

STATE *of* CALIFORNIA
**COMMISSION ON STATE
MANDATES**



**REPORT TO THE LEGISLATURE:
APPROVED MANDATE CLAIMS**

July 1, 2022 – December 31, 2022

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I. INTRODUCTION

Commission on State Mandates

Test Claim Process

Article XIII B, section 6 of the California Constitution requires the state to provide a subvention of funds to reimburse local government for the costs of new programs or increased levels of service mandated by the state. To implement article XIII B, section 6, the Legislature created the Commission on State Mandates (Commission) to succeed the State Board of Control in making determinations whether new statutes or executive orders are state-mandated programs.¹ The Commission was established to render sound quasi-judicial decisions and to provide an effective means of resolving disputes over the existence of state-mandated local programs. The Commission provides the sole and exclusive procedure for local agencies and school districts (claimants) to resolve disputes over the existence of state-mandated local programs and costs mandated by the state. The Commission is required to hear and decide claims (test claims) filed by local agencies and school districts that they are entitled to be reimbursed by the state for costs mandated by the state.²

Parameters and Guidelines

Government Code section 17557 provides that if the Commission determines that a statute or executive order imposes a mandate upon local agencies and school districts, the Commission is required to determine the amount to be subvended to local agencies and school districts for reimbursement by adopting parameters and guidelines. In adopting parameters and guidelines, the Commission may adopt a reasonable reimbursement methodology (RRM). Once parameters and guidelines are adopted, the Commission is required to adopt a statewide cost estimate of the mandated program (Gov. Code, § 17553).

Alternative Processes

Government Code section 17557.1 and 17557.2 provide an alternate process for determining the amount to be subvended for mandated programs. Under 17557.1, local governments and the Department of Finance may jointly develop reasonable reimbursement methodologies (RRMs) and statewide estimates of costs for mandated programs for approval by the Commission in lieu of parameters and guidelines and statewide cost estimates. Government Code section 17557.2 requires that joint RRMs have broad support and, if approved, they remain in effect for five years unless otherwise specified. Jointly developed RRMs and statewide estimates of costs that are approved by the Commission are included in the Commission's Annual Reports to the Legislature. To date, only one jointly developed RRM has ever been approved and it expired and was not extended by the parties so the Commission adopted parameters and guidelines for that program.

Government Code sections 17572 and 17573 provide another alternative process where the Department of Finance and local agencies, school districts, or statewide associations may jointly request that the Legislature determine that a statute or executive order imposes a state-mandated program, establish a reimbursement methodology, and appropriate funds for reimbursement of costs. This process is intended to bypass the Commission's test claim process, thus providing the Commission with more time to complete the caseload backlog. To date, this process has not been successfully utilized.

¹ Statutes 1984, chapter 1459, Government Code section 17500, et seq.

² Government Code section 17551.

Report to the Legislature

The Commission is required to report to the Legislature at least twice each calendar year on the number of mandates it has found, the estimated statewide costs of each mandate, and the reasons for recommending reimbursement.³ In 2010, SB 894 (Stats. 2010, ch. 699) was enacted to require the Commission to expand its Report to the Legislature to include:

- The status of pending parameters and guidelines that include proposed reimbursement methodologies.
- The status of pending joint proposals between the Department of Finance and local governments to develop reasonable reimbursement methodologies in lieu of parameters and guidelines.
- The status of joint proposals between the Department of Finance and local governments to develop legislatively-determined mandates.
- Any delays in the process for completion of reasonable reimbursement methodologies.

This report fulfills these requirements.

Legislative Analyst

After the Commission submits its report to the Legislature, the Legislative Analyst is required to submit a report to the Joint Legislative Budget Committee and legislative fiscal committees on the mandates included in the Commission's reports. The Legislative Analyst's report shall make recommendations as to whether each mandate should be repealed, funded, suspended, or modified.

The Legislature

Upon receipt of the report submitted by the Commission pursuant to Government Code Section 17600, funding shall be provided in the subsequent Budget Act for costs incurred in prior years. No funding shall be provided for years in which a mandate is suspended.⁴

The Legislature may amend, modify, or supplement the parameters and guidelines, reasonable reimbursement methodologies, and adopted statewide estimates of costs for the initial claiming period and budget year for mandates contained in the annual Budget Act. If the Legislature amends, modifies, or supplements the parameters and guidelines, reasonable reimbursement methodologies, or adopted statewide estimates of costs for the initial claiming period and budget year, it shall make a declaration in separate legislation specifying the basis for the amendment, modification, or supplement.⁵

Mandate Funding Provisions

If the Legislature deletes from the annual Budget Act funding for a mandate, the local agency or school district may file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement for that fiscal year.⁶ Under Proposition 1A, which amended article XIII B, section 6 of the California Constitution, city, county, city and county, or special district mandate claims for costs incurred

³ Government Code section 17600.

⁴ Government Code section 17612(a).

⁵ Government Code section 17612(b).

⁶ Government Code section 17612(c).

prior to the 2004-2005 fiscal year that have not been paid prior to the 2005-2006 fiscal year may be paid over a term of years, as prescribed by law. However, for the 2005-2006 fiscal year and every subsequent fiscal year, the Constitution now requires the Legislature to either appropriate in the annual Budget Act the full payable amount that has not been previously paid or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable.

If payment for an initial reimbursement claim is being made more than 365 days after adoption of the statewide cost estimate, the State Controller’s Office (Controller) shall include accrued interest at the Pooled Money Investment Account rate.⁷

If the amount the Legislature appropriates is insufficient to pay all of the reimbursement claims filed and approved for reimbursement, the Controller will prorate the claims.⁸ If the funds to cover the remaining deficiency are not appropriated in the Budget Act, the Controller shall report this information to the legislative budget committees and the Commission.

II. NEW MANDATES

The following table shows the Statewide Cost Estimates that were adopted during the period of July 1, 2022 through December 31, 2022.

**Statewide Cost Estimates (SCE) Adopted
During the Period of July 1, 2022 through December 31, 2022**

<i>Adoption Date, Claim Name and Number, and Initial Claiming Period</i>			<i>Estimated Costs for Initial Claiming Period</i>			<i>Estimated Future Annual Costs</i>
Date	Test Claim Name and Number	Initial Claiming Period	Education (K-14)	Local Agency	Totals	Estimated Totals
07/22/22	<i>Racial and Identity Profiling, 18-TC-02</i>	2017-2018, 2018-2019, and 2019-2020	-	\$25,523,241 ⁹	\$25,523,241	\$10,792,578 - \$11,763,910 ¹⁰
09/23/22	<i>Sexual Assault Evidence Kits: Testing, 20-TC-01</i>	Second Half Fiscal Year 2019-2020 and Fiscal Year 2020-2021		\$11,218,184 - \$22,758,309	\$11,218,184 - \$22,758,309	\$7,513,209 - \$10,763,822 Plus the Implicit Price Deflator 2021-2022 and Following

⁷ Government Code section 17561.5(a).

⁸ Government Code section 17567.

⁹ Since the deadline to file late claims for the initial reimbursement period passed on April 21, 2022, this number reflects all claims that may be filed on this program for these fiscal years.

¹⁰ The Government Code requires a statewide costs estimate for the initial claiming period and the year following, and that usually provides the Legislature with a rough estimate for future annual costs. However, due to the structure of this program, it is estimated that annual costs will increase by at least 12.5 percent in 2021-2022 and 25 percent in 2022-2023, as additional waves are required to collect and report data, after which one-time costs will significantly reduce and annual costs will stabilize.

<i>Adoption Date, Claim Name and Number, and Initial Claiming Period</i>			<i>Estimated Costs for Initial Claiming Period</i>			<i>Estimated Future Annual Costs</i>
Date	Test Claim Name and Number	Initial Claiming Period	Education (K-14)	Local Agency	Totals	Estimated Totals
TOTAL			-	\$36,741,425 - \$48,281,550	\$36,741,425 - \$48,281,550	

III. PENDING PARAMETERS AND GUIDELINES, REQUESTS TO AMEND PARAMETERS AND GUIDELINES, AND STATEWIDE COST ESTIMATES CASELOAD

Following are tables showing parameters and guidelines, requests to amend parameters and guidelines, and statewide cost estimates that are pending Commission determination. A request to include an RRM in parameters and guidelines or amendments thereto is a request made by a local entity claimant, an interested party, Finance, the Controller, or an affected state agency, pursuant to Government Code section 17557 and 17518.5 – which is distinct from the jointly proposed RRM, discussed above under “Alternative Processes.” These requests are often disputed by one or more of the parties and interested parties. There are no pending RRMs.

A. Pending Parameters and Guidelines

	Program	Status
1.	<i>Discharge of Stormwater Runoff, 07-TC-09*</i>	Inactive pending court action.

* Local agency programs

† School district or community college district programs

B. Pending Requests for Parameters and Guidelines Amendments

	Program	Status
1.	<i>Racial and Identity Profiling, 21-PGA-01 (18-TC-02)*</i>	Tentatively scheduled for hearing on 01/27/23

* Local agency programs

† School district or community college district programs

C. Pending Statewide Cost Estimates

	Program	Status
1.	<i>County of Los Angeles Citizens Redistricting Commission, 19-TC-04*</i>	Tentatively scheduled for hearing on 03/24/23.

* Local agency programs

† School district or community college district programs

IV. THERE ARE NO PENDING JOINT REASONABLE REIMBURSEMENT METHODOLOGIES OR LEGISLATIVELY-DETERMINED MANDATES AND HENCE, NO DELAYS IN THE PROCESS

There are no currently pending joint reasonable reimbursement methodologies or legislatively determined mandates.

Government Code section 17600 requires the Commission to report any delays in the process for joint RRM or LDMs being developed by Department of Finance and local entities and for RRM proposed by any party pursuant to Government Code section 17518.5. There are currently no pending joint RRM, LDM or RRM proposed by any party. Therefore, there are no delays in these processes.

With regard to RRM included in parameters and guidelines amendments pursuant to Government Code sections 17557 and 17518.5, there are currently no pending parameters and guidelines or amendments thereto containing RRM and therefore no delays in this process.

V. ADOPTED STATEWIDE COST ESTIMATES

Racial and Identity Profiling, 18-TC-02

Adopted July 22, 2022

STATEWIDE COST ESTIMATE

\$25,523,241¹¹

For the Initial Claiming Period of 2017-2018, 2018-2019, and 2019-2020

\$10,792,578- \$11,763,910

Estimated Annual Costs for Fiscal Year 2020-2021¹²

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

California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228,
and 999.229 as added by Register 2017, No. 46¹³

Racial and Identity Profiling

18-TC-02

The Commission on State Mandates (Commission) adopted this Statewide Cost Estimate on consent by a vote of 6-0 during a regularly scheduled hearing on July 22, 2022 as follows:

Member	Vote
Lee Adams, County Supervisor	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Absent
Renee Nash, School District Board Member	Yes
Sarah Olsen, Public Member	Yes
Shawn Silva, Representative of the State Controller	Yes
Spencer Walker, Representative of the State Treasurer, Vice Chairperson	Yes

¹¹ Since the deadline to file late claims for the initial reimbursement period passed on April 21, 2022, this number reflects all claims that may be filed on this program for these fiscal years.

¹² The Government Code requires a statewide costs estimate for the initial claiming period and the year following, and that usually provides the Legislature with a rough estimate for future annual costs. However, due to the structure of this program, it is estimated that annual costs will increase by at least 12.5 percent in 2021-2022 and 25 percent in 2022-2023, as additional waves are required to collect and report data, after which one-time costs will significantly reduce and annual costs will stabilize.

¹³ Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

STAFF ANALYSIS

Background and Summary of the Mandate

This Statewide Cost Estimate (SCE) addresses the State’s subvention costs for the mandated activities arising from Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 (AB 953); Statutes 2017, chapter 328 (AB 1518) and 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. 46¹⁴ (test claim statutes and regulations). The Commission found that the test claim statutes and regulations impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Specifically, the Commission found a mandate imposed on “city and county law enforcement agencies that employ peace officers (other than probation officers and officers in a custodial setting) to electronically report to the Attorney General, on an annual basis, data on all “stops” within their own jurisdiction, conducted by the agency’s peace officers; and on those city and county law enforcement agencies that contract for peace officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their jurisdictions.”¹⁵ The Decision and Parameters and Guidelines specify the reimbursable activities.¹⁶

On September 25, 2020, the Commission adopted the Decision and Parameters and Guidelines for claiming costs incurred beginning November 7, 2017.¹⁷

The State Controller’s Office (Controller) issued claiming instructions on December 22, 2020.¹⁸ Eligible claimants were required to file initial reimbursement claims with the Controller for costs incurred beginning November 7, 2017, through June 30, 2018, for fiscal year 2017-2018 and for fiscal years 2018-2019, and 2019-2020 by April 21, 2021.¹⁹ Late initial reimbursement claims may be filed until April 21, 2022, but will incur a 10 percent late filing penalty of the total amount of the initial claim without limitation.²⁰ Annual reimbursement claims for subsequent fiscal years, starting with 2020-2021, must be filed with the Controller by February 15 following the fiscal year in which costs were incurred.²¹ Claims filed more than one year after the deadline will not be accepted, and late annual claims filed within one year of the deadline will incur a 10 percent late filing penalty not to exceed \$10,000.²²

¹⁴ Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

¹⁵ Exhibit A, Decision and Parameters and Guidelines, adopted September 25, 2020, page 4.

¹⁶ Exhibit A, Decision and Parameters and Guidelines, adopted September 25, 2020, pages 15-19.

¹⁷ Exhibit A, Decision and Parameters and Guidelines, adopted September 25, 2020, page 3.

¹⁸ Exhibit C, Controller’s Claiming Instructions Program No. 375, page 1.

¹⁹ Exhibit C, Controller’s Claiming Instructions Program No. 375, pages 1-2; Government Code section 17561(d)(1)(A).

²⁰ Government Code section 17561(d)(3).

²¹ Government Code section 17560(a).

²² Government Code section 17568.

During the test claim process, the claimant filed evidence regarding its alleged increased costs, most but not all of which are tied to the activities found by the Commission to be reimbursable. The claimant also provided a statewide cost estimate (as required by Government Code 17553(a)(1)(E)) of \$18 million in costs for the law enforcement agencies in “Wave 1” and “Wave 2” for fiscal year 2018-2019.²³ The claimant based its estimate on its own costs and relative size compared to other departments in Waves 1 and 2 and on the analysis from the Department of Justice (DOJ) Fiscal Impact Statement Addendum.²⁴

Additionally, in its bill analysis for the test claim statute, the Senate Committee on Appropriations found that this mandate would impose “major one-time and ongoing costs, potentially in the tens of millions of dollars annually to local law enforcement agencies for data collection, reporting, and retention requirements specified in the bill. Additional costs for training on the process would likely be required.”²⁵ The Senate Committee on Appropriations further stated “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.”²⁶

For the reasons discussed below, the Commission finds that the costs for this program are \$25,523,241 for the initial reimbursement period of 2017-2018 through 2019-2020 and are estimated to be from \$10,792,578 to \$11,764,238, for fiscal year 2020-2021. Costs are projected to significantly increase by approximately 12.5 percent in 2021-2022 and 25 percent in 2022-2023, when Wave 3 will first claim for a full fiscal year and Wave 4 will be required to begin collecting and reporting stop data. Thereafter, it is anticipated that costs will reduce (based on the ending or minimization of one-time costs) and stabilize going forward.

Eligible Claimants and Period of Reimbursement

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

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

K-12 school districts and community college districts are not eligible to claim for this program. Cities and counties may not claim the costs of their peace officer employees that are incurred while they are assigned out to work for

²³ Exhibit B, Test Claim, filed June 14, 2019 (Narrative), pages 16-17.

²⁴ Exhibit B, Test Claim, filed June 14, 2019 (Narrative), pages 16-17 and (DOJ Fiscal Impact Statement Addendum), pages 100-121.

²⁵ Exhibit G (1), Senate Committee on Appropriations Committee Bill Analysis for AB 953, as amended June 30, 2015, page 1.

²⁶ Exhibit G (1), Senate Committee on Appropriations Committee Bill Analysis for AB 953, as amended June 30, 2015, page 1.

*other government or private entities based on a contract or memorandum of understanding.*²⁷

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on June 14, 2019, establishing eligibility for reimbursement for the 2017-2018 fiscal year, beginning July 1, 2017.²⁸ However, the regulations adopted by DOJ to implement section 12525.5 (Cal. Code Regs., tit. 11, §§ 999.224 through 999.229, Register 2017, No. 46) became operative and effective on November 7, 2017,²⁹ establishing the period of reimbursement beginning November 7, 2017.³⁰

Additionally, the mandated ongoing activities B.2.- B.5. began on or before July 1, 2018 (FY 2018-2019) for Wave 1 agencies, on or before January 1, 2019 (FY 2018-2019) for Wave 2 agencies, on or before January 1, 2021 (2020-2021) for Wave 3 agencies, and on or before January 1, 2022 (FY 2021-2022) for Wave 4 agencies.³¹

Reimbursable Activities

The Parameters and Guidelines authorize reimbursement as follows:³²

A. One-Time Activities

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

B. Ongoing Activities

1. Identification of the peace officers required to report stops, and maintenance of a system to match individual officers to their Officer I.D. number.
 - a. On January 1 of each year until the agency begins reporting data to the DOJ, each reporting agency shall count the number of peace officers it employs who are required to report stops to determine the date that agency must start collecting stop data and reporting to the DOJ pursuant to Government Code section 12525.5(a)(1)(2). (Cal. Code Regs, tit. 11, § 999.227(a)(8) [Register 2017, No. 46].)

²⁷ Exhibit A, Decision and Parameters and Guidelines, adopted September 25, 2020, pages 13-14.

²⁸ Exhibit A, Decision and Parameters and Guidelines, adopted September 25, 2020, page 14.

²⁹ 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.

³⁰ Exhibit A, Decision and Parameters and Guidelines, adopted September 25, 2020, page 14.

³¹ Government Code section 12525.5(a)(2).

³² Exhibit A, Decision and Parameters and Guidelines, adopted September 25, 2020, pages 15-19.

- 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,³³ 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 (Gov. Code, § 12525.5(a)(2), Stats. 2017, ch. 328):
 - (1) An agency that employs 1,000 or more peace officers shall begin collecting data on or before July 1, 2018, and shall issue its first round of reports on or before April 1, 2019.
 - (2) An agency that employs 667 or more but less than 1,000 peace officers shall begin collecting data on or before January 1, 2019, and shall issue its first round of reports on or before April 1, 2020.
 - (3) An agency that employs 334 or more but less than 667 peace officers shall begin collecting data on or before January 1, 2021, and shall issue its first round of reports on or before April 1, 2022.
 - (4) An agency that employs one or more but less than 334 peace officers shall begin collecting data on or before January 1, 2022, and shall issue its first round of reports on or before April 1, 2023.

The following are **not** reportable:

- Data elements described in section 999.226(a) for passengers in vehicles subject to a stop who have not been observed or suspected of violating the law, or who have not been subjected to the officer's actions listed in section 999.226(a)(12)(A), excluding "Vehicle impounded" and "None."³⁴
- Stops made during public safety mass evacuations.³⁵
- Stops during an active shooter incident.³⁶

³³ See Government Code section 12525.5(g)(2) (Stats.2015, ch.466) and California Code of Regulations, title 11, section 999.224(a)(14) (Register 2017, No. 46), which define a "stop" as "any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person's body or property in the person's possession or control;" section 999.227(b) and (c) for interactions that 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.

³⁴ California Code of Regulations, title 11, section 999.227(b) (Register 2017, No. 46).

³⁵ California Code of Regulations, title 11, section 999.227(c)(1) (Register 2017, No. 46).

³⁶ 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.³⁷
 - 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.³⁸
 - Interactions that take place with a person in his or her residence who is the subject of a warrant or search condition.³⁹
 - 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.⁴⁰
 - Stops in a custodial setting.⁴¹
 - Stops that occur while the officer is off-duty.⁴²
- b. The agency’s peace officers shall collect the following required categories of stop data, and all applicable “data elements,” “data values,” and narrative explanatory fields described in section 999.226(a) for every person stopped, and in accordance with section 999.227(a)(4)-(6), (b) and (d) of the regulations, and complete all stop reports for stops made during the officer’s shift by the end of the officer’s shift, or if exigent circumstances preclude doing so, as soon as practicable: (Gov. Code, §12525.5(b), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, §§999.226(a), 999.227(a)(1)(2)(4)(5)(6)(9), (b) and (d) [Register 2017, No. 46].)
- (1) “ORI number,” which is “the data element that refers to the reporting agency’s Originating Agency Identifier, a unique identification code number assigned by the Federal Bureau of Investigation.” (Cal Code Regs., tit. 11, § 999. 226(a)(1) [Register 2017, No. 46].)

³⁷ California Code of Regulations, title 11, section 999.227(c)(3) (Register 2017, No. 46).

³⁸ California Code of Regulations, title 11, section 999.227(d)(1).

³⁹ California Code of Regulations, title 11, section 999.227(d)(2) (Register 2017, No. 46).

⁴⁰ California Code of Regulations, title 11, section 999.227(d)(3) (Register 2017, No. 46).

⁴¹ California Code of Regulations, title 11, section 999.225(c) (Register 2017, No. 46).

⁴² Citation to the Test Claim Decision, included in the Parameters and Guidelines, omitted.

- (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].)

Offsetting Revenues and Reimbursements.

The Parameters and Guidelines provide the following:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other applicable state funds, shall be identified and deducted from any claim submitted for reimbursement.⁴³

⁴³ Exhibit A, Decision and Parameters and Guidelines, adopted September 25, 2020, page 22.

Statewide Cost Estimate

Commission staff reviewed the 157 reimbursement claims submitted by 60 cities, 8 counties, and zero cities and counties, and data compiled by the Controller for the initial reimbursement period.⁴⁴ The unaudited reimbursement claims data compiled by claimant totals \$1,414,407 for the partial fiscal year of 2017-2018, \$12,884,394 for fiscal year 2018-2019, and \$11,224,440 for fiscal year 2019-2020 totaling \$25,523,241 for the initial reimbursement period.⁴⁵

Initial Reimbursement Period

The statewide cost for the initial reimbursement period, is \$25,523,241, the total amount of timely and late filed, unaudited claims for fiscal years 2017-2018, 2018-2019, and 2019-2020, less a 10 percent late filing penalty of \$1,594 on three late claims. The costs segregated by activity, are as follows:

\$1,526,219	Activity A.1. (One-time training per peace officer employee and supervisor assigned to perform the reimbursable activities)
\$1,085,884	Activity A.2. (One-time installation and testing of software)
\$6,716 ⁴⁶	Activity B.1. (Identification of peace officers required to report stops, and maintenance of a system to match individual officers to their Officer I.D. number)
\$14,919,313	Activity B.2. (Collection and reporting data on all stops)
\$787,876 ⁴⁷	Activity B.3. (Electronic submission of data to DOJ and retention of stop data collected)
\$731,856 ⁴⁸	Activity B.4. (Audits and validation of data collected)

⁴⁴ Exhibit D, Claims data reported as of May 19, 2021.

⁴⁵ Exhibit D, Claims data reported as of May 19, 2021 (note that the total above includes the following \$26,294 in additional costs not reflected in Exhibit D: one late claim filed by the City of Norco for fiscal year 2018-2019 (\$5,664), one late claim filed by the City of Norco for fiscal year 2019-2020 (\$4,901), and one late claim filed by the City of Riverside for fiscal year 2019-2020 (\$3,776), and, indirect costs of \$11,953 omitted by the County of Fresno on its cover sheet, but included in the claim detail).

⁴⁶ During the initial reimbursement period, only two local agencies claimed costs for activity B.1: City of San Jose for FY 2018-2019 and 2019-2020 and City of Bakersfield for FY 2019-2020.

⁴⁷ During the initial reimbursement period, only 7 local agencies claimed costs for activity B.3: County of Riverside for all three FYs; City of Sacramento, City of San Diego, City of San Jose, and County of San Diego for 2018-2019 and 2019-2020; and City of Bakersfield and County of Orange for fiscal year 2019-2020. All but City of Bakersfield are in either Wave 1 or 2.

⁴⁸ The City of Oakland provided only a number of hours and no dollar amount for activity B.4. and indicated this activity was claimed as part of its indirect costs: fiscal year 2018-2019 (96 hours), and fiscal year 2019-2020 (40 hours).

\$43,861 ⁴⁹	Activity B.5. (For stop data collected, ensure identities of the individual and the peace officer involved are not transmitted to the Attorney General in an open text field)
\$6,423,110	Indirect Costs
\$0 ⁵⁰	Offsetting Revenues
(\$1,594)	Less 10 Percent Late Filing Penalty ⁵¹
\$25,523,241	Total Costs for the Initial Reimbursement Period

Fiscal Year 2020-2021

The statewide cost estimate for annual state liability for this program for fiscal year 2020-2021 is estimated at \$10,792,578- \$11,763,910, based on actual claiming data for 2020-2021. The low end of the estimated costs is based on the actual costs claimed for 2020-2021, including three late claims filed as of May 16, 2022.⁵² The high end of the estimated costs assumes that an additional 10 percent of costs already claimed may be claimed in additional late claims filed on or before February 15, 2023. The range of costs by activity is estimated as follows:

\$653,892- \$719,281	Activity A.1. (One-time training per peace officer employee and supervisor assigned to perform the reimbursable activities)
\$1,127,827- \$1,240,610	Activity A.2. (One-time installation and testing of software)
\$31,700- \$34,870	Activity B.1. (Identification of peace officers required to report stops, and maintenance of a system to match individual officers to their Officer I.D. number)
\$6,060,511- \$6,666,562	Activity B.2. (Collection and reporting data on all stops)
\$320,524 - \$352,576	Activity B.3. (Electronic submission of data to DOJ and retention of stop data collected)
\$354,050- \$389,455	Activity B.4. (Audits and validation of data collected)
\$99,412- \$109,353	Activity B.5. (For stop data collected, ensure identities of the individual and the peace officer involved are not transmitted to the Attorney General in an open text field)
\$2,148,301- \$2,363,131	Indirect Costs
\$0	Offsetting Revenues ⁵³

⁴⁹ During the initial reimbursement period, only two local agencies claimed costs for activity B.5: City of San Diego, FYs 2018-2019 and 2019-2020 and City of Bakersfield FY 2019-2020.

⁵⁰ No offsetting revenues were reported in any claims filed during the initial reimbursement period.

⁵¹ Only three claims were filed late and assessed the following penalties: City of Norco \$629 for 2018-2019 and \$545 for 2019-2020 and City of Riverside \$420 for 2019-2020.

⁵² Exhibit E, Claims Data reported as of May 16, 2022.

⁵³ None of the claims filed for 2020-2021 included offsetting revenue. This estimate makes no assumptions regarding offsetting revenues or reimbursements for additional late claims or future fiscal years.

(\$3,639) – (\$111,601) Less 10 Percent Late Filing Penalty⁵⁴

\$10,792,578- \$11,763,910 Estimated Costs for 2020-2021

Assumptions

Based on the claims data and other publically available information, staff made the following assumptions and used the following methodology to develop the Statewide Cost Estimate for this program.

- *The total amount claimed for the initial reimbursement period may increase as a result of late or amended initial claims.*

There are approximately 481 cities, 57 counties, 1 city and county,⁵⁵ each of which will eventually incur costs for this program, when it is fully implemented in 2022-2023. And, there are a total of 415 city and county law enforcement agencies (LEAs) who will eventually be required to implement the mandated requirements. Some of these city and county law enforcement agencies are contracted out to perform law enforcement duties for other jurisdictions and it is unknown exactly how many cities and counties contract out for their law enforcement.

Per the Test Claim, there were only seven city and county law enforcement agencies in Wave 1 subject to the mandate for fiscal year 2017-2018.⁵⁶ Seven additional city and county law enforcement agencies in Wave 2 became subject to the mandate in fiscal year 2018-2019,⁵⁷ for a total of 14 city and county law enforcement agencies required to implement the mandate in the initial claiming period. And there will also be a total of 14 city and county law enforcement agencies required to implement the mandated program in the following fiscal year of 2019-2020.⁵⁸

However, a cross-reference between two data sets provided by the DOJ, the OpenJustice Data Portal, Agency Name – Jurisdiction Listing data set that “provides mapping information between the NCIC code, agency name, and the years the agency actively reported”⁵⁹ and the Law Enforcement Personnel data set for which the DOJ “collects the Law Enforcement Personnel

⁵⁴The high end is the 10 percent late fee on the estimated additional late claims amounting to 10 percent of the actual costs already claimed, plus the late fee for the claims already filed, rounded to the dollar.

⁵⁵ For the purposes of this analysis, the City and County of San Francisco is added to the total number of counties (58) and is included in the averages as a county.

⁵⁶ Exhibit B, Test Claim, filed June 14, 2019 (Narrative), page 16.

⁵⁷ Exhibit B, Test Claim, filed June 14, 2019 (Narrative), page 16. Please note that the list of Wave 2 agencies provided by the claimant in the Test Claim omitted the Sacramento Police Department, which when added makes for a total of 7 agencies in Wave 2.

⁵⁸ Exhibit B, Test Claim, filed June 14, 2019 (Narrative), pages 16-17. Please note that the list of Wave 2 agencies provided by the claimant in the Test Claim omits the Sacramento Police Department, for a total of 7 agencies in Wave 2.

⁵⁹ Exhibit G (2), DOJ, OpenJustice Data Portal, <https://openjustice.doj.ca.gov/data> (accessed on May 26, 2021).

data through a one-day survey taken on October 31st of each reporting year”⁶⁰ reveals the following:⁶¹

WAVE	AGENCY NAME	COUNTY	NCIC CODE	FUNDED NON-JAIL SWORN PERSONNEL 2017 ⁶²	FUNDED NON-JAIL SWORN PERSONNEL 2018	FUNDED NON-JAIL SWORN PERSONNEL 2019
1 (1000+)	City of Los Angeles	Los Angeles	1942	9920	9923	9947
1 (1000+)	CA CHP	Sacramento	3499	7401	7286	7230
1 (1000+)	LA County Sheriff	Los Angeles	1900	6541	6502	6647
1 (1000+)	City of San Francisco	San Francisco	3801	2332	2306	2279
1 (1000+)	City of San Diego	San Diego	3711	1752	1731	1764
1 (1000+)	Riverside County Sheriff	Riverside	3300	1466	1077	1453
1 (1000+)	San Diego County Sheriff	San Diego	3700	1400	1384	1400
1 (1000+)	San Bernardino County Sheriff	San Bernardino	3600	1251	1312	1314
1 (1000+)	City of San Jose	Santa Clara	4313	940	1113	1150
1 (1000+)	Orange County Sheriff	Orange	3000	1079	1077	1090

⁶⁰ Exhibit G (2), DOJ, OpenJustice Data Portal, <https://openjustice.doj.ca.gov/data> (accessed on May 26, 2021).

⁶¹ Exhibit G (3), DOJ Law Enforcement Agency Number of Sworn Non-Jail Personnel per Agency in Waves 1-3 of RIPA Reported as of 2017, 2018, and 2019, <https://openjustice.doj.ca.gov/data> (accessed on May 26, 2021). Please note that the CA CHP and the Capital DPR are not eligible claimants for this program but are provided to explain the inconsistency in the number of agencies provided in the Test Claim by the DOJ as its estimates did not isolate state from local agencies or account for the size of agencies to change during the implementation period.

⁶² Please note that the City of San Jose would have been classified as Wave 2 in 2017 and met the requirements of Wave 1 in 2018; the City of Sacramento would have been classified as Wave 3 in 2017 and 2018 and met the requirements of Wave 2 in 2019; the County of Kern would have been classified as Wave 4 in 2017 but met the requirements of Wave 3 in 2018 and 2019; and the City of Santa Ana would have been classified as Wave 4 in 2017 and 2018 but met the requirements for Wave 3 in 2019. All other jurisdictions in Waves 1, 2, and 3 remained in the same Wave during the initial reporting period.

WAVE	AGENCY NAME	COUNTY	NCIC CODE	FUNDED NON-JAIL SWORN PERSONNEL 2017 ⁶²	FUNDED NON-JAIL SWORN PERSONNEL 2018	FUNDED NON-JAIL SWORN PERSONNEL 2019
2 (667-999)	Sacramento County Sheriff	Sacramento	3400	688	871	865
2 (667-999)	City of Long Beach	Los Angeles	1941	794	819	809
2 (667-999)	City of Fresno	Fresno	1005	786	811	806
2 (667-999)	City of Oakland	Alameda	109	744	731	740
2 (667-999)	City of Sacramento	Sacramento	3404	644	651	678
3 (334-666)	Alameda County Sheriff	Alameda	100	559	515	522
3 (334-666)	Capital DPR	Sacramento	3422	523	493	493
3 (334-666)	Santa Clara County Sheriff	Santa Clara	4300	455	475	481
3 (334-666)	City of Stockton	San Joaquin	3905	441	469	459
3 (334-666)	Ventura County Sheriff	Ventura	5600	462	467	449
3 (334-666)	Fresno County Sheriff	Fresno	1000	402	420	403
3 (334-666)	City of Anaheim	Orange	3001	397	396	395
3 (334-666)	City of Bakersfield	Kern	1502	364	398	380
3 (334-666)	City of Riverside	Riverside	3313	350	370	366
3 (334-666)	San Francisco County Sheriff	San Francisco	3800	399	353	361
3 (334-666)	Kern County Sheriff	Kern	1500	325	337	343
3 (334-666)	City of Santa Ana	Orange	3019	325	313	339

In sum, in October 2017, there were eight Wave 1 local agencies, and as of October 2018 and October 2019 there were nine Wave 1 local agencies. Further, in October 2017 and October 2018 there were four Wave 2 local agencies and as of October 2019 there were five Wave 2 local agencies. Therefore, for the initial reimbursement period, fiscal years 2017-2018, 2018-2019, and 2019-2020 there were 14 local Wave 1 and 2 local agencies, required to implement activities A.1., A.2., and B.1.

In addition, for fiscal year 2018-2019, there were nine Wave 1 and four Wave 2 for a total of 13 local agencies also eligible to claim costs for activities B.2., - B.5. Finally, for fiscal year 2019-2020, there were nine Wave 1 and five Wave 2 for a total of 14 local agencies also eligible to claim costs for activities B.2., - B.5.

For fiscal year 2020-2021, there will be 11 agencies in Wave 3 subject to the stop data requirements and presumably also claiming for activities A.1., A. 2., and B.1., based on the numbers of sworn personnel provided to the DOJ for 2019 and then for fiscal year 2021-2022 all of the approximately 415 city and county LEAs in all four waves will be required to implement the mandate and all 539 cities and counties will be eligible to claim costs for all activities.

Twelve of the 14 eligible claimants subject to activities B.2., - B.5., in the initial reimbursement period, six Wave 1 local agencies and six Wave 2 local agencies, and 49 cities that contract with Wave 1 agencies for law enforcement services filed timely claims for the initial reimbursement period. And, the remaining claimant in Wave 1, the City of San Francisco, and the remaining claimant in Wave 2, the City of Long Beach, did not file late claims by the April 21, 2022 deadline to do so. Only the cities of Norco and Riverside submitted late claims for the initial reimbursement period, totaling \$15,935, and reduced by a late penalty of 10 percent (\$1,594).⁶³

Although, one Wave 3 and one Wave 4 local agency submitted claims for 2018-2019 and four Wave 3 and one Wave 4 local agencies submitted claims for 2019-2020, these costs totaled only \$306,008 or 12 percent of the total costs claimed in the initial reimbursement period. The test claim statute requires that Wave 3 and Wave 4 agencies begin collecting and reporting stop data “on or before” the specified date (January 1, 2021 for Wave 3) and therefore those agencies that implement before the date are eligible for reimbursement. However, the overwhelming majority of Wave 3 and Wave 4 agencies did not implement the program or file timely or late claims for the initial claiming period before the deadline for late claims.

There may be several reasons that eligible agencies did not file reimbursement claims during the initial claiming period, including but not limited to the following: they did not incur costs of more than \$1,000 during a fiscal year; or they had a relatively low number of stops in a given fiscal year; they completed installation and testing of software necessary to comply with the program prior to the beginning of the reimbursement period; or they determined that it was not cost-effective to participate in the reimbursement claim process.

- *The costs for this program may be lower than the Statewide Cost Estimate based on the Controller’s audit findings.*

The Controller may conduct audits and reduce any claim it deems to be excessive or unreasonable. Therefore, costs may be lower than the Statewide Cost Estimate based on the audit findings.

⁶³ Government Code sections 17561(d)(3).

- *Future annual costs will increase due to Wave 3 and Wave 4 jurisdictions becoming subject to the stop data reporting requirements in 2020-2021 and 2021-2022, respectively.*

The test claim statute requires that Wave 3 and Wave 4 agencies begin collecting and reporting stop data “on or before” the specified date (July 1, 2021 for Wave 3) and therefore those agencies that implement before the date are eligible for reimbursement. However, the overwhelming majority of Wave 3 and Wave 4 agencies did not implement the program or file claims for the initial claiming period. However, Wave 3 began collecting and reporting stop data in 2020-2021 as will Wave 4 in 2021-2022, and that will significantly increase the annual costs.

Waves 3 and 4 make up the majority of the LEA jurisdictions, and about half of the sworn officers in California that perform the mandated activities. The costs for Wave 3 LEAs are being claimed in annual claims, beginning with 2020-2021 for the first six months of implementation, and costs will peak with the 2022-2023 claims, when all agencies including Wave 4 LEAs will have a full fiscal year of costs for collecting and reporting stop data.

Estimates of the number of agencies in each Wave and of sworn personnel were updated in the recent RIPA Board Reports issued in 2020 and 2021 and provide the following:⁶⁴

Reporting Wave	Size of Agency	Data Collection Begins	Data Must be Reported to DOJ	Approximate Number of Agencies⁶⁵
1	1,000	July 1, 2018	April 1, 2019	8
2	667-999	Jan. 1, 2019	April 1, 2020	7
3	334-666	Jan. 1, 2021	April 1, 2022	10
4	1-333	Jan. 1, 2022	April 1, 2023	400+

Also, the 2020 RIPA Board Report and the 2021 RIPA Board Report provide its updated summary of the agencies and numbers of sworn personnel, in waves 1 2, and 3:⁶⁶

⁶⁴ Exhibit G (5), RIPA Board Report 2020, page 19; Exhibit G (6), RIPA Board Report 2021, page 23.

⁶⁵ Please note that these numbers do not distinguish between state and local agencies. Specifically, CHP is included in Reporting Wave 1.

⁶⁶ Exhibit G (5), RIPA Board Report 2020, pages 77-78; Exhibit G (6), RIPA Board Report 2021, page 17. Note that CHP and the Los Angeles World Airport Police have been omitted, the tables from both reports have been combined, and totals have been added, both RIPA Board Reports indicate that the numbers of sworn personnel are from the same source as that provided earlier in this analysis, and that the RIPA Board Report 2020 does not specify the year associated with the numbers of sworn personnel provided in the table for Wave 3.

Reporting Wave	Agency	Total Complaints Received	Profiling Allegations Reported	Total Sworn Personnel
1	Los Angeles County Sheriff's Department	1,010	68	9,565
1	Los Angeles Police Department	2,205	426	10,002
1	Riverside County Sheriff's Department	33	0	1,788
1	San Bernardino County Sheriff's Department	113	39	1,927
1	San Diego County Sheriff's Department	214	74	2,601
1	San Diego Police Department	102	25	1,764
1	San Francisco Police Department	842	0	2,279
Wave 1 Total Sworn Personnel				29,926
2	Fresno Police Department	231	13	806
2	Long Beach Police Department	182	9	817
2	Oakland Police Department	1,215	36	740
2	Orange County Sheriff's Department	129	11	1,888
2	Sacramento County Sheriff's Department	205	5	1,348
2	Sacramento Police Department	146	6	678
2	San Jose Police Department	205	36	1,150
Wave 2 Total Sworn Personnel Total				7,427
3	Santa Clara County Sheriff's Office	30	2 (7%)	1,279
3	Alameda County Sheriff's Office	62	1 (2%)	939
3	San Francisco County Sheriff Department	66	1 (2%)	860
3	Kern County Sheriff's Office	142	3 (2%)	806
3	Ventura County Sheriff's Office	67	12 (18%)	760
3	Stockton Police Department	11	4 (36%)	469
3	Santa Barbara Sheriff's Office	27	3 (11%)	454
3	Anaheim Police Department	71	4 (6%)	419
3	Fresno County Sheriff's Office	38	11 (29%)	430
3	Bakersfield Police Department	49	0	398
3	Riverside Police Department	58	2 (3%)	370
Wave 3 Total Sworn Personnel Total				7,184
Waves 1-3 Sworn Personnel Total				44,537

Compared to DOJ's initial estimates provided to the Legislature in 2015, referred to in the Test Claim,⁶⁷ the 2020 and 2021 RIPA Board Reports' data most recently available for 2019 reflects an overall 31 percent increase in the number of sworn personnel between 2015 and 2019 (or 7.75 percent growth annually). The distribution of sworn officers in each Wave, is as follows:

⁶⁷ Exhibit B, Test Claim, filed June 14, 2019 (DOJ Fiscal Impact Statement Addendum), pages 100-121.

Wave	Agency Type	Agencies 2015	Agencies 2019	Sworn Officers 2015 ⁶⁸	Sworn Officers 2019 ⁶⁹
1	Local	8	7	25,772	29,926
2	Local	5	7	3,807	7,427
Wave 1-2 Total			14	29,579	37,353
3	Local	10	10	4,536	7,184
4	Local	392	400+	23,382	22,614 ⁷⁰
Wave 3-4 Total		402	410+	27,918	29,798
Waves 1-4 Total		415		57,497	67,151

- *The total amount that may be claimed for the one-time activities A.1., and B.1., for the initial reimbursement period and for future annual costs will increase before decreasing and then stabilizing when all costs for these activities will be as a result of turnover and growth.*

For the years for which data is available, the total number of sworn city and county peace officers has grown. The total growth in the numbers of sworn full-time law enforcement personnel between the years of 2014 and 2018 (4 years) for all police departments in California was 3.3 percent and for all Sheriff's departments was 3.1 percent, the weighted average of which is .8 percent annually.⁷¹ The percentage of growth in the numbers of sworn full-time law enforcement personnel for police departments in 2018-2019 was about the same as the average for the prior years with police departments at .8 percent and sheriff's departments at .7 percent, with a weighted average of .8 percent.⁷² Based on this data, we could assume an average of .8 annual growth in the numbers of sworn city and county officers, based on the average growth rates over the years for which data is available.

Separate and apart from the issue of growth, total turnover rates for law enforcement (i.e. the number of officers that separated from their employer and whose positions were refilled) in the state of California were reported to be 9.19 percent in 2003 and 8.28 percent in 2008. Nationally, turnover rates varied considerably between rural areas (14.11 in 2003, 14.16 in

⁶⁸ Exhibit B, Test Claim, filed June 14, 2019 (DOJ Fiscal Impact Statement Addendum), page 106.

⁶⁹ Exhibit G (5), RIPA Board Report 2020 (Wave 3), pages 77-78; Exhibit G (6), RIPA Board Report 2021 (Waves 1 and 2), page 17.

⁷⁰ Exhibit G (4), DOJ Law Enforcement Agency Number of Sworn Non-Jail Personnel per Agency in 2019 (Wave 4), <https://openjustice.doj.ca.gov/data> (accessed on May 26, 2021), page 12.

⁷¹ Exhibit G (8), Crime in California 2019, Xavier Becerra, Attorney General, California Department of Justice, California Justice Information Services Division, Justice Data and Investigative Services Bureau, Criminal Justice Statistics Center, page 62, <https://data-openjustice.doj.ca.gov/sites/default/files/2020-06/Crime%20In%20CA%202019.pdf> (accessed on January 19, 2021).

⁷² Exhibit G (8), Crime in California 2019, Xavier Becerra, Attorney General, California Department of Justice, California Justice Information Services Division, Justice Data and Investigative Services Bureau, Criminal Justice Statistics Center, page 62, <https://data-openjustice.doj.ca.gov/sites/default/files/2020-06/Crime%20In%20CA%202019.pdf> (accessed on January 19, 2021).

2008), suburban areas (9.89 in 2003 and 10.98 in 2008), and urban areas (7.57 in 2003 and 6.94 in 2008) and also between types of agency Municipal (11.59 in 2003 and 11.14 in 2008) and County (7.94 in 2003 and 9.23 in 2008).⁷³ For the purposes of this estimate, an 8.73 percent turnover rate is assumed based on the average turnover rate for California law enforcement in the years for which we have data available. Unlike growth, turnover is only eleventh to the one-time costs for activities A.1. and B.1.

Further, both growth and turnover rates of sworn law enforcement personnel will impact the number required to be trained (A.1.) and identified and put into a system that matches the individual officer to their Officers I.D. number (B.1.).

- *The future annual costs for this program will decrease and stabilize with the eventual minimization of costs for activities A.1., and B.1., beginning in fiscal year 2022-2023.*

The annual costs incurred for activity A.1., (one-time training per peace officer employee and supervisor assigned to perform the reimbursable activities) and B.1., (identification of peace officers required to report stops, and maintenance of a system to match individual officers to their Officer I.D. number) are not expected to end after the initial reimbursement period, because these activities will continue to be required to be completed as Wave 3 and 4 agencies comply with the mandate in 2020-2021 and 2021-2022.⁷⁴ In addition, activities A.1., and B.1., will continue after all agencies have complied and these costs are assumed to remain relatively stable, requiring the training and identification of peace officers required to report stops due to turnover and growth in the number of peace officer employees, based on the data available.

- *The future annual costs for this program will decrease with the eventual elimination of costs for activity A.2.*

The annual costs incurred for activity A.2., (one-time installation and testing of software) are not expected to end after the initial reimbursement period, because activity A.2., will continue to be required to be completed as additional agencies begin to comply with the mandate.⁷⁵ However, the costs for activity A.2., (one-time installation and testing of software) will eventually be eliminated after all agencies have complied, likely by fiscal year 2022-2023.

- *The future annual costs for this program will increase with the eventual stabilization of costs for ongoing activities, in fiscal year 2022-2023.*

Based on this analysis, the bulk of costs during the initial reimbursement period and in annual claims going forward will likely be incurred to perform activity B.2., (collection and reporting data on all stops). The estimate originally provided to the Legislature by the DOJ and included in the Test Claim was based on the estimated number of officers performing stops, provided to the DOJ by POST in 2015, on a 2016 survey of law enforcement, and on the comments received from law enforcement agencies during the initial public comment period on the implementing

⁷³ Exhibit G (9), Excerpt from the Jennifer Wareham et al, *Rates and Patterns of Law Enforcement Turnover: A Research Note*, 26-4 Criminal Justice Policy Review, 345 (2013), pages 2-5, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.846.1028&rep=rep1&type=pdf> (accessed on March 23, 2020).

⁷⁴ Government Code section 12525.5 (a)(2).

⁷⁵ Government Code section 12525.5 (a)(2).

regulations.⁷⁶ The number of officers and stops per year by agency type was estimated by the DOJ as follows:⁷⁷

Estimated Stops, by Agency Type			
Agency	Total Officers	Total Stops	Average Stops Per Officer
Sheriff	19,586	3,936,786	201
Other	38,710	10,000,000	258
Statewide Total	58,296	13,936,786	239

However, based on the actual stops reported for 2019, 239 stops per officer is a significant an overestimation of stops. The 2021 RIPA Board Report indicates the following:

The 15 largest law enforcement agencies in California, referred to as Wave 1 and Wave 2 agencies in this Report, collected data on pedestrian and vehicle stops and submitted these data to the Department. Reporting agencies collected data on 3,992,074 million stops between January 1, 2019 and December 31, 2019. The California Highway Patrol conducted the most stops (54.4%) of all reporting agencies, which was expected given the size and geographic jurisdiction of the agency and its primary mission with respect to highway safety.⁷⁸

Of the 3,992,074 stops conducted by Wave 1 and 2 agencies in 2019, 54 percent, or approximately 2,171,688 were conducted by CHP, leaving 1,820,385 stops actually conducted by Wave 1 and 2 local agencies in 2019. Further, the 2022 RIPA Board Report indicates a significant reduction in the number of stops between 2019 and 2020:⁷⁹

⁷⁶ Exhibit B, Test Claim, filed June 14, 2019 (DOJ Fiscal Impact Statement Addendum), page 107.

⁷⁷ Exhibit B, Test Claim, filed June 14, 2019 (DOJ Fiscal Impact Statement Addendum), page 107. Please note that the data regarding CHP has been omitted from this table.

⁷⁸ Exhibit G (6), RIPA Board Report 2021, page 9 (footnote omitted).

⁷⁹ Exhibit G (6), RIPA Board Report 2021, page 17; Exhibit G (7), RIPA Board Report 2022, page 28-29. This table reorders and omits non-Wave 1 and Wave 2 agencies.

Reporting Wave	Agency	# of Stops 2019	# of Stops 2020	Difference	% point difference from 2019
1	Los Angeles Police Department	712,807	521,426	-191,381	-26.8%
1	Los Angeles County Sheriff's Department	196,850	104,275	-92,575	-47.0%
1	San Diego Police Department	187,231	150,611	-36,620	-19.6%
1	San Bernardino County Sheriff's Department	157,715	109,024	-48,691	-30.9%
1	San Francisco Police Department	101,614	38,615	-62,999	-62.0%
1	San Diego County Sheriff's Department	65,029	38,824	-26,205	-40.3%
1	Riverside County Sheriff's Department	58,379	56,339	-2,040	-3.5%
	Total Stops Wave 1	1,479,625	1,019,114	-460,511	-28.76%
2	Sacramento Police Department	68,012	51,446	-16,566	-24.4%
2	Sacramento County Sheriff's Department	60,944	43,881	-17,063	-28.0%
2	Fresno Police Department	51,849	14,738	-37,111	-71.6%
2	Orange County Sheriff's Department	50,396	39,855	-10,541	-20.9%
2	San Jose Police Department	44,306	17,988	-26,318	-59.4%
2	Long Beach Police Department	40,524	17,210	-23,314	-57.5%
2	Oakland Police Department	24,395	21,076	-3,319	-13.6%
	Total Stops Wave 2	340,426	206,194	-134,232	-39.34%
	Total Stops Wave 1-2	1,820,051	1,225,308	-594,743	-34.05%

Based on this data, a rate of 49 stops per officer provides a closer estimate of the actual stops per sworn officer.⁸⁰ 1,820,051 stops conducted by 37,353⁸¹ officers averages 49 stops per officer for Waves 1 and 2 in 2019, and provides a closer estimate for Waves 3 and 4 and future costs as follows:

⁸⁰ Exhibit G (6), RIPA Board Report 2021, page 17; Exhibit G (7), RIPA Board Report 2022, page 28-29. This table reorders and omits non-Wave 1 and Wave 2 agencies.

⁸¹ Exhibit G (5), RIPA Board Report 2020, pages 77-78; Exhibit G (6), RIPA Board Report 2021, page 17.

Wave	Agency Type	Sworn Officers 2015 ⁸²	Estimated Stops 2015 ⁸³	Sworn Officers 2019 ⁸⁴	Estimated Stops in 2019 at 49 per Officer ⁸⁵
1	Local	25,772	6,159,508	29,926	1,466,374
2	Local	3,807	909,873	7,427	363,923
Wave 1-2 Total		29,579	7,069,381	37,353	1,830,297
3	Local	4,536	1,084,104	7,184	352,016
4	Local	23,382	5,588,298	22,614 ⁸⁶	1,108,086
Wave 3-4 Total		27,918	6,672,402	29,798	1,460,102
Waves 1-4 Total		57,497	13,741,783	67,151	3,290,399

The annual costs incurred for all ongoing activities will continue to increase as additional agencies begin to comply with the mandate.⁸⁷ In addition, costs for these activities, will stabilize and continue after all agencies have begun to comply, since this is an ongoing requirement of the program. Once the program is fully implemented, the costs for activities B.3., B.4., and B.5. are not expected to fluctuate significantly.

Draft Proposed Statewide Cost Estimate

On June 3, 2022, Commission staff issued the Draft Proposed Statewide Cost Estimate.⁸⁸ No comments were filed on the Draft Proposed Statewide Cost Estimate.

Conclusion

On July 22, 2022, the Commission adopted this Statewide Cost Estimate of \$25,523,241 for the initial reimbursement period of fiscal years 2017-2018, 2018-2019, and 2019-2020 and the estimated cost for fiscal year 2020-2021 of \$10,792,578- \$11,763,910.

⁸² Exhibit B, Test Claim, filed June 14, 2019 (DOJ Fiscal Impact Statement Addendum), page 106.

⁸³ Exhibit B, Test Claim, filed June 14, 2019 (DOJ Fiscal Impact Statement Addendum), page 107. Stops per officer are estimated based on 239 stops per officer, as estimated by the DOJ in 2015.

⁸⁴ Exhibit G (5), RIPA Board Report 2020, pages 77-78; Exhibit G (6), RIPA Board Report 2021, page 17.

⁸⁵ Exhibit G (6), RIPA Board Report 2021, page 17; Exhibit G (7), RIPA Board Report 2022, page 28-29. Stops per officer are estimated based on 49 stops per officer, as reported by Waves 1 and 2 data.

⁸⁶ Exhibit G (4), DOJ Law Enforcement Agency Number of Sworn Non-Jail Personnel per Agency in 2019 (Wave 4), <https://openjustice.doj.ca.gov/data> (accessed on May 26, 2021), page 12.

⁸⁷ Government Code section 12525.5 (a)(2).

⁸⁸ Exhibit F, Draft Proposed Statewide Cost Estimate, issued June 3, 2022.

Adopted: September 23, 2022

STATEWIDE COST ESTIMATE

\$11,218,184 - \$22,758,309

Initial Claim Period

(Second Half Fiscal Year 2019-2020 and Fiscal Year 2020-2021)

**\$7,513,209- \$10,763,822, Plus the Implicit Price Deflator
2021-2022 and Following**

Penal Code Section 680 as Amended by Statutes 2019, Chapter 588 (SB 22)

Sexual Assault Evidence Kits: Testing

20-TC-01

The Commission on State Mandates (Commission) adopted this Statewide Cost Estimate on consent by a vote of 7-0 during a regularly scheduled hearing on September 23, 2022 as follows:

Member	Vote
Lee Adams, County Supervisor	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Renee Nash, School District Board Member	Yes
Sarah Olsen, Public Member	Yes
Shawn Silva, Representative of the State Controller	Yes
Spencer Walker, Representative of the State Treasurer, Vice Chairperson	Yes

STAFF ANALYSIS

Summary of the Mandate, Eligible Claimants, and Period of Reimbursement

Penal Code section 680, as amended by Statutes 2019, chapter 588 (SB 22), requires city and county law enforcement agencies to perform activities relating to DNA testing of sexual assault forensic evidence within specified time periods.

The Commission adopted the Test Claim Decision on July 23, 2021 and the Decision and Parameters and Guidelines on September 24, 2021, approving reimbursement for any city, county, or city and county that incurs increased costs as a result of this mandate.

The initial reimbursement period is January 1, 2020 through June 30, 2021 (second half of fiscal year 2019-2020 and all of fiscal year 2020-2021). Eligible claimants were required to file initial claims with the State Controller’s Office (Controller) by April 27, 2022. Late initial

reimbursement claims may be filed until April 27, 2023, but will incur a 10 percent late filing penalty of the total amount of the initial claim without limitation.⁸⁹

Reimbursable Activities

The Commission approved the following reimbursable activities for this program:

1. A law enforcement agency in whose jurisdiction a sex offense specified in Penal Code sections 261, 261.5, 262, 286, 287, or 289 or former section 288a occurred shall do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:
 - a. Submit sexual assault forensic evidence to the crime lab within 20 days after booked into evidence; *or*
 - b. Ensure that a rapid turnaround DNA program is in place (with a written agreement between the law enforcement agency, the crime lab, and the medical facility pursuant to Penal Code section 680(c)(5)) to submit sexual assault forensic evidence directly from the medical facility examining the victim to the crime lab within five days. (Penal Code 680(c)(1), Stats. 2019, ch. 588.)
2. For any sexual assault forensic evidence received on or after January 1, 2016, the law enforcement's crime lab shall do one of the following:
 - a. Process sexual assault forensic evidence, creating DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initial receipt; *or*
 - b. Transmit sexual assault forensic evidence to another crime lab for DNA processing as soon as practically possible, but no later than 30 days after initial receipt. The transmitting crime lab shall upload into CODIS any qualifying DNA profiles from sexual assault forensic evidence as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA and no later than 120 days after the transmitting crime lab initially receives the evidence. (Penal Code 680(c)(2), Stats. 2019, ch. 588.)

The Commission further concluded that the test claim statute does not mandate city and county law enforcement agencies to conduct follow-up investigations on evidence tested pursuant to the test claim statute.⁹⁰ Therefore, such follow-up investigations are excluded from the reimbursable activities.

Offsetting Revenues and Reimbursements

The Parameters and Guidelines specify that any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, other state funds, and other funds that are not the claimant's proceeds of taxes shall be identified and deducted from this claim. This includes, but is not limited to, the following state and federal grant programs that may be used by a claimant to pay for the mandated activities in this program and which constitute offsetting revenues when used for this purpose:

⁸⁹ Government Code section 17561(d)(3).

⁹⁰ Exhibit A, Decision and Parameters and Guidelines, adopted September 24, 2021, pages 5-6.

- Citizens Option for Public Safety Grant (COPS) (state)
- DNA Capacity Enhancement and Backlog Reduction Program (federal)
- DNA Identification Fund (state)
- Sexual Assault Evidence Submission Grant Program (state)⁹¹

Offsetting revenues identified in the initial reimbursement claims totaled \$1,022,578.

Statewide Cost Estimate

Staff reviewed 83 unaudited initial reimbursement claims submitted by 49 city and county claimants and compiled by the Controller, and developed the Statewide Cost Estimate based on the assumptions and methodology discussed herein. Table 1 and Table 2, below, summarize the cost estimates for the initial reimbursement period and the year following, respectively.

Table 1. Initial Reimbursement Period Cost Estimate

Activity 1.a. (Submit sexual assault forensic evidence to the crime lab within 20 days after booked into evidence)	\$271,541 - \$2,299,913
Activity 1.b. (Ensure that a rapid turnaround DNA program is in place)	\$0 - \$0
Activity 2.a. (Process sexual assault forensic evidence, creating DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initial receipt)	\$7,310,867 - \$14,003,080
Activity 2.b. (Transmit sexual assault forensic evidence to another crime lab for DNA processing as soon as practically possible, but no later than 30 days after initial receipt.)	\$694,483 - \$1,384,920
Indirect Costs	\$3,963,871 - \$8,490,198
Offsetting Revenues	(\$1,022,578 - \$2,137,566)
Late Filing Penalty	(\$0 - \$1,282,236)
Total Costs	\$11,218,184 - \$22,758,309

Table 2. Estimated Annual Costs for Fiscal Year 2021-2022 and Following

Direct Costs for All Activities	\$5,517,927- \$7,905,275
Indirect Costs	\$2,648,605 - \$3,794,532
Offsetting Revenues	(\$653,323 - \$935,985)
Total Costs	\$7,513,209- \$10,763,822

Assumptions

1. The amount claimed for the initial reimbursement period may increase if late or amended claims are filed. Only 49 of 415 eligible claimants (12 percent) filed claims for the initial reimbursement period.⁹² The remaining 366 eligible claimants may still file late claims, and

⁹¹ Exhibit A, Decision and Parameters and Guidelines, adopted September 24, 2021, page 10.

⁹² This Statewide Cost Estimate assumes there are 415 eligible claimants. There are 58 counties and 481 cities in California, including one city and county (the City and County of San Francisco). Exhibit C (10), Senate Government and Finance Committee, County Fact Sheet (April 2016), https://sgf.senate.ca.gov/sites/sgf.senate.ca.gov/files/county_facts_2016.pdf (accessed on August 18, 2022), page 1. All 58 counties have law enforcement agencies (see Cal.

the 49 claimants that timely filed may file amended initial claims for additional costs. Disruptions caused by the COVID-19 pandemic may contribute to a higher number of late or amended claims for the initial reimbursement period.

2. Costs are likely to be higher during the initial years of reimbursement because law enforcement agencies have to process a backlog of existing sexual assault forensic evidence received on or after January 1, 2016. Based on a one-time Department of Justice (DOJ) audit of untested sexual assault evidence kits in the possession of California law enforcement agencies, crime laboratories, medical facilities and others, the known backlog of untested sexual assault evidence kits in 2020 totaled 13,929.⁹³ Of the 2,005 untested kits reported in the audit from 2016 or later, 1,995 are subject to the test claim statute.⁹⁴ Assuming all eligible claimants have untested kits at the same average rate as the audit participants, there would be approximately 5,830 untested sexual assault evidence kits subject to the test claim statute at the beginning of the reimbursement period.⁹⁵ While it is assumed that material and labor costs will increase over time, as reflected in the implicit price deflator, once the backlog has been eliminated and sexual assault forensic evidence is timely tested on a flow basis, total costs will likely trend downward, being limited to the number of test kits collected annually, and for some claimants, may not exceed the \$1,000 minimum filing threshold.
3. The average cost to process a sexual assault evidence kit is approximately \$1,000 per kit. According to the National Center for Victims of Crime, DNA processing costs average \$500

Const., art. XI, § 1(b)) and it is assumed, extrapolating from POST data, that approximately 357 of 481 cities either have their own law enforcement agencies or contract with another city or county to provide law enforcement services in their jurisdiction.

⁹³ Exhibit C (5), California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Evidence Kits, 2020 Report to the Legislature, <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/ag-rpt-audit-usasfe-kits-2020.pdf> (accessed on April 8, 2022), pages 3, 9. Penal Code section 680.4 (Stats. 2018, ch. 950) required DOJ to conduct the one-time audit. Data was primarily collected between November 6, 2018 and July 1, 2019, but the DOJ continued to accept late submission until the release of the audit report.

⁹⁴ Exhibit C (5), California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Evidence Kits, 2020 Report to the Legislature, <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/ag-rpt-audit-usasfe-kits-2020.pdf> (accessed on April 8, 2022), page 9. 142 of the 149 of the audit participants are eligible claimants (the omitted seven are university police departments and are not eligible claimants) and reported a total of 1,995 untested kits from 2016 or later.

⁹⁵ Exhibit C (5), California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Evidence Kits, 2020 Report to the Legislature, <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/ag-rpt-audit-usasfe-kits-2020.pdf> (accessed on April 8, 2022), pages 14-23.

Number of untested sexual assault evidence kits from 2016 or later in the possession of eligible claimants [1,995] / eligible claimants participating in the audit [142] = average of 14 kits per eligible claimant.

Average untested kits per eligible claimant [14] x total eligible claimants [415] =

Potential backlog of untested kits at beginning of initial reimbursement period [5,830].

to \$1,200 per kit.⁹⁶ The available claims data supports this estimate, with direct costs for DNA processing (Activities 2.a. and 2.b.) averaging \$1,088 per kit. There may also be backlogged crime scene evidence that requires DNA processing, although that number is not tracked at the statewide level.⁹⁷

4. The number of reimbursement claims filed will vary from year to year, depending on the number of sex offenses that occur within each eligible claimant's jurisdiction and whether those crimes are reported and qualifying forensic evidence is collected and processed.
5. Claimants may elect not to seek reimbursement for one or more reimbursable activities. Under the test claim statute, eligible claimants may seek reimbursement for performing each of the two mandated activities in one of two ways. Some eligible claimants may decide not to claim costs for one or more of the mandated activities because the costs imposed may be de minimis. For example, none of the 83 unaudited claims seek reimbursement for ensuring a rapid turnaround program is in place (Activity 1.b.) and only 20 claims (less than 25%) seek reimbursement for both submitting sexual assault forensic evidence to the crime lab (Activity 1.a.) and processing the evidence for DNA, creating DNA profiles, and uploading qualifying DNA profiles into CODIS (Activity 2.a. or 2.b.).
6. Estimated future annual costs will be lower if the claimants receive and apply offsetting revenues. While the Parameters and Guidelines identify several state and federal grant programs as potential offsetting revenue sources, not all claimants receive those funds, nor are those claimants that do required to apply them to this program. Of the 49 initial claimants, only five (10 percent) used offsetting revenues. Additionally, those offsets varied greatly, ranging from less than \$5,000 to more than \$500,000. While known available offsetting revenues for the initial reimbursement period exceed \$194 million, three out of five of those funding sources are grant-based, meaning that there is no guarantee that the claimants will receive or apply those funds in the future.

The majority of known available offsetting revenues come from the Citizens Option for Public Safety Grant (COPS) program (totaling \$170,074,800 for fiscal years 2019-2020 and 2020-2021) and are intended to generally fund front-line law enforcement services at the county and city level, and without a specific requirement that the funds be used for DNA testing of sexual assault forensic evidence.⁹⁸ Only, \$7,491,383 awarded in fiscal year 2019-

⁹⁶ Exhibit C (9), National Center for Victims of Crime, Frequently Asked Questions, <https://victimsofcrime.org/frequently-asked-questions/> (accessed on April 8, 2022), Question 6 (estimating the cost to test one kit at \$500-\$1,200); see also Exhibit C (8), End the Backlog, Testing All Rape Kits Provides Returns of Up to 65,000%, <https://www.endthebacklog.org/blog/testing-all-rape-kits-provides-returns-65000> (accessed on April 8, 2022) (estimating the cost at \$500-\$1,500 to test one kit).

⁹⁷ The submission and testing requirements imposed by the test claim statute are not limited to sexual assault evidence kits; they include crime scene evidence as well. If a sexual assault evidence kit is not collected in a case, representative and probative samples of any other types of sexual assault evidence (e.g., the victim's clothing, bedding from the assault scene, etc.) must be sent to the crime lab. Exhibit C (4), California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), pages 1-2.

⁹⁸ Exhibit C (7), California State Controller, Citizens' Option for Public Safety (COPS) Program Funds, Fiscal Year 2019-2020 Year-to-Date Allocation Spreadsheet, https://www.sco.ca.gov/ard_payments_cops_fy1920.html (accessed on June 24, 2022); Fiscal

2020; \$8,184,159 in fiscal year 2020-2021; and \$8,510,042 in fiscal year 2021-2022 in U.S. Department of Justice, Bureau of Justice Assistance, Awards for DNA Capacity Enhancement and Backlog Reduction Program; \$8,575,184.39 awarded in calendar year 2019 in state DNA Identification Fund (Proposition 69) revenues; \$2 million in California Department of Justice, Sexual Assault Evidence Submission Grant Program funds awarded in 2020-2021 and 2021-2022 were allocated to county and city law enforcement agencies, as specified. Additionally, the California Department of Justice, Untested Sexual Assault Evidence Grant – Backlog Reduction Program has available \$1.814 million in grant funds for fiscal years 2021-2022 and 2022-2023, specifically for the “California Department of Justice, Untested Sexual Assault Evidence Grant – Backlog Reduction Program.”⁹⁹ Thus, this Statewide Cost Estimate assumes that all potential eligible claimants will file claims and identify offsetting revenues at the same rate as that identified in the initial claims, which is eight percent.¹⁰⁰

7. Actual costs may be lower if the Controller reduces any reimbursement claim for this program following an audit deeming the claim to be excessive or unreasonable, or not eligible for reimbursement.

Methodology

A. Initial Reimbursement Period Cost Estimate:

The low end statewide cost estimate for the initial reimbursement period (second half of fiscal year 2019-2020 and all of fiscal year 2020-2021) is based on 83 unaudited, actual reimbursement claims (35 claims filed for fiscal year 2019-2020 and 48 for fiscal year 2020-2021) totaling **\$11,218,184**. The high end of the estimated potential costs is up to **\$22,758,309** if all eligible claimants file claims for the initial reimbursement period.

Activity 1.a.: Activity 1.a. consists of submitting sexual assault forensic evidence to the crime lab. The low end of the range for Activity 1.a. is costs actually claimed for that activity. The high end assumes that all eligible claimants will file claims for Activity 1.a. and the costs are

Year 2020-2021 Allocation Letter from the Department of Finance, https://www.sco.ca.gov/Files-ARD-Payments/copsdofletter_2021.pdf (accessed on June 24, 2022).

⁹⁹ Exhibit C (11), U.S. Department of Justice, Bureau of Justice Assistance, Awards for DNA Capacity Enhancement and Backlog Reduction Program, https://bja.ojp.gov/funding/awards/list?field_award_status_value=All&state=CA&field_funding_type_value=All&fiscal_year=2019+2020+2021&combine_awards=DNA+Capacity+Enhancement&awardee=&city=#kq5n09 (accessed on June 24, 2022); Exhibit C (1), California Department of Justice, Annual Statewide DNA Fund Report, <https://oag.ca.gov/sites/all/files/agweb/pdfs/bfs/2019-dna-fund-report.pdf> (accessed on June 24, 2022), page 2; Exhibit C (2), California Department of Justice, Sexual Assault Evidence Submission Grant Program, <https://oag.ca.gov/saesg> (accessed on June 24, 2022); Exhibit C (6), California Department of Justice, Untested Sexual Assault Evidence Grant – Backlog Reduction Program, <https://oag.ca.gov/usaeg-br> (accessed on June 24, 2022).

¹⁰⁰ The offsetting revenue rate is calculated as follows: Actual Offsetting Revenues [\$1,022,578] / Actual Direct and Indirect Costs [\$12,240,772] = Offsetting Rate (offsetting revenues as a percentage of total costs claimed) [0.08].

calculated using the average costs claimed in the initial period of reimbursement and multiplying the average cost by the number of eligible claimants who have not yet filed claims as follows:

Activity 1.a. actual costs claimed [\$271,541] / number of 1.a. filers [49] = average activity 1.a. cost per claimant [\$5,542]

Average activity 1.a. cost per claimant [\$5,542] x number of non-filers [366] = total estimated non-filer activity 1.a. costs [\$2,028,372]

Activity 1.a. actual costs claimed [\$271,541] + estimated non-filer activity 1.a. costs that could be claimed in late claims [\$2,028,372] = Total Potential Activity 1.a. Costs [\$2,299,913]

Activity 1.b.: Activity 1.b. consists of ensuring that a rapid turnaround DNA program is in place so that the sexual assault forensic evidence is submitted directly from the medical examination facility to the crime lab. While some of the initial claims contain supporting documentation showing that a rapid turnaround agreement is in place, none of the initial claims include claimed costs for Activity 1.b., likely because the mandate is to either perform 1.a. *or* 1.b. Therefore, both the low and high ends of the range for Activity 1.b. are \$0.

Activities 2.a. and 2.b.: Activity 2.a. consists of processing sexual assault forensic evidence for DNA, creating DNA profiles, and uploading qualifying DNA profiles into CODIS. Activity 2.b. consists of transmitting the sexual assault forensic evidence to another crime lab for DNA processing and uploading qualifying DNA profiles into CODIS. Both of these activities require the law enforcement agency to pay for the sexual assault forensic evidence to be processed for DNA, either by the agency itself, or by a contracted public or private crime lab, and to upload qualifying DNA profiles into CODIS.

The low end of the range for Activities 2.a. and 2.b. is costs actually claimed for that activity. The high end assumes that all eligible claimants will file claims for Activities 2.a. and 2.b.

The estimate of the high end of potential Activity 2.a and 2.b. costs for the initial reimbursement period uses the number of kits collected statewide in calendar year 2020 (two-thirds of the initial reimbursement period), as reported in DOJ's SAFE-T database,¹⁰¹ the statewide backlog of approximately 5,830 untested kits subject to the test claim statute, and an average processing cost per kit of \$1,000, to result in \$13,957,580 for 2.a. and \$1,380,420 for 2.b., calculated as follows:

1. Number of sexual assault evidence kits collected statewide in calendar year 2020 [6,372] x average cost of processing a sexual assault evidence kit for DNA [\$1,000] = Activity 2.a. and Activity 2.b. Costs for calendar year 2020 [\$6,372,000].
2. Costs for Activities 2.a. and 2.b. for the second half of fiscal year 2020-2021 are calculated by dividing the costs for calendar year 2020 by two (6,372,000 / 2 = \$3,186,000).
3. Statewide backlog of sexual assault evidence kits subject to the test claim statute [5,830] x average cost of processing a sexual assault evidence kit for DNA [\$1,000] = Activity 2.a. and 2.b. Backlog Costs for the initial reimbursement period [\$5,830,000].

¹⁰¹ DOJ reported 6,372 sexual assault evidence kits collected statewide in calendar year 2020. Exhibit C (3), California Department of Justice, 2020 SAFE-T Annual Report to the Legislature, <https://oag.ca.gov/system/files/media/ag-report-safe-t-database-2020.pdf> (accessed on April 8, 2022), page 6.

4. Activity 2.a. and 2.b. Costs for calendar year 2020 [\$6,372,000] + Activity 2.a and Activity 2.b. Costs for second half of fiscal year 2020-2021 [\$3,186,000] + Activity 2.a. and 2.b. Backlog Costs for the initial reimbursement period [\$5,830,000] = High End of Estimated Activity 2.a. and Activity 2.b. Costs for the initial claim period [\$15,388,000].
5. Assuming the same proportionality of 2.a. and 2.b. costs (2.a. actual costs claimed account for 91 percent and 2.b. for nine percent of their combined total), Total Estimated Activity 2.a. Costs for the initial claim period = \$15,388,000 x 0.91 [\$14,003,080] and High End of Estimated Activity 2.b. Costs for the initial claim period = \$15,388,000 x 0.09 [\$1,384,920].

Indirect Costs: The low end of the range for indirect costs is those indirect costs actually claimed. The high end, in addition to indirect costs actually claimed, assumes that all eligible claimants who have not yet filed claims will file claims for indirect costs at the same average rate actually claimed during the initial period of reimbursement, which is calculated as follows:

1. Indirect Costs Actually Claimed [\$3,963,871] / Direct Costs Actually Claimed [\$8,276,891] = Average Indirect Cost Rate [48%].
2. Indirect Cost Rate [48%] x Estimated Direct Costs (sum of all estimated activity costs for the initial claim period) [\$17,687,913] = High End of the Estimated Indirect Costs [\$8,490,198].

Offsetting Revenues: The low end of the range is total offsetting revenues actually claimed. The high end assumes that all eligible claimants will file claims, with offsetting revenues reported by all eligible claimants at the same average rate, and is calculated as follows:

1. Actual Offsetting Revenues [\$1,022,578] / Actual Direct and Indirect Costs [\$12,240,762] = Offsetting Rate (offsetting revenues as a percentage of total costs claimed) [8%].
2. Estimated Non-filer Direct and Indirect Costs [\$13,937,349] x Offsetting Rate [8%] = Non-filer Offsetting Revenues [\$1,114,988].
3. Actual Offsetting Revenues [\$1,022,578] + Non-filer Offsetting Revenues [\$1,114,988] = High End of Estimated Offsetting Revenues [\$2,137,566].

Late Filing Penalties: The low end is \$0 because none of the initial claims compiled by the Controller were assessed a late filing penalty. The high end assumes that all eligible claimants will file claims for the initial period of reimbursement, which will be subject to a late filing penalty, and that penalty is calculated as follows:

1. Estimated Non-filer Direct and Indirect Costs [\$13,937,349] – Estimated Non-filer Offsets [\$1,114,988] = Estimated Non-filer Net Costs [\$12,822,361].
2. Estimated Non-filer Net Costs [\$12,822,361] x (10% late filing penalty) = Estimated Non-filer Late Filing Penalties [\$1,282,236].
3. Actual Late Filing Penalties [\$0] + Estimated Non-filer Late Filing Penalties [\$1,282,236] = High End of Estimated Late Filing Penalties [\$1,282,236].

B. Projected Annual Costs for Fiscal Year 2021-2022 and Following:

Beginning in fiscal year 2021-2022, future statewide costs are estimated to range from **\$7,513,209** to **\$10,763,822** annually.

The low end of the range assumes that the same claimants that filed reimbursement claims for the initial period of reimbursement will continue to file annual reimbursement claims, that the

backlog of 5,830 untested kits is completed, and that the number of sexual assault evidence kits to be tested annually remains unchanged from 2020, as follows:

1. Initial Activity 1.a. Costs [\$271,541] / 1.5 (to account for the initial reimbursement period length of one and one-half years) = Annual Activity 1.a. Costs [\$181,027].
2. Initial Activity 2.a. and 2.b. Costs [\$8,005,350] / 1.5 years = Annual Activity 2. Costs [\$5,336,900].
3. Annual Activity 1.a. Costs [\$181,027] + Annual Activity 2. Costs [\$5,336,900] = Annual Direct Costs [\$5,517,927].
4. Indirect Cost Rate [0.48] x Annual Direct Costs [\$5,517,927] = Annual Indirect Costs [\$2,648,605].
5. Annual Direct and Indirect Costs [\$8,166,532] x Offsetting Rate [8%] = Annual Offsetting Revenues [\$653,323].
6. Annual Direct and Indirect Costs [\$8,166,532] – Annual Offsetting Revenues [\$653,323] = Low End Projected Future Annual Costs [\$7,513,209, plus the implicit price deflator].

The high end of the range assumes that all eligible claimants will file annual claims, that the backlog of 5,830 untested kits is completed during the initial reimbursement period, and that the number of sexual assault evidence kits remains unchanged from 2020:

1. Estimated Initial Activity 1.a. Costs [\$2,299,913] + (Activity 2. Costs for calendar year 2020 [\$6,372,000] x 1.5-year initial reimbursement period) = Direct Costs [\$11,857,913].
2. Direct Costs [\$11,857,913] / 1.5 (to account for the initial reimbursement period length of one and one-half years) = Annual Direct Costs [\$7,905,275].
3. Indirect Cost Rate [48%] x Annual Direct Costs [\$7,905,275] = Annual Indirect Costs [\$3,794,532].
4. Annual Direct and Indirect Costs [\$11,699,807] x Offsetting Rate [8%] = Annual Offsetting Revenues [\$935,985].
5. Annual Direct and Indirect Costs [\$11,699,807] – Annual Offsetting Revenues [\$935,985] = High End Estimated Annual Costs for 2021-2022 and Following [\$10,763,822, plus the implicit price deflator].

Draft Proposed Statewide Cost Estimate

On August 19, 2022, Commission staff issued the Draft Proposed Statewide Cost Estimate.¹⁰² No comments were filed on the Draft Proposed Statewide Cost Estimate.

Conclusion

On September 23, 2022, the Commission adopted this Statewide Cost Estimate of \$11,218,184 - \$22,758,009 for the Initial Claim Period (Second Half Fiscal Year 2019-2020 and Fiscal Year 2020-2021) and \$7,513,209- \$10,763,822, plus the implicit price deflator for fiscal year 2021-2022 and following.

¹⁰² Exhibit B, Draft Proposed Statewide Cost Estimate, issued August 19, 2022.