission of data from reporting agencies.*” The Addendum to Initial Statement of Reasons for the regulations states that the intent of this provision is “to require electronic versus paper submission of data in order to ensure data is both accurate and accessible,” as follows:

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

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

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<sup>180</sup> California Code of Regulations, title 11, section 999.227(d)(2).

<sup>181</sup> California Code of Regulations, title 11, section 999.227(d)(3).

<sup>182</sup> California Code of Regulations, title 11, section 999.225(c). “Custodial setting” means correctional institutions, juvenile detention facilities, and jails, including parking lots and grounds within the perimeter of these enumerated facilities. “Custodial setting” does not include home detention or any circumstances where persons are under house arrest outside of correctional institutions, juvenile detention facilities, or jails. (California Code of Regulations, title 11, section 999.224(a)(3)).

including secure file transfer of spreadsheets or other common file formats—to comply with the reporting requirements.<sup>183</sup>

Section 999.228(b) then provides for three permissible methods of electronic data transmission of stop data to the DOJ, as follows:

Submission of Data. Agencies shall be provided with the following options to submit their stop data to the Department: (1) a web-browser based application, which shall include mobile capabilities for agencies that choose to use the Department's developed and hosted solution to submit stop data; (2) a system-to-system web service for agencies that elect to collect the data in a local system and then submit the data to the Department; and (3) a secured file transfer protocol for agencies that elect to collect the data in a local repository and then submit the data to the Department. Agencies that select option 3 shall be permitted to submit batch uploads of stop data in Excel spreadsheets and other delimited text formats of electronic documentation that complies with the Department's interface specifications.<sup>184</sup>

The Addendum to Initial Statement of Reasons for the regulations explains that “...DOJ will accept data in any electronic format that complies with the Department’s interface specifications.”<sup>185</sup> The “interface specifications” are not included with the implementing regulations. Instead, section 999.228(f) of the regulations states that the DOJ shall publish a data dictionary and interface specifications for submission of stop data, as follows:

Data Standards. The Department shall publish a data dictionary and interface specifications to ensure uniform and complete reporting of stop data. These documents will define each required data element and acceptable data values. These data standards shall be consistent with the definitions and technical specifications set forth in this chapter.<sup>186</sup>

According to DOJ, each method of submission carries costs and benefits from a fiscal perspective, as follows:

- **DOJ-hosted application** may require up-front costs in technology investment to equip officers in the field with a laptop, tablet, or smartphone (although many departments already provide some or all of their officers with such tools), but it eliminates the need for data input services, paper publication, and data storage costs.

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<sup>183</sup> Exhibit I, Addendum to Initial Statement of Reasons (OAL File No. Z-2016-1129-03), pages 30-31, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/isor-addendum-08012017.pdf> (accessed on November 8, 2019).

<sup>184</sup> California Code of Regulations, title 11, section 999.228(b).

<sup>185</sup> Exhibit I, Addendum to Initial Statement of Reasons (OAL File No. Z-2016-1129-03), pages 30-31, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/isor-addendum-08012017.pdf> (accessed on November 8, 2019).

<sup>186</sup> California Code of Regulations, title 11, section 999.228(f).

- **Paper-based collection** will require few upfront costs but significant ongoing resources to produce paper forms and to input the data. It will also require some minimal costs to store the data.
- **Relay-to-dispatch** eliminates the need for paper forms but requires similar costs for data input. It will also require some minimal costs to store the data.
- Modifying an existing **agency-hosted data collection process** to accommodate the statutory and regulatory requirements-or acquiring such a system-may result in significant upfront costs for technology, as well as ongoing vendor costs to maintain and support the system, but may streamline the data collection process by syncing with other agency data collection requirements. It may be especially challenging and costly for some law enforcement agencies with older record management systems to modify these systems to allow for the collection of stop data. Some agencies are using systems that are 20+ years old. If agencies are unable to make modifications to their existing systems due to the age or other limitations, an alternative would be to use the DOJ AB 953 application or other acceptable submission methods.<sup>187</sup>

Thus, while the regulations provide for a choice of data submission methods, all reporting agencies are required to ensure that their electronic stop data submission is compatible with the DOJ interface specifications.

Section 999.228(e) of the regulations further requires that the reporting agencies authorize and remove users from the system developed by the DOJ as necessary, and that automated systems handling the stop data shall be secure from unauthorized access, alteration, deletion, or release:

(e) System Security. The Department shall design its system to be easily accessible for authorized users, confidential, and accurate. The system will provide role-based authorization services. Reporting agencies will be required to 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.

Finally, section 999.228(h) states “[e]ach reporting agency shall keep a record of its source data for a minimum of three years, and shall make this data available for inspection by the Department should any issues arise regarding the transfer of data to the Department.” However, the last sentence of this section provides that for agencies that report stop data via DOJ web-browser based application, the DOJ “shall host the data for the agency for the requisite retention period,” which would result in no costs to the local agency for stop-data retention.<sup>188</sup> The

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<sup>187</sup> Exhibit A, Test Claim, page 105 (AB 953 Stop Data Reporting Regulations, Addendum to Form 399).

<sup>188</sup> Exhibit I, California Department of Justice Economic and Fiscal Impact Statement (STD 399), AB 953 Stop Data Reporting Regulations to Implement Gov. Code Section 12525.5, page 17, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-std399-signed-110817.pdf> (accessed on November 8, 2019).



rulemaking materials for Section 999.228 indicate that the DOJ will assume responsibility for the three-year retention period for the agencies that use the DOJ web-browser based application to collect stop data where the DOJ retains sole possession of the transmitted stop data.<sup>189</sup> In the alternative, “*at the agency's election*” the DOJ will transfer this data back to the agency.<sup>190</sup> Thus, if an agency uses DOJ’s web-browser based application, it is not required by state law to store and retain the data because DOJ will host the data for the agency for the retention period. If the agency elects to store and retain the data under these circumstances, however, any costs incurred for storage and retention are triggered by the agency’s own discretion.<sup>191</sup> Therefore, section 999.228(h) authorizes, but does not require, storage and retention of the stop data by the reporting agencies that use the DOJ web-browser based application to report stop data.

e. Audit and validation requirements

California Code of Regulations, title 11, section 999.229(b) states that DOJ shall perform data validation on stop data submitted to ensure data integrity and quality assurance. Each reporting agency, therefore, “is responsible for ensuring that all data elements, data values, and narrative explanatory fields conform to these regulations and for correcting any errors in the data submission process, and shall do so through the Department’s error resolution process.” Section 999.227(a)(10) makes clear that “[o]nce stop data is submitted to the Department . . . an agency can only revise stop data through the Department’s error resolution process.” Although the regulations do not define “error resolution process,” the Final Statement of Reasons for these regulations explains that it is a term of art in database management and that this process will be used to ensure compliance with the technical requirements of the database system and to obtain missing data:

As used here, “error resolution process” is a term of art in database management, which refers to a common technical process imposed by the database manager to impose a uniform, standard mechanism for correction of submitted data to ensure compliance with the technical requirements of the database system; it does not refer to a substantive or qualitative review of the reported data. It will be used simply to obtain missing data. Law enforcement agencies are familiar with error resolution processes in place for a variety of databases maintained by the Department of Justice that require the submission of data. For example, an error resolution process would apply if an agency attempted to batch upload 6 months of data into the Department’s system, but neglected to include one of the required data fields. In that case, the agency’s database manager would receive an electronic notice of the error, and the data will be sent back for the agency to

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<sup>189</sup> Exhibit I, California Department of Justice Economic and Fiscal Impact Statement (STD 399), AB 953 Stop Data Reporting Regulations to Implement Gov. Code Section 12525.5, page 17, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-std399-signed-110817.pdf> (accessed on November 8, 2019).

<sup>190</sup> California Code of Regulations, title 11, section 999.228(h).

<sup>191</sup> *Department of Finance v. Commission on State Mandates (Kern High School District)* (2003) 30 Cal.4th 727, 743.

resolve and resubmit the corrected data as required by AB 953 and its implementing regulations.<sup>192</sup>

Section 999.224(a)(5) similarly requires reporting agencies to “ensure that the technical specifications for data values are consistent with these regulations and in doing so shall follow the data dictionary prepared by the Department. In this respect, the Addendum to the Initial Statement of Reasons for the regulation package adopting California Code of Regulations, title 11, sections 999.224-999.229 states the following:

999.224, subs. (a)(4)-(5). "*Data element*" and "*Data Value*."

[¶] . . . [¶]

. . . [T]he following language was added to the definition of "data value": "[r]eporting agencies shall ensure that the technical specifications for data values are consistent with these regulations and in doing so shall follow the data dictionary prepared by the Department." This amendment is intended to provide guidance to law enforcement agencies so that agencies develop technical specifications for their computer systems that are consistent with the requirements of the regulations. To assist agencies in this objective, the regulations also reference the data dictionary that the Department shall prepare, as required by section 999.228, subdivision (f). As subdivision (f) makes clear, this data dictionary is designed to provide technical specifications regarding the requirements in these regulations and must be consistent with those requirements.<sup>193</sup>

In addition, section 999.229(c) requires each reporting agency “submitting records via the system-to-system web service or the secure file transfer protocol . . . [to] include a unique stop record number for each stop,” so that DOJ can use the record number to relay information on errors when necessary.

- f. Ensuring that personally identifiable information of the individual stopped or any other information exempt from disclosure is not transmitted to the Attorney General

Government Code section 12525.5(f) states that all data and reports under the Act are public records within the meaning of Government Code section 6252(e), and are open to public inspection. However, section 12525.5(d) states that local law enforcement agencies “shall not report the name, address, social security number, or other unique personal identifying information of persons stopped, searched, or subjected to property seizure. . . .” and not report

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<sup>192</sup> Exhibit I, Final Statement of Reasons, Proposed Regulations, Title 11, Sections 999.224-999.229, page 3, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-fsor-revised-110817.pdf> (accessed on November 8, 2019).

<sup>193</sup> Exhibit I, Addendum to Initial Statement of Reasons (OAL File No. Z-2016-1129-03), page 2, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/isor-addendum-08012017.pdf> (accessed on November 8, 2019).

“the badge number or other unique identifying information of the peace officer involved.”<sup>194</sup> Section 12525.5(d) and section 999.228(d) of the test claim regulations further state that the law enforcement agencies are “solely responsible for ensuring that personally identifiable information of the individual stopped or any other information that is exempt from disclosure” pursuant to this section is not transmitted to the Attorney General in an open text field.

The Addendum to the Initial Statement of Reasons for the test claim regulations explains that this provision is “intended to make clear that the reporting agencies are responsible to ensure—through training, supervisory review, or any other methodology—that these fields do not contain information that is exempt from public disclosure,” and notes that the earlier version “provided that law enforcement agencies must redact any personally identifiable information with respect to the person stopped and officer, except for the Officer's Unique Identifier, prior to transmission of stop data.”<sup>195</sup>

g. Summary of required activities

Accordingly, the following activities are required by 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):

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].)

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<sup>194</sup> The term “Unique Identifying Information” is defined in section 999.224(a)(17) of the title 11 regulations to mean “personally identifying information, the release of which, either alone or in combination with other data reported, is reasonably likely to reveal the identity of the individual officer who collected the stop data information. It does not include the minimum information that is specified in Government Code section 12525.5, subdivision (b).”

<sup>195</sup> Exhibit I, Addendum to Initial Statement of Reasons (OAL File No. Z-2016-1129-03), page 31, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/isor-addendum-08012017.pdf> (accessed on November 8, 2019).

2. Collection and reporting data on all stops, as defined,<sup>196</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.
  - a. Begin collecting and reporting data on all stops on or before the following dates:
    - (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.

(Gov. Code, § 12525.5(a)(2), Stats. 2017, ch. 328).

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>197</sup>
- Stops made during public safety mass evacuations.<sup>198</sup>
- Stops during an active shooter incident.<sup>199</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

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<sup>196</sup> Government Code section 12525.5(g)(2) (Stats.2015, ch.466); see also, California Code of Regulations, title 11, section 999.224(a)(14) (Register 2017, No. 46), which defines 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 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>197</sup> California Code of Regulations, title 11, section 999.227(b), Register 2017, No. 46.

<sup>198</sup> California Code of Regulations, title 11, section 999.227(c)(1), Register 2017, No. 46.

<sup>199</sup> California Code of Regulations, title 11, section 999.227(c)(2), Register 2017, No. 46.

detector screenings, including any secondary searches that result from the screening.<sup>200</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 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>201</sup>
  - Interactions that take place with a person in his or her residence who is the subject of a warrant or search condition.<sup>202</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>203</sup>
  - Stops in a custodial setting.<sup>204</sup>
  - Stops that occur while the officer is off-duty.<sup>205</sup>
- b. The agency’s peace officers shall collect the following minimum 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].)

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<sup>200</sup> California Code of Regulations, title 11, section 999.227(c)(3), Register 2017, No. 46.

<sup>201</sup> California Code of Regulations, title 11, section 999.227(d)(1).

<sup>202</sup> California Code of Regulations, title 11, section 999.227(d)(2), Register 2017, No. 46.

<sup>203</sup> California Code of Regulations, title 11, section 999.227(d)(3), Register 2017, No. 46.

<sup>204</sup> California Code of Regulations, title 11, section 999.225(c), Register 2017, No. 46.

<sup>205</sup> Exhibit I, 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).

- (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].)
- (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].)

In addition, the claimant requests reimbursement for the costs of training, updating policies and procedures, supervisory review, and for installation and testing of software.<sup>206</sup> Although the legislative history of the test claim statute<sup>207</sup> and rulemaking materials<sup>208</sup> acknowledge that the mandate would result in local agencies incurring costs for training and technology, and the claimant has filed evidence supporting such costs,<sup>209</sup> these activities and costs are not required by the plain language of the test claim statutes and regulations. Nevertheless, these activities and costs may be proposed by claimant for inclusion in the Parameters and Guidelines if they are supported by evidence in the record showing they are “reasonably necessary for the performance of the state-mandated program” in accordance with Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

## **2. Government Code section 12525.5 and the test claim regulations impose a state-mandated program on counties and cities only.**

The activities addressed above are required of agencies identified in Government Code section 12525.5(a)(1) and (g)(1) as “each state or local agency that employs peace officers,” as “defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code,” “limited to members of the California Highway Patrol, a city or county law enforcement agency, and California state or university educational institutions.”<sup>210</sup> Section 12525.5(g)(1) further states that “peace officer” does not include probation officers and officers in a custodial setting. Thus, section 12525.5 imposes the requirements on city and county law enforcement agencies and law

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<sup>206</sup> Exhibit A, Test Claim, pages 8-9.

<sup>207</sup> Exhibit I, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 953, (2015-2016 Reg. Sess.), as amended August 31, 2015, page 5.

<sup>208</sup> Exhibit I, California Department of Justice Economic and Fiscal Impact Statement (STD 399), AB 953 Stop Data Reporting Regulations to Implement Government Code section 12525.5, pages 15-20, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-std399-signed-110817.pdf> (accessed on November 8, 2019).

<sup>209</sup> Exhibit A, Test Claim, pages 20-21 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

<sup>210</sup> DOJ’s interpretation of Government Code section 12525.5(a)(1) and (g)(1) is stated as follows: “Government Code section 12525.5, subdivision (a) provides that the reporting requirements apply only to those state and local agencies that employ “peace officers,” a term that Government Code section 12525.5, subdivision (g)(1) limits for purposes of reporting agencies “to members of the California Highway Patrol, a city or county law enforcement agency, and California state or university educational institutions,” excluding “probation officers and officers in a custodial setting.” (Exhibit I, Final Statement of Reasons, Proposed Regulations, Title 11, Sections 999.224-999.229, page 8, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-fsor-revised-110817.pdf> (accessed on November 8, 2019).)



enforcement agencies of California state or university educational institutions that employ persons, other than probation and custodial officers, who have been designated by statute to have peace officer powers and duties.<sup>211</sup>

California Code of Regulations, title 11, section 999.224(a)(11) refers to agencies required to collect and report stop data as “reporting agencies”. And, section 999.224(a)(11) defines reporting agency, for purposes of local government, as any city or county law enforcement agency that employs peace officers, including those who are contracted to work at other government agencies or private entities (such as housing or transit agencies and state educational institutions) and the law enforcement agencies of any California state or university educational institutions. California Code of Regulations, title 11, section 999.224(a)(11) then defines “California state or university educational institutions,” as used in the statute, rather broadly to include K-12 school districts that employ peace officers pursuant to the authority provided by Education Code section 38000; and community college districts that employ peace officers pursuant to the authority provided by Education Code section 72300. Section 999.224(a)(11) states the following:

(11) “Reporting agency” means:

(A) Any city or county law enforcement agency that employs peace officers.

1. “Reporting agency” includes any city or county law enforcement agency that employs peace officers, including officers who are contracted to work at other government agencies or private entities. This includes, but is not limited to, peace officers assigned to work in cities or other jurisdictions that are not within the original jurisdiction of the city or county law enforcement agency; peace officers of city or county law enforcement agencies assigned to or contracted to work at housing or transit agencies; and school resource officers assigned to work in California state educational institutions.

(B) The California Highway Patrol.

(C) The law enforcement agencies of any California state or university educational institutions.

1. “California state educational institution” means any public elementary or secondary school; the governing board of a school district; or any combination of school districts or counties recognized as the administrative agency for public elementary or secondary schools.
  - a. “The law enforcement agencies of California state educational institutions” refers to any police department established by a public school district pursuant to Education Code section 38000, subdivision (b).

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<sup>211</sup> The Legislature enacted chapter 4.5 of the Penal Code to “define peace officers, the extent of their jurisdiction, and the nature and scope of their authority, powers and duties.” (*County of Santa Clara v. Deputy Sheriffs’ Ass’n. of Santa Clara County, Inc.* (1992) 3 Cal.4th 873, 879; see also, *People v. Pennington* (2017) 3 Cal.5th 786, 792-793.)

2. “California university educational institution” means the University of California, the California State University, and any college of the California Community Colleges.
  - a. “The law enforcement agencies of California university educational institutions” refers to the following:
    - (1) Police departments of all campuses of the California State University established pursuant to Education Code section 89560;
    - (2) Police departments of all campuses of the University of California established pursuant to Education Code section 92600; and
    - (3) Police departments of all California community colleges established pursuant to Education Code section 72330.<sup>212</sup>

California Code of Regulations, title 11, section 999.225(d) further explains that “all peace officers employed by a reporting agency, except for probation officers [and officers in a custodial setting], are subject to this chapter even if the officer makes a stop while assigned or contracted to work for another governmental agency or a private entity pursuant to a contract or memorandum of understanding between the reporting agency and the government agency or private entity.” Section 999.225(d)(1),(2) describes the following examples:

- (1) Example: A peace officer of a reporting agency who is also a member of a federal task force is subject to this chapter when stopping a person while the officer is performing duties as part of the task force, regardless of whether the officer must also comply with federal data collection policies, if any.
- (2) Example: A peace officer of a reporting agency assigned to work as a school resource officer in a K-12 Public School pursuant to a memorandum of understanding or other contractual relationship is subject to this chapter when stopping a person while on that assignment.

The Final Statement of Reasons for the DOJ regulations further makes clear that off-duty officers are not required to collect and report stop data, as follows:

. . . the Department has modified proposed Section 999.225, subdivision (d) to *delete* the provision that these reporting requirements apply to off-duty officers and to delete the examples pertaining to off-duty officers. In drafting these regulations, the Department has considered the need to balance the burden on law enforcement, including both officer time and technological costs, with the value of the data to examine racial and identity profiling. As explained in the ISOR Addendum: “This amendment was made upon further review of the regulations because of the infrequent nature of such stops and the practical and logistical complications that may arise regarding the reporting by an officer who is off-duty. For example, an officer who is off-duty will be unable to complete the reporting requirement by the end of his or her shift, and may not have access to mobile or

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<sup>212</sup> California Code of Regulations, title 11, section 999.224(a)(11), Register 2017, No. 46.

electronic devices, or other means of reporting the data electronically, as he or she would if on-duty.”<sup>213</sup>

Thus, the local government reporting agencies required to comply with Government Code section 12525.5 and the test claim regulations are limited to city and county law enforcement agencies that employ peace officers (other than probationary and custodial officers) assigned to work in the city or county jurisdiction and those city and county peace officer employees assigned by contract to provide services for other government and private entities; and to K-12 and community college districts that have established police departments and employ peace officers. As described below, however, the test claim statutes and regulations do not impose a state-mandated program in all of these circumstances.

- a. The test claim statutes and regulations do **not** impose a state-mandated program on K-12 school districts and community college districts.

The courts have made clear that activities required by state law, but triggered by a local discretionary decision (that is, action undertaken without any legal compulsion from the state or threat of penalty for nonparticipation) do not result in a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.<sup>214</sup> In *Department of Finance v. Commission on State Mandates (POBRA)*, the court addressed legislation that provided procedural protections to peace officers employed by counties, cities, and school districts when a peace officer employee is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The court specifically held that “school districts . . . that are permitted by statute [i.e., Education Code sections 38000 and 72330], but not required, to employ peace officers who supplement the general law enforcement units of cities and counties” are not eligible to claim reimbursement under article XIII B, section 6 for the new activities required by the state because school districts and community college districts are not legally or practically compelled by state law to comply.<sup>215</sup> The court reasoned that unlike cities and counties,<sup>216</sup> school districts and community college districts do

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<sup>213</sup> Exhibit I, 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).

<sup>214</sup> *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 742; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1363.

<sup>215</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1357-1367.

<sup>216</sup> Article XI of the California Constitution provides for the formation of cities and counties. Section 1, Counties, states that the Legislature shall provide for an elected county sheriff. Section 5, City charter provision, specifies that “It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force . . . .” Government Code section 36501 further provides that “[t]he government of a general law city is vested in: . . . (d)A chief of police.”

not have the provision of police protection as an essential and basic function, and instead make a discretionary decision to form a police department and employ peace officers pursuant to statutory authority:

The Commission notes that *Carmel Valley Fire Protection Dist. v. State* characterizes police protection as one of “the most essential and basic functions of local government.” [Citation omitted.] However, that characterization is in the context of cities, counties, and districts that have as an ordinary, principal, and mandatory duty the provision of policing services within their territorial jurisdiction. A fire protection district perform must hire firefighters to supply that protection.

Thus, as to cities, counties, and such districts, new statutory duties that increase the costs of such services are prima facie reimbursable. This is true, notwithstanding a potential argument that such a local government’s discretionary decision is voluntary in part, as to the number of personnel it hires. (See *San Diego Unified School Dist., supra*, 33 Cal.4th at p. 888. . . .) A school district, for example, has an analogous basic and mandatory duty to educate students. In the course of carrying out that duty, some “discretionary” expulsions will necessarily occur. [Citation to *San Diego Unified School Dist.* omitted.] Accordingly, San Diego Unified School Dist. suggests additional costs of “discretionary” expulsions should not be considered voluntary. Where, as a practical matter, it is inevitable that certain actions will occur in the administration of a mandatory program, costs attendant to those actions cannot fairly and reasonably be characterized as voluntary under the rationale of *City of Merced*. [Citation to *San Diego Unified School Dist.* omitted.]

However, the districts in issue are authorized, but not required, to provide their own peace officers and do not have provision of police protection as an essential and basic function. It is not essential unless there is a showing that, as a practical matter, exercising the authority to hire peace officers is the only reasonable means to carry out their core mandatory functions.<sup>217</sup>

In this case, section 999.224(a)(11) states that “any police department established by a public school district pursuant to Education Code section 38000, subdivision (b)” and “police departments of all California community colleges established pursuant to Education Code section 72330” are required to comply with Government Code section 12525.5 and the test claim regulations. Education Code section 38000(b) states that “The governing board of a school district *may* establish a school police department under the supervision of a school chief of police and, in accordance with Chapter 5 (commencing with a Section 45100) of Part 25, may employ peace officers, as defined in subdivision (b) of Section 830.32 of the Penal Code, to ensure the safety of school district personnel and pupils, and the security of the real and personal property of the school district.”

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<sup>217</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

Similarly, Education Code section 72330(a) states that “The governing board of a community college district *may* establish a community college police department under the supervision of a community college chief of police and, in accordance with Chapter 4 (commencing with Section 88000) of Part 51, may employ personnel as necessary to enforce the law on or near the campus of the community college and on or near other grounds or properties owned, operated, controlled, or administered by the community college or by the state acting on behalf of the community college.”

Thus, as recognized by the court in *Department of Finance (POBRA)*, K-12 school districts and community college districts are authorized, but not mandated by state law, to have police departments and employ peace officers. Police protection is not a basic or essential function of K-12 school districts and community college districts. Thus, K-12 school districts and community college districts are not legally compelled to comply with the activities required by Government Code section 12525.5 and the test claim regulations. Nor is there any evidence in the record that, as a practical matter, exercising the authority to hire peace officers is the only reasonable means to carry out their core mandatory function to provide educational services.

Accordingly, the Commission finds that the test claim statutes and regulations do not impose a state-mandated program on K-12 school districts and community college districts and, thus, K-12 school districts and community college districts are not eligible to claim reimbursement for this program.

- b. The test claim statutes and regulations, do **not** impose a state-mandated program when a city or county assigns their peace officer employees out to work for other government or private entities based on a contract or memorandum of understanding.

As indicated above, California Code of Regulations, title 11, section 999.224(a)(11) states that “[a]ny city or county law enforcement agency that employs peace officers, *including officers who are contracted to work at other government agencies or private entities*” is a reporting agency and is required to comply with Government Code section 12525.5 and the test claim regulations. This includes,

- Peace officers assigned to work in cities or other jurisdictions that are not within the original jurisdiction of the city or county law enforcement agency.
- Peace officers of city or county law enforcement agencies assigned to or contracted to work at housing or transit agencies.
- School resource officers assigned to work in California state educational institutions.

Section 999.225(d) similarly provides that the peace officers assigned by the reporting agency (i.e., a city or county) to work for other governmental agencies under contractual arrangements (such as a federal task force) are “subject to this chapter” and must comply with the reporting requirements of the test claim statute and regulations.

Thus, the activities required by the test claim statutes and regulations apply when a county or city peace officer is assigned to work for other government (such as other cities or counties, housing or transit agencies, schools as their resource officer, or a federal task force) or private entities based on a contract or memorandum of understanding entered into by the county or city employer.

The Commission finds, however, that the test claim statutes and regulations do *not* impose a state-mandated program on city or county law enforcement agencies when the city or county assigns their peace officer employees *out* to work for other government entities (such as other cities or counties, housing or transit agencies, schools as their resource officer, or a federal task force) or private entities based on a contract or memorandum of understanding. In such cases, any costs incurred by the county or city to comply with Government Code section 12525.5, as added or amended by the test claim statutes, and California Code of Regulations, title 11, sections 999.224- 999.229 (Reg. 2017, No. 46) are triggered by the local discretionary decision to enter into the contract with the other entity, and are not mandated by the state. As indicated by the court in *Department of Finance v. Commission on State Mandates (POBRA)*, cities and counties have as an ordinary, principal, and mandatory duty the provision of policing services *within their territorial jurisdiction*.<sup>218</sup> There is no duty to provide services by contract to other entities. Government Code section 53069.8 authorizes a county or city to enter into contract on behalf of the sheriff or chief of police to provide supplemental services to private entities. And Government Code section 51301 provides that “[a] board of supervisors may contract with a city, governed under general laws or charter, within the county, and the city legislative body may contract with the county for the performance by its appropriate officers and employees, of city functions.”

The court in *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* made it clear that activities required by state law, but triggered by a local discretionary decision, do not result in a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.<sup>219</sup>

Thus, the test claim statutes and regulations do not impose a state-mandated program when a city or county assigns their peace officer employees out to work for other government or private entities based on a contract or memorandum of understanding.

- c. Government Code section 12525.5 and California Code of Regulations, title 11, sections 999.224- 999.229, as added or amended by the test claim statutes and regulations, constitute a state-mandated program 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 in 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 own jurisdictions.

Section 999.224(a)(11) states that “[a]ny city or county law enforcement agency that employs peace officers” other than probation officers and officers in a custodial setting, is a reporting agency and is required to comply with Government Code section 12525.5 and the test claim regulations. As indicated by the court in *Department of Finance v. Commission on State*

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<sup>218</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367, emphasis added.

<sup>219</sup> See also, *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1363.

*Mandates (POBRA)*, cities and counties have as an ordinary, principal, and mandatory duty the provision of policing services within their territorial jurisdiction and, thus, new statutory duties that increase the costs of such services are “prima facie reimbursable,” notwithstanding the number of personnel it hires.<sup>220</sup> Thus, Government Code section 12525.5 and California Code of Regulations, title 11, sections 999.224-999.229, as added or amended by the test claim statutes and regulations, impose a state-mandated program on city and county law enforcement agencies that employ peace officers to perform the requirements of the test claim statute and regulations in their own jurisdictions.

In addition, however, there are many cities that, by law, provide police protection services within their jurisdictions,<sup>221</sup> but contract with the county sheriff’s department for those services within the city. It is estimated that nearly 30 percent of the cities in California contract with the county for police protection services.<sup>222</sup> Similarly, city or county law enforcement agencies that employ peace officers have the authority to enter into contracts with other city and county law enforcement agencies for additional police protection services in their jurisdictions, and may

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<sup>220</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

<sup>221</sup> Article XI, section 5 of the California Constitution specifies that “It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force . . . .” Government Code section 36501 further provides that “[t]he government of a general law city is vested in: . . . (d) A chief of police.”

<sup>222</sup> See Exhibit I, Abstract of the Peter J. Nelligan & William Bourns, *Municipal Contracting With County Sheriffs for Police Services in California: Comparison of Cost and Effectiveness*, 14 *Police Q.* 70 (2011), SAGE Journals, <https://journals.sagepub.com/doi/abs/10.1177/1098611110393133> (accessed on October 14, 2019).

For example, the Sheriff of Stanislaus County “provides contractual law enforcement services for the cities of Riverbank, Patterson, Waterford and Hughson. The contract funds police services and all general law enforcement services as specified in the respective contract with each city. Each city government, in partnership with the Sheriff’s Department, establishes the level of service to be provided. Law enforcement services are based upon a philosophy of community-oriented policing which is the foundation to ensure and maintain a safe community for the residents of and visitors to Stanislaus County.” (Exhibit I, Stanislaus County Sheriff’s Department, *Contract Cities*, <https://www.scsdonline.com/ops/contract-cities.html> (accessed on December 5, 2019)).

In addition, the Los Angeles Sheriff’s Department provides contractual law enforcement services for forty cities in Los Angeles County. (Exhibit I, Excerpt from the L. Baca, *Contract Law Enforcement Services*, Los Angeles Sheriff’s Department, Contract Law Enforcement Bureau (revised January 2009), page 3, <https://www.sheriffs.org/sites/default/files/uploads/CLESDocument.pdf> (accessed on October 14, 2019))

need these supplemental services from time to time.<sup>223</sup> Under these circumstances, the Commission finds that Government Code section 12525.5 and California Code of Regulations, title 11, sections 999.224-999.229, as added or amended by the test claim statutes and regulations, constitute a state-mandated program on city and county law enforcement agencies that contract *for* officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their own jurisdictions.

Although section 999.224(a)(11) defines reporting agencies as city or county law enforcement agencies that “employ” peace officers, the regulation defines peace officers required to comply with the collection and reporting activities broadly to include those city or county employees assigned to work in cities or other jurisdictions based on contract or memorandum of understanding. As indicated by the court in *Department of Finance v. Commission on State Mandates (POBRA)*, cities and counties have as an ordinary, principal, and mandatory duty the provision of policing services *within their* territorial jurisdiction.<sup>224</sup> And in *San Diego Unified*, the court recognized that reimbursement under article XIII B, section 6 should not be foreclosed under the *City of Merced* and *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* cases based on local decisions, such as the number of people to hire for example, in order to carry out the agency’s core government function:

Upon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs. Indeed, it would appear that under a strict application of the language in *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, as explained above, in *Carmel Valley* [citation omitted], an executive order requiring that county firefighters be provided with protection clothing and safety equipment was found to create a reimbursable state mandated for the added costs of such clothing and equipment. [Citation omitted.] The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ – and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced* [citation omitted], such costs would not be reimbursable for the simple reason that the local agency’s

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<sup>223</sup> Government Code section 51301 provides that “A board of supervisors may contract with a city, governed under general laws or charter, within the county, and the city legislative body may contract with the county for the performance by its appropriate officers and employees, of city functions.”

<sup>224</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367, emphasis added.



decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such a result.<sup>225</sup>

Thus, the application of the rule in *City of Merced* and *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* [that activities triggered by a local discretionary decision do not result in a state-mandated program] should not foreclose reimbursement based on a decision to employ peace officers or to contract with other cities or counties for peace officers to provide the police protection services in their jurisdictions.

Accordingly, the Commission finds that Government Code section 12525.5 and California Code of Regulations, title 11, sections 999.224-999.229, as added and amended by the test claim statutes and regulations, constitute a state-mandated program 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 in their own jurisdictions, and on 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 own jurisdictions.

**3. The activities mandated by 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 new program or higher level of service.**

State mandate reimbursement is not required for any and all costs that might be incurred by local government as an incident of a change in law or regulation. Alleged costs must be *mandated by the state*, and must constitute a *new program or higher level of service*, within the meaning of article XIII B, section 6. The California Supreme Court explained in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46:

Looking at the language of section 6 then, it seems clear that by itself the term “higher level of service” is meaningless. It must be read in conjunction with the predecessor phrase “new program” to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing “programs.” But the term “program” itself is not defined in article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term – programs that carry out the governmental function of providing services to the public, or laws which, to implement a state

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<sup>225</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 888.

policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>226</sup>

Here, the activities mandated by the state are new. Prior law prohibited peace officers from engaging in racial profiling;<sup>227</sup> required every law enforcement officer in the state to participate in racial profiling training approved by POST;<sup>228</sup> required submission of certain criminal statistics requested by the Attorney General, including in some cases, the person's age, gender, race, and ethnic background;<sup>229</sup> and required the Legislative Analyst's Office to conduct a study of the racial profiling data that was voluntarily collected by some law enforcement agencies. However, prior law did not require the collection and reporting of the specific stop data or the manner of electronic reporting mandated by the test claim statutes and regulations.<sup>230</sup> And, though some local agencies were voluntarily collecting limited data on traffic stops before the enactment of the test claim statute, they were not mandated by state law to do so. The claimant describes its prior stop data collection activities as follows:

[T]he Department already collected data on approximately ten elements related to a traffic stop -primarily on paper forms prior to AB 953 and Government Code it enacted that produced the alleged mandate 12525.5 (a) (1). SDPD's collection of data could be accomplished in a matter of seconds by sworn officers in the field and later entered by data entry personnel without significantly increasing out of service time for sworn officers. Prior to AB 953, SDPD officers could also use their mobile computer to enter stop data, but since SDPD collected very limited stop data elements it could be collected and entered almost instantaneously. This SDPD practice was not mandated by any local, state or federal statutes, and conducted voluntarily by the Department.<sup>231</sup>

Government Code section 17565 states “[i]f a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.” No prior state law required local agencies to collect and submit an additional report on racial and identity profiling data for all stops made by their peace officers. Thus, the mandated activities with respect to collecting and reporting stop data to the DOJ are new.

In addition, the activities mandated by Government Code section 12525.5 and California Code of Regulations, title 11, sections 999.224- 999.229, as added or amended by the test claim statutes and regulations, are unique to government as by the plain language of the statutes and regulations the requirements are only applicable to governmental entities. Moreover, the activities provide a peculiarly governmental service to the public – police protection is one of the most essential and

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<sup>226</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, emphasis added.

<sup>227</sup> Penal Code section 13519.4(e) (Stats. 2000, ch. 684).

<sup>228</sup> Penal Code section 13519.4(f)(h) (Stats. 2000, ch. 684).

<sup>229</sup> Penal Code sections 13014 (Stats., ch. 1992, ch. 1338), 13023 (Stats. 1989, ch. 1172).

<sup>230</sup> Penal Code section 13519.4(j) (Stats. 2000, ch. 684).

<sup>231</sup> Exhibit A, Test Claim, page 10.

basic functions of local government.<sup>232</sup> The legislative history of statutes 2015, chapter 466 indicated that by enacting this statute the Legislature “seeks to facilitate the development of evidence-based policing by establishing a system of collecting and reporting information on law enforcement stops”<sup>233</sup> and intends that the activities required “will help eliminate the harmful and unjust practice of racial and identity profiling, and improve the relationship between law enforcement and the communities they serve.”<sup>234</sup>

Accordingly, Government Code section 12525.5, as added and amended by the test claim statutes, and California Code of Regulations, title 11, sections 999.224- 999.229 impose a new program or higher level of service.

**4. 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) impose increased costs mandated by the state for counties and cities within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.**

For the mandated activities to constitute reimbursable state-mandated activities under article XIII B, section 6 of the California Constitution, they must result in local agencies incurring increased costs mandated by the state. Government Code section 17514 defines “costs mandated by the state” as any increased cost that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564(a) further requires that no claim shall be made nor shall any payment be made unless the claim exceeds \$1,000. In addition, a finding of costs mandated by the state means that none of the exceptions in Government Code section 17556 apply to deny the claim.

Here, the claimant alleges that it has incurred increased costs of \$97,367.95 to comply with the mandate in fiscal year 2017-2018.<sup>235</sup> This amount includes costs for initial training, information technology staff costs for software update and testing, labor costs for stop data collection, and program manager labor costs.<sup>236</sup> The claimant supports these assertions with a declaration from Jeffrey Jordon, Lieutenant for the City of San Diego Police Department.<sup>237</sup> The claimant identifies the following actual costs incurred in fiscal year 2017-2018 with respect to stop data collection and reporting:<sup>238</sup>

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<sup>232</sup> *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

<sup>233</sup> Exhibit A, Test Claim, page 56 (Senate Committee on Appropriations Analysis of AB 953 (2015-2016 Reg. Sess.), as amended August 27, 2015).

<sup>234</sup> Exhibit I, Senate Committee on Public Safety Analysis of AB 953, (2015-2016 Reg. Sess.), as amended June 30, 2015, page 7.

<sup>235</sup> Exhibit A, Test Claim, page 14.

<sup>236</sup> Exhibit A, Test Claim, pages 11-14.

<sup>237</sup> Exhibit A, Test Claim, pages 20-21 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

<sup>238</sup> Exhibit A, Test Claim, page 20 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

FY2017-2018 is the fiscal year the alleged mandate in GC 12525.5(a)(1) was implemented.

Activity	Date(s) Performed	Description	Cost
1) Initial Training	6/15/2018-6/26/2018	Online PowerPoint	\$56,476.35
2) IT Activity	6/20/2018-6/27/2018	Software Update/Testing	\$5,754.50
3) Data Collection	6/27/2018-6/30/2018	Officers Collecting Stop Data	\$10,048.70
4) Program Manager	6/15/2018-6/30/2018	Implement Training	\$25,088.40
Total			\$97,367.95

The total costs alleged for the 2018-2019 fiscal year, and supported by the Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, amounted to \$871,675.56, including the \$744,005.98 in labor costs for stop data collection, \$62,080.60 in supervisor training costs, \$40,500.58 in information technology staff costs for DOJ compliance and reporting, and \$ 25,088.40 in program manager labor costs.<sup>239</sup>

The claimant also estimated the statewide cost to implement the mandated activities at \$18,000,000 for fiscal year 2018-2019.<sup>240</sup>

Finance argues that costs for the training provided by the claimant’s police department to its sworn personnel in 2017-2018 and 2018-2019 “was not required under the relevant statutes, and the associated costs are therefore not reimbursable.”<sup>241</sup> According to Finance, the police department made a discretionary decision to provide training, and should therefore absorb the associated costs.<sup>242</sup> As indicated earlier in this Decision, training is not required by the plain language of the Government Code section 12525.5 or California Code of Regulations, title 11, sections 999.224- 999.229, as added or amended by the test claim statutes and regulations. However, training costs may be proposed by the claimant for consideration in the Parameters and Guidelines as a reasonably necessary activity. Even without the training costs, the record contains substantial evidence, which has not been disputed, that the claimant’s costs to comply with the mandate in fiscal year 2017-2018 exceeded \$1,000.

Additionally, no law or facts in the record support a finding that the exceptions specified in Government Code section 17556 apply to this claim. There is, for example, no law or evidence in the record that additional funds have been made available for the new state-mandated activities, or that there is any fee authority specifically intended to pay the costs of the alleged mandate.<sup>243</sup> Although claimant noted that “[t]here could be *potentially* some grants and funding sources to partially pay for the mandated regulations associated with AB 953 and the DOJ has

<sup>239</sup> Exhibit A, Test Claim, pages 15-16 and page 20 (Declaration of Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, July 30, 2019).

<sup>240</sup> Exhibit A, Test Claim, pages 3, 16-17.

<sup>241</sup> Exhibit B, Finance’s Comments on the Test Claim, page 2.

<sup>242</sup> Exhibit B, Finance’s Comments on the Test Claim, page 2.

<sup>243</sup> See Government Code section 17556(d-e).

spoken to SDPD about limited grant monies to assist purchasing equipment to facilitate data collection,” the claimant states that it “is not aware of any *current* State, Federal, or other non-local agency funds to pay for its substantial costs already incurred and those anticipated going forward from the alleged statutory mandate.”<sup>244</sup>

Based on the foregoing, the Commission finds 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), impose increased costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514.

## V. Conclusion

Based on the forgoing analysis, the Commission partially approves this Test Claim, with a reimbursement period beginning November 7, 2017, and finds 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 *only* on city and county law enforcement agencies that 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, and city and county law enforcement agencies that contract for officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their jurisdictions, for the following 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].)

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<sup>244</sup> Exhibit A, Test Claim, page 17, emphasis added.

2. Collection and reporting data on all stops, as defined,<sup>245</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.
  - a. Begin collecting and reporting data on all stops on or before the following dates:
    - (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.

(Gov. Code, § 12525.5(a)(2), Stats. 2017, ch. 328).

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>246</sup>
- Stops made during public safety mass evacuations.<sup>247</sup>
- Stops during an active shooter incident.<sup>248</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

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<sup>245</sup> Government Code section 12525.5(g)(2) (Stats.2015, ch.466); see also, California Code of Regulations, title 11, section 999.224(a)(14) (Register 2017, No. 46), which defines 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 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>246</sup> California Code of Regulations, title 11, section 999.227(b) (Register 2017, No. 46).

<sup>247</sup> California Code of Regulations, title 11, section 999.227(c)(1) (Register 2017, No. 46).

<sup>248</sup> California Code of Regulations, title 11, section 999.227(c)(2) (Register 2017, No. 46).

detector screenings, including any secondary searches that result from the screening.<sup>249</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 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>250</sup>
  - Interactions that take place with a person in his or her residence who is the subject of a warrant or search condition.<sup>251</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>252</sup>
  - Stops in a custodial setting.<sup>253</sup>
  - Stops that occur while the officer is off-duty.<sup>254</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].)

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<sup>249</sup> California Code of Regulations, title 11, section 999.227(c)(3) (Register 2017, No. 46).

<sup>250</sup> California Code of Regulations, title 11, section 999.227(d)(1).

<sup>251</sup> California Code of Regulations, title 11, section 999.227(d)(2) (Register 2017, No. 46).

<sup>252</sup> California Code of Regulations, title 11, section 999.227(d)(3) (Register 2017, No. 46).

<sup>253</sup> California Code of Regulations, title 11, section 999.225(c) (Register 2017, No. 46).

<sup>254</sup> Exhibit I, 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).

- (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].)
- (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].)

The test claim statutes and regulations do not impose a state-mandated program for K-12 school districts or community college districts and, thus, these entities are not eligible for reimbursement. In addition, the test claim statutes and regulations do not impose a state-mandated program when a city or county assigns their peace officer employees *out* to work for other government or private entities based on a contract or memorandum of understanding. There is no requirement in law that a city or county contract out their law enforcement officers and any costs resulting from the discretionary decision to do so are not mandated by the State.

Moreover, Penal Code sections 13012 and 13519.4, as amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, do not impose any activities on local government, and thus, do not constitute a reimbursable state-mandated program within the meaning of article XIII B, Section 6 of the California Constitution.

All other activities and costs alleged in the Test Claim are not mandated by the plain language of the test claim statute, but may be proposed by claimant for inclusion in the Parameters and Guidelines, and must be supported with evidence, pursuant to Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

## 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 May 6, 2020, I served the:

- **Proposed Decision issued May 6, 2020**

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

Government Code Section 12525.5 and Penal Code Sections 13012 and 13519.4; 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, Register 2017, No. 46, effective November 7, 2017<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 May 6, 2020 at Sacramento, California.



Jill L. Magee  
Commission on State Mandates  
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<sup>1</sup> Although the claimant incorrectly pled Notice Register Number 2016, 50-2 regarding changes to California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229 with a file and effective date of November 7, 2017, the Commission can take judicial notice of Register 2017, No. 46. In this case, Westlaw incorrectly indicates in the history of each of these sections that the update appears in Register 2017, No. 45 when in fact the adoption of these changes appears in Register 2017, No. 46.

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 4/22/20

**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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