<u>**FINAL STATEMENT OF REASONS**</u>

<u>**UPDATE OF THE INITIAL STATEMENT OF REASONS**</u>

On July 31, 2019, the Department of Justice (Department) published an Addendum to Initial Statement of Reasons to explain the modifications to these regulations as originally proposed and the reasons for those modifications. On December 31, 2019, the Department published a Second Addendum to Initial Statement of Reasons to explain modifications to these regulations as proposed on July 31, 2019, and the reasons for those modifications. Both addenda are incorporated by reference herein. These regulations have since been modified as follows:

§ 750. Title and Scope.

The Department amended this paragraph to remove the commencement date of these regulations. This amendment is necessary so that the effective date does not need to be updated each time these regulations are amended and whenever the Office of Administrative Law approves the rulemaking file.

The Authority and Reference section was amended to remove reference to an irrelevant code section and to remove a comma.

§ 750.2. Purpose of the CalGang Database.

Subdivision (b). This provision was nonsubstantively amended to remove an additional period.

Subdivision (c). This provision was amended to remove "and/" before "or." This amendment is necessary because a memorandum of understanding does not need to be adopted by both sections listed in this provision, only one. This provision was also nonsubstantively amended to capitalize "Agency" to reflect the defined term.

Subdivision (e). This provision was amended for clarity. This amendment is necessary because this provision was previously unclear and implied that these regulations could "contemplate" rather than specifying the ways in which these regulations shall not be interpreted.

§ 750.4. Definition of Key Terms.

Subdivision (i). This provision was amended to remove "a minor or" because "a minor" is captured in the age range provided.

Subdivision (r). This provision was amended to remove "and/" before "or." This amendment is necessary because this provision already provides that one or more of these services could be provided so "and" is unnecessary.

Subdivision (u). This provision was amended to remove "/or" after "and." This amendment is necessary because the definition is intended to apply to both of the listed scenarios.

Subdivision (z). This provision was amended to remove "and/" before "or." This amendment is necessary because both of these conditions would not need to be satisfied for a person to have a right to know.

Subdivision (cc). This provision was nonsubstantively amended to add a "," after "Symbol."

Subdivision (ee). This provision was nonsubstantively amended to relocate the phrase "by a person."

Subdivision (ff). This provision was nonsubstantively amended for citation consistency.

Subdivision (gg). This provision was nonsubstantively amended to remove an additional space between "an" and "Agency."

The Authority and Reference section was amended to remove references to irrelevant code sections and to remove a comma.

§ 750.6. Access to the CalGang Database.

Subdivision (a). This provision was nonsubstantively amended to add a comma after "rather."

Subdivision (d). This provision was nonsubstantively amended to add a space between the form number and the form date. This provision was also amended to remove "and/" before "or." This amendment is necessary because the Department could not perform both listed actions at the same time.

Subdivision (e). This provision was nonsubstantively amended for citation consistency.

Subdivision (f)(1). This provision was nonsubstantively amended to add a space before "[s]uch memorandum."

§ 750.8. The Node Administrator's Role and Admission as a Node Agency.

Subdivision (b)(5)(B). This provision was amended to remove "and/" before "or." This amendment is necessary because the Department could not perform both listed actions at the same time.

§ 751. CalGang Database User Terms and Account Security.

Subdivision (d). This provision was amended to remove "and/" before "or." This amendment is necessary because the Department could not perform both listed actions at the same time.

Subdivision (d)(1). This provision was amended to add "and/" before "or." This amendment is necessary because the Node Administrator or the Department need to be notified if any or all of the listed items are occurring, or have occurred.

Subdivision (d)(2). This provision was amended to remove "and/" before "or revoke." This amendment is necessary because the Department could not perform both listed actions at the same time.

Subdivision (e)(1). This provision was nonsubstantively amended for citation consistency.

§ 751.4. Proxy Query to the Information Contained in the CalGang Database.

Subdivision (a)(1). This provision was nonsubstantively amended to add a space between the form number and the form date.

Subdivision (a)(3)(B)(1). This provision was nonsubstantively amended to adjust the format of the numbering and add a "t" before "he CalGang database." This provision was also amended to replace "[n]otwithstanding" with "[h]owever." This amendment is necessary for clarity purposes.

Subdivision (a)(3)(E)(1). This provision was nonsubstantively amended to adjust the format of the numbering. This provision was also amended to remove "and/" before "or." This amendment is necessary because the Department could not perform both listed actions at the same time.

Subdivision (a)(3)(E)(2). This provision was nonsubstantively amended to adjust the format of the numbering. This provision was also amended to remove "or" after "and/." This amendment is necessary because the intent was to have proxy query requests made by either party denied but the use of "and/or" previously made it read as if there was an option.

Subdivision (b)(1). This provision was amended to remove "and/" before "or." This amendment is necessary because the Department could not perform both listed actions at the same time.

Subdivision (c). This provision was nonsubstantively amended to change "sections" from plural to singular and replace "and" with "or."

The Authority and Reference section was nonsubstantively amended to remove a comma.

§ 751.6. User Training.

Subdivision (a). This provision was amended to require that only the Department or an instructor certified by the Department may conduct User training. This amendment is necessary because Node Administrators and Node Administrator's Designees are typically certified by the Department so it was not necessary to include them in the list as it was duplicative. It was additionally necessary to add "the Department" because the Department needs to be able to certify new Node Administrators or Node Administrator's Designees. This provision was also amended to replace "approved" with "certified." This amendment is necessary because the Department used the terms "certification" and "recertification" throughout the text so "certified" is more appropriate.

Subdivision (b). This provision was amended to align with the changes to subdivision (a). This amendment is necessary because the Department needs to be able to certify new Node Administrators or Node Administrator's Designees. This provision was also amended to replace "approved" with "certified." This amendment is necessary because the Department used the terms "certification" and "recertification" throughout the text so "certified" is more appropriate.

Subdivision (b)(1). This provision was amended to expand the definitions that a User is required to be trained on. This amendment is necessary because these regulations govern the use of the CalGang database so it is important that Users be trained on all definitions listed within these regulations, as well as the definitions in the governing statute. It is necessary for special emphasis to be placed on the specified terms because these terms are associated with designating a person or criminal street gang in the CalGang database and limitations of use of the CalGang database. This provision was also nonsubstantively amended to add a space between "Gang Member or Associate" and "reasonable suspicion."

Subdivision (b)(2). This provision was amended to provide a more detailed explanation of the requirement to train on criteria. This amendment is necessary to be as specific as possible, provide section numbers for reference, and to require detailed training on criteria requirements and how to use each criterion. This provision was also nonsubstantively amended to remove an additional space between "required" and "to."

Subdivision (b)(3). This provision was amended to narrow the scope of this training requirement from "any federal, state and local laws, policies and procedures regarding criminal intelligence information" to "applicable federal, state, and local laws, policies, and procedures governing the gathering of criminal intelligence information" and to provide specific examples. This amendment is necessary so that the User training covers the federal, state, and local laws, policies, and procedures that govern the use of criminal intelligence databases and the CalGang database.

Subdivision (b)(4). This provision was amended to provide a more detailed explanation of the requirement to train on database security and data dissemination. This amendment is necessary to be specific as possible and to ensure that all of the physical, administrative, and technical system, hardware and software requirements and data dissemination restrictions set forth in these regulations are captured in the User training.

Subdivision (b)(5). This provision was amended to provide an example of "practical, hands-on system usage." This amendment is necessary to be specific as possible and to require training on how to enter and view information in the CalGang database because without this training, a person would not be knowledgeable on the basics of using the system.

Subdivision (b)(6). This provision was amended to require training on uploading files to the CalGang database. This amendment is necessary because photographs are not the only files that may be added to the database and this provision did not previously include training on how to upload any other file formats.

Former Subdivision (b)(7). This provision was removed. This amendment is necessary because this information is duplicative of subdivision (b)(3) and subdivision (b)(3) now provides a more detailed explanation.

Subdivision (b)(7) (formerly subdivision (b)(8)). This provision was amended to provide a more detailed explanation of the requirement to train on mitigating the entry and dissemination of false or incorrect information into or from the CalGang database. This amendment is necessary to be specific as possible, provide section numbers for reference, and to ensure that all of the safeguards for preventing the entry or dissemination of false or incorrect information such as audits and supervisory reviews set forth in these regulations are captured in the User training.

Subdivision (b)(8) (formerly subdivision (b)(9)). This provision was amended to provide a more detailed explanation of the requirement to train on Articles 7 and 8 and include the governing statutes. This amendment is necessary to be as specific as possible. This provision was also amended to move the requirement to train on Article 9 to the new subdivision (b)(9). This amendment is necessary because Article 9 details retention periods, not notices, responses to inquiries, and removal guidelines.

Former Subdivision (b)(10). This provision was removed. This amendment is necessary because this information is duplicative of subdivision (b)(3).

New Subdivision (b)(9). This provision was added to require Users to be trained on the retention periods described in Article 9. This addition is necessary so that the retention period and purging requirements set forth in these regulations are captured in the User training.

Subdivision (b)(10) (formerly subdivision (b)(11)). This provision was amended to provide a more detailed explanation of the requirement to train on the consequences of system misuse. This amendment is necessary to be as specific as possible and to provide a section number for reference.

Subdivision (b)(12) (formerly subdivision (b)(13)). This provision was amended to require Users to be trained on both the potential positive and negative impacts of data collection and expanded on what is captured in data collection. These amendments are necessary to capture all types of data collection and who may be impacted by that data collection.

Subdivision (b)(13) (formerly subdivision (b)(14)). This provision was amended to add "in policing" after "implicit bias." This amendment is necessary to be as specific as possible that this training requirement is intended to address implicit bias in police work

Subdivision (b)(14) (formerly subdivision (b)(15)). This provision was amended to provide a more detailed explanation of the requirement to train on proxy query requests. This amendment is necessary to be as specific as possible, to expand the training from covering only the entry of proxy query requests to include information sharing, and to provide a section number for reference.

Subdivision (c). This provision was amended to replace "approved" with "certified." This amendment is necessary because the Department used the terms "certification" and "recertification" throughout the text so "certified" is more appropriate.

Subdivision (d). This provision was amended to provide specific examples of what additional required training may include. This amendment is necessary so that agencies understand the intent of this provision and do not overlook the opportunity to customize their User training to include information on gangs local to their area and their agency-specific policies.

The Authority and Reference section was amended to remove reference to an irrelevant code and to remove a comma.

§ 751.8. Initial Exam Information and Recertification Exam.

Subdivision (d). This provision was amended to remove "the content of which shall be determined by the Node Administrator" and instead require the content which the User struggled with or performed inadequately on to be included in the refresher training. This amendment is necessary to give direction to the System Administrator on the scope of the refresher training. The Department determined it was most practical to include the content which the User struggled with or performed inadequately on during the initial exam or recertification exam.

§ 752. Requirements to Become a Certified Instructor.

This section title was nonsubstantively amended to remove an additional period. This provision was also amended to replace "approved" with "certified." This amendment is necessary because the Department used the terms "certification" and "recertification" throughout the text so "certified" is more appropriate.

Subdivision (a). This provision was amended to make a list of the minimum qualifications to become a certified instructor of User training. This amendment is necessary for better flow and reader understanding.

New Subdivision (a)(1). This provision was amended to remove the requirement for the instructor approval. This amendment is necessary because this provision is now part of a list of the minimum qualifications needed to become a certified instructor.

New Subdivision (a)(2). This provision removes the requirement that the User experience be verified and tested and instead requires that the person demonstrate proficiency with the CalGang database. This amendment is necessary because this provision is now part of a list of the minimum qualifications needed to become a certified instructor. The verification requirement has been moved to subdivision (c).

New Subdivision (a)(3). This provision was added to prohibit a person from becoming a certified instructor if they have been suspended from using, or had their access revoked for misuse of, a shared gang database or the CalGang database. This addition is necessary because these conditions would call into question the person's integrity and demonstrate that the person is unqualified to train other people on proper use of the CalGang database.

New Subdivision (b). This provision was added to explain the process for becoming a certified instructor. It is necessary for the person seeking instructor certification to contact the Department so that the Department can arrange training for the person. It is necessary for instructor certification training to only be conducted by the Department or by another instructor certified by the Department because the instructor training curriculum is different than User training and covers the duties specific to an instructor. The language "[i]nstructors shall take a Department-approved course of instruction that shall provide an in-depth familiarization with all system applications, intelligence file guideline requirements, proper use, and any additional administrative requirements" was removed. This amendment is necessary because some of these topics are already covered in the User training and "administrative requirements" was vague. This provision now requires that the instructor certification training include "a comprehensive overview of the CalGang database system and the administrative functions of instructor training, including how to reset passwords, run reports, and oversee User certification and recertification exams." This amendment is necessary to be as specific as possible and require training on actual instructor duties.

Subdivision (c) (formerly subdivision (b)). This provision was nonsubstantively amended to remove the "t" in "ta." This provision was also amended to require the instructor of a person's instructor certification training to provide to the Department the person's name and the date they complete the training. This amendment is necessary so that the Department can maintain a record of persons who have received instructor certification training. This provision was additionally amended to require the Department to verify whether the person has satisfied the requirements to become a certified instructor. This amendment is necessary to explain the Department's approval process.

Subdivision (d) (formerly subdivision (c)). This provision was amended to require instructors of User training to attend instructor recertification training every two years from the date of initial certification. This amendment is necessary because annual recertification training may be too frequent for system changes and the training was previously discretionary. The Department believes that requiring recertification training every two years will ensure instructors of User

training are up to date on the latest system changes without being too burdensome on instructors or agencies. This provision was also amended to clarify the Department's intent behind the phrase "new mandates, and regulations" by replacing it with "laws governing the CalGang database or shared gang databases." This amendment is necessary because the previous language did not draw any connection to the CalGang database or shared gang databases.

§ 752.2. Minimum Age of Entry and Requirements to Enter a Person into the CalGang Database.

Subdivision (c)(2). This provision was nonsubstantively amended for citation consistency and to change "one year" to "one-year."

§ 752.4. Criteria to be Designated as a Gang Member or Associate.

Subdivision (a)(3). In light of comments received from the public, the Department further supplements its Second Addendum to Initial Statement of Reasons in support of subdivision (a)(3) as follows. This criterion is consistent with the empirical research in the rulemaking file. It is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the inclusion of this criterion does not conflict with or contradict any study. The Department is not aware of any empirical research determining that this criterion lacks any probative value for identifying a gang member. As a supplement to its review of empirical research on gangs and gang membership, the Department considered the experience of law enforcement officers who are experts in criminal gang activity. Studies in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. This criterion is consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criterion is a strong indicator of gang membership. The Department is committed to conducting and examining future research on the probative value of this criterion.

Subdivision (a)(3)(B). This provision was nonsubstantively amended for citation consistency.

Subdivision (a)(4). In light of comments received from the public, the Department further supplements its Second Addendum to Initial Statement of Reasons in support of subdivision (a)(4) as follows. This criterion is consistent with the empirical research in the rulemaking file. It is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the inclusion of this criterion does not conflict with or contradict any study. The Department is not aware of any empirical research determining that this criterion lacks any probative value for identifying a gang member. As a supplement to its review of empirical research on gangs and gang membership, the Department considered the experience of law enforcement officers who are

experts in criminal gang activity. Studies in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. This criterion is consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criterion is a strong indicator of gang membership. The Department is committed to conducting and examining future research on the probative value of this criterion.

Subdivision (a)(5). This provision was amended to remove "and/" before "or." This amendment is necessary because this provision already provides that one or more of these actions could be observed so "and" is unnecessary. This provision was also amended to add "to identify their affiliation" after "tied to a specific active criminal street gang." This amendment is necessary to ensure that the person is displaying the symbol(s) or hand sign(s) tied to a specific active criminal street gang to identify their affiliation and not for other reasons that may not indicate gang activity.

Subdivision (a)(6). In light of comments received from the public, the Department further supplements its Second Addendum to Initial Statement of Reasons in support of subdivision (a)(6) as follows. This criterion is consistent with the empirical research in the rulemaking file. It is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the inclusion of this criterion does not conflict with or contradict any study. The Department is not aware of any empirical research determining that this criterion lacks any probative value for identifying a gang member. As a supplement to its review of empirical research on gangs and gang membership, the Department considered the experience of law enforcement officers who are experts in criminal gang activity. Studies in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. This criterion is consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criterion is a strong indicator of gang membership. The Department is committed to conducting and examining future research on the probative value of this criterion.

Subdivision (a)(7). This provision was amended to remove "and/" before "or." This amendment is necessary because this provision already provides that one or more of these actions could be observed so "and" is unnecessary. In light of comments received from the public, the Department further supplements its Second Addendum to Initial Statement of Reasons in support of subdivision (a)(7) as follows. This criterion is consistent with the empirical research in the rulemaking file. It is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the inclusion of this criterion does not conflict with or contradict any study. The Department is not aware of any empirical research determining that

this criterion lacks any probative value for identifying a gang member. As a supplement to its review of empirical research on gangs and gang membership, the Department considered the experience of law enforcement officers who are experts in criminal gang activity. Studies in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. This criterion is consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criterion is a strong indicator of gang membership. The Department is committed to conducting and examining future research on the probative value of this criterion.

Subdivision (a)(7)(A). This provision was amended to remove "and/" before "or." This amendment is necessary because both actions would not have to occur simultaneously, but still could with the sole use of "or." This provision was also nonsubstantively amended to add a comma after "including."

Subdivisions (a)(8)(A) – (a)(8)(C). These provisions were nonsubstantively amended for citation consistency.

Subdivision (c). This provision was amended to remove "and/" before "or." This amendment is necessary because these documents or actions would not have to occur simultaneously, but still could with the sole use of "or." This provision was also amended to add "[n]o contact(s), incident(s), or supporting source documents that occurred before the juvenile turned 13 years of age shall be used to designate a juvenile as a Gang Member or Associate." This amendment is necessary because these regulations prohibit the inclusion of a person under the age of 13 in the CalGang database so it would be unfair to permit any information collected before the person turned 13 years of age to be used for their designation as a Gang Member or Associate.

§ 752.6. Adding Information to a Person's Record.

Subdivision (c). This provision was nonsubstantively amended to change "sections" from plural to singular.

§ 752.8. Supervisory Review Process of Intelligence Data.

Subdivision (a). This provision was nonsubstantively amended to remove the comma after "database."

Subdivision (b). This provision was nonsubstantively amended to add a comma before and after "but not limited to" and remove the comma after "satisfied."

Subdivision (b)(2). This provision was nonsubstantively amended to change "the supervisory review may review" to read "the supervisor may review."

Subdivision (c). This provision was added to require the first-level supervisor, or gang-unit lieutenant or equivalent to complete a written attestation that the entry complies with these regulations at the conclusion of the supervisory review. This provision also requires a notation in the CalGang database confirming that the attestation was completed. This provision is necessary to ensure Node Agency and User Agency accountability and accuracy of CalGang database entries.

§ 753. Requirements to Designate an Organization as a Criminal Street Gang.

This section title was nonsubstantively amended to remove the quotation marks around "Criminal Street Gang."

Subdivision (a)(2). This provision was amended to replace "that" with "who" before "belongs to the criminal street gang." This amendment is necessary because the Department is referring to a person, not an object.

Subdivision (c). This provision was amended to remove an additional space between "database" and "until."

§ 753.2. Adding Information to a Designated Criminal Street Gang.

Subdivision (b). This provision was amended to remove "it undergoes." This amendment is necessary for better flow.

§ 753.4. Supervisory Review Process of Criminal Street Gang Intelligence Data.

This section title was nonsubstantively amended to add a period after the section number for consistency.

Subdivision (a). This provision was nonsubstantively amended to remove the comma after "database."

Subdivision (b). This provision was nonsubstantively amended to add a comma before and after "but not limited to" and remove the comma after "satisfied."

Subdivision (b)(2). This provision was nonsubstantively amended to change "the supervisory review may review" to read "the supervisor may review."

Subdivision (c). This provision was added to require the first-level supervisor, or gang-unit lieutenant or equivalent to complete a written attestation that the entry complies with these

regulations at the conclusion of the supervisory review. This provision also requires a notation in the CalGang database confirming that the attestation was completed. This provision is necessary to ensure Node Agency and User Agency accountability and accuracy of designated criminal street gangs.

§ 753.6. Notifying a Person of Inclusion in the CalGang Database.

Subdivision (b). This provision was nonsubstantively amended to change "in-person" to "in person."

Subdivision (c)(1). This provision was amended to require agencies to provide information about any source documents in the possession of the Node Agency or User Agency related to a person's inclusion in the CalGang database when sending a written notice of inclusion. This amendment is necessary to be as transparent as possible and to make the person receiving the notice aware of what materials the Node Agency or User Agency has to support their designation. Furthermore, the listed details may assist the person in seeking such source documents from the Node Agency or User Agency under other laws and local policies. Additionally, "a brief description of how the source documents supports any criteria" was added to provide the designee, and their parent in the event a juvenile is receiving a notice, with as much information as possible about how the criteria were met.

Subdivision (e)(1). This provision was amended to replace "which" with "whom." This amendment is necessary because the Department is referring to a person, not an object.

Subdivision (e)(3). This provision was amended to replace "'returned to sender'" with "undeliverable." This amendment is necessary to capture multiple methods of delivery.

Subdivision (i). This provision was amended to narrow the scope of the exemption for sending a notice of inclusion. This amendment is necessary to align with the language in subdivision (c) of Penal Code section 186.34. The previous language provided that a notice of inclusion should not be sent to an adult if it compromised the health or safety of a juvenile that is designated in the CalGang database; however, the Department believes that this is not the intent of subdivision (c) of Penal Code section 186.34.

Subdivision (i)(1). This provision was nonsubstantively amended for citation consistency, to remove an additional space before "[n]othing in this subdivision," and to change "sections" from plural to singular.

§ 753.8. Information Requests and Verifying the Identity of the Requesting Party.

Subdivision (a)(1). This provision was amended to replace "that" with "who" after "a client." This amendment is necessary because the Department is referring to a person, not an object.

Subdivision (c). This provision was nonsubstantively amended to add a comma after "rather."

§ 754. An Agency's Response to an Information Request.

Subdivision (a). This provision was amended to replace "that" with "who" before "who has been designated." This amendment is necessary because the Department is referring to a person, not an object.

Subdivision (b)(3). This provision was amended to require an Agency that originated a person's designation or added to a person's record in the CalGang database to provide information about any source documents in the possession of the Agency related to that person's inclusion in the CalGang database when sending a response to an information request. This amendment is necessary to be as transparent as possible and to make the person receiving the notice aware of what materials the Agency has to support their designation. Furthermore, the listed details may assist the person in seeking such source documents from the Node Agency or User Agency under other laws and local policies. Additionally, "a brief description of how the source documents supports any criteria" was added to provide the designee, and their parent in the event a juvenile is receiving a notice, with as much information as possible about how the criteria were met.

Subdivision (b)(4). This provision was amended to only require this information to be provided if the Agency originated the person's designation or added to the person's record in the CalGang database. This amendment is necessary because an Agency that is not an Agency that has originated or added to the person's record in the CalGang database, would not have access to this information. This provision was also nonsubstantively amended to remove an additional space after "date(s)."

Subdivision (b)(5). This provision was amended to add "Node Agency or User" before "Agency." This amendment is necessary because an Agency does not have access to the CalGang database unless they are a Node Agency or User Agency.

Subdivision (b)(8). This provision was amended to change "[a] Node Agency or User Agency" to "[a]n Agency." This amendment is necessary because an Agency should be required to provide gang intervention or outreach resources to a person who submitted an information request even if that Agency does not participate in use of the CalGang database.

Subdivision (c). This provision was amended to change "[a]n Agency" to "[a] Node Agency or User Agency." This amendment is necessary because only a Node Agency or User Agency would have access to the documentation supporting the criteria that were satisfied for designation.

Subdivision (d). This provision was amended to narrow the scope of the exemption for responding to an information request. This amendment is necessary to align with the language in subdivision (c) of Penal Code section 186.34. The previous language provided that a response to an information request should not be sent to an adult if it compromised the health or safety of a juvenile that is designated in the CalGang database; however, the Department believes that this is not the intent of subdivision (c) of Penal Code section 186.34.

Subdivision (d)(1). This provision was nonsubstantively amended for citation consistency and to change "sections" from plural to singular.

The Authority and Reference section was nonsubstantively amended for citation consistency and to remove a comma.

§ 754.2. An Agency's Response to a Request for Removal.

Subdivision (b). This provision was amended to narrow the scope of the exemption for responding to a request for removal. This amendment is necessary to align with the language in subdivision (c) of Penal Code section 186.34. The previous language provided that a response to a request for removal should not be sent to an adult if it compromised the health or safety of a juvenile that is designated in the CalGang database; however, the Department believes that this is not the intent of subdivision (c) of Penal Code section 186.34.

Subdivision (b)(1). This provision was nonsubstantively amended for citation consistency.

Subdivision (c). This provision was nonsubstantively amended to change "cover up" to "cover-up." This provision was also amended to remove "and/" before "or." This amendment is necessary because the listed actions would not need to occur simultaneously.

The Authority and Reference section was nonsubstantively amended to remove a comma.

§ 754.4. Retention Period for Adult Records.

Subdivision (a). This provision was amended to remove "up to." This amendment is necessary because other provisions provide for removal of a record before the end of the five-year retention period in Article 10.

Subdivision (b). This provision was amended to change section "752.4" to "752.2." This amendment is necessary because section 752.4 details the criteria and section 752.2 details the requirements for entry.

Subdivision (b)(2). This provision was nonsubstantively amended to change "one year" to "one-year."

§ 754.6. Retention Period for Juvenile Records.

Subdivision (a). This provision was amended to remove "up to." This amendment is necessary because other provisions provide for removal of a record before the end of the five-year retention period in Article 10.

Subdivision (b). This provision was amended to change section "752.4" to "752.2." This amendment is necessary because section 752.4 details the criteria and section 752.2 details the requirements for entry.

Subdivision (b)(2). This provision was nonsubstantively amended to change "one year" to "one-year."

Subdivision (c). This provision was amended to change section "752.4" to "752.2." This amendment is necessary because section 752.4 details the criteria and section 752.2 details the requirements for entry. This provision was also amended to change section "754.2" to "754.4." This amendment is necessary because section 754.4 details the retention period for adult records.

Subdivision (c)(2). This provision was nonsubstantively amended to change "one year" to "one-year."

§ 754.8. Retention Period for Notice of Inclusion.

This paragraph was nonsubstantively amended to add a comma after "186.34." This provision was also amended to change section "753.4" to "753.6." This amendment is necessary because section 753.6 details notifying a person of inclusion in the CalGang database.

§ 755.2. Retention Period for Source Documents.

Subdivision (b)(2). This provision was amended to remove "as the case may be" and the commas surrounding this phrase. This amendment is necessary because this phrase did not add anything to the content of this provision.

§ 755.3. Retention Period for Written Attestations.

Subdivision (a). This provision was added to require a written attestation made pursuant to subdivision (c) of section 752.8 or 753.4 to be maintained for the same period as the record or designated criminal street gang it supports. This provision is necessary so that written attestations are maintained for auditing purposes.

§ 755.4. A Node Agency or User Agency's Discretion to Perform Self-Audits.

Subdivision (d). This provision was amended to add "[a]t least" before "ten calendar days." This amendment is necessary to allow a Node Agency or User Agency to communicate with other Node Agencies or User Agencies more than ten calendar days prior to deleting a record.

§ 755.6. Peer Audits of Records in the CalGang Database.

Subdivision (a). This provision was amended to remove "and/" before "or" before "criteria." This amendment is necessary because both of these items would not need to be out of compliance simultaneously to justify purging. This provision was also amended to change "criteria" to "criterion." This amendment is necessary because multiple criteria to would not need to be out of compliance simultaneously to justify purging. This provision was also nonsubstantively amended to change "Articles" from plural to singular and "and" to "or." Furthermore, this provision was amended to remove the effective date of these regulations. This amendment is necessary so that the effective date does not need to be updated each time these regulations are amended and whenever the Office of Administrative Law approves the rulemaking file.

Subdivision (b). This provision was amended to remove the effective date of these regulations. This amendment is necessary so that the effective date does not need to be updated each time these regulations are amended and whenever the Office of Administrative Law approves the rulemaking file.

Subdivision (b)(2). This provision was amended to add "754.4 or" before "754.6." This amendment is necessary because section 754.4 details the retention periods for adult records and how adult records may be reset.

New Subdivision (b)(2)(A). This provision was added to require that records which have had the retention period reset pursuant to section 754.4 or 754.6 be audited using the requirements set forth in subdivision (c). This addition is necessary because a record that has had the retention period reset satisfied the threshold for entry established by these regulations and therefore should be audited against this higher threshold, not the threshold for entry that existed prior to these regulations becoming effective.

Subdivision (c). This provision was amended to remove the effective date of these regulations. This amendment is necessary so that the effective date does not need to be updated each time these regulations are amended and whenever the Office of Administrative Law approves the rulemaking file.

§ 756.1. Written Attestation by a Node Agency or User Agency.

Subdivision (a). This provision was added to establish that the Department may require a Node Agency or User Agency to review any or all of its entries in the CalGang database and provide a written attestation that the entries are supported by reasonable suspicion as required by Part 23 of Title 28 of Code of Federal Regulations. This provision is necessary to ensure Node Agency and User Agency accountability and accuracy of CalGang database entries. This provision also requires the Node Agency or User Agency to provide the written attestation to the Department within a time frame set by the Department. This requirement is necessary because the Department will establish a reasonable timeframe based on the amount of entries it is requesting to be reviewed.

Subdivision (b). This provision was added to require an annual written attestation from the head of a Node Agency or User Agency that its entries made during the prior 12-month period comply with these regulations. This provision is necessary to ensure Node Agency and User Agency accountability and accuracy of CalGang database entries.

§ 755.8. Audits of Designated Criminal Street Gangs.

This section title was nonsubstantively amended to add a period after the title for consistency.

Subdivision (a). This provision was nonsubstantively amended to remove an additional period.

Subdivision (b)(1). This provision was amended to remove the effective date of these regulations. This amendment is necessary so that the effective date does not need to be updated each time these regulations are amended and whenever the Office of Administrative Law approves the rulemaking file.

Subdivision (b)(2). This provision was amended to remove the effective date of these regulations. This amendment is necessary so that the effective date does not need to be updated each time these regulations are amended and whenever the Office of Administrative Law approves the rulemaking file.

Subdivision (c). This provision was amended to change "a criminal street gang designated in the CalGang database" to "that designated criminal street gang." This amendment is necessary because the Department did not intend for a designated criminal street gang to be purged anytime the specified audit requirements are not satisfied for any criminal street gang; rather, the Department intended for a designated criminal street gang to be purged if the specified audit requirements are not satisfied for that criminal street gang. This provision was also amended to remove "and/" before "or." This amendment is necessary because the listed actions would not need to occur simultaneously.

Subdivision (d). This provision was nonsubstantively amended to change "Articles" from plural to singular and "and" to "or." This provision was also amended to replace "such" with "that," change "gang(s)" from singular to plural, and change "were" to "was." These amendments are necessary because this provision is referring to one criminal street gang. Furthermore, this provision was amended to remove the effective date of these regulations. This amendment is necessary so that the effective date does not need to be updated each time these regulations are amended and whenever the Office of Administrative Law approves the rulemaking file.

§ 756. The Department's Authority to Audit Node Agencies and User Agencies.

Subdivision (a). This provision was nonsubstantively amended to remove the lettering of this subdivision. This provision was also nonsubstantively amended to remove two additional spaces before "A Node Agency or User Agency shall grant." Furthermore, this provision was amended for clarity and reader understanding and to provide a section number for reference.

Article 11. Information Sharing and Reporting Data to the Department

This Article title was nonsubstantively amended to remove an additional space before "Information."

§ 756.2. Information Sharing.

This section title was nonsubstantively amended to remove an additional space before "Information."

Subdivision (a).   This provision was nonsubstantively amended to change "sections" from plural to singular and "and" to "or."

Subdivision (c).   This provision was nonsubstantively amended to remove the comma after "authorities."

The Authority and Reference section was nonsubstantively amended to remove a comma.

§ 756.4. Sharing Information through Printing and Other Mediums.

Subdivision (a). This provision was amended to allow Node Administrators to have printing privileges. This amendment is necessary because of the role of Node Administrators. They have a need to run reports and assist with audits. This provision was also amended to add "export or" before "print." This amendment is necessary because sometimes Users need to run reports which require database information to be exported from the database, but not necessarily printed. Finally, this provision was amended to add an example of a how a User may demonstrate a compelling need. This amendment is necessary so that Users know a common example of a compelling need to export or print database information.

The Authority and Reference section was nonsubstantively amended to remove a comma.

§ 756.6. Annual Reporting of Data to the Department.

Subdivision (a). This provision was amended for clarity and reader understanding. This provision was also amended to reflect that "Node" was intended to mean Node Agencies, the defined term. Furthermore, this provision was amended to require both Node Agencies and User Agencies to report the specified list of information because the Department is required to collect this information pursuant to subdivision (p) of Penal Code section 186.36 and it was not the Department's intent for Node Agencies and User Agencies to opt out of reporting this information to the Department.

Subdivision (a)(1). This provision was amended to incorporate "[t]he zip code, Agency, race, gender, and age associated with any records that meet the following circumstances" into the new subdivision (b) and replace it with "[e]ach instance the Node Agency or User Agency." This amendment is necessary because the previous layout of this list was unclear and did not flow properly.

Subdivisions (a)(1)(A)-(a)(1)(F). These provisions were amended for clarity, reader understanding, and to provide section numbers for reference.

New Subdivision (a)(1)(E). This provision was added to break subdivision (a)(1)(D) into two different sets of data, the actual requests received (subdivision (a)(1)(D)) and the requests for removal granted (subdivision (a)(1)(E)). This amendment is necessary for better flow and reader understanding.

Subdivision (a)(2). This provision was amended to remove "or an out-of-state agency or federal agency with authorized Users." This amendment is necessary because an out-of-state agency or federal agency that has been authorized to use the CalGang database would be considered a User Agency. This provision was also amended to modify the language which requires the name of each agency requesting the proxy query to be reported to the Department. This amendment is necessary for better flow and reader understanding.

Subdivision (b). This provision was added to incorporate the requirement from subdivision (a)(1) into this subdivision. This amendment is necessary for better flow and reader understanding. Furthermore, this language was modified to be more specific.

Subdivision (c) (formerly subdivision (a)(3)). This provision was amended to specify that the information contained in this provision needs to be included with the report described in subdivision (a). This amendment is necessary for clarity and reader understanding.

The Authority and Reference section was nonsubstantively amended to remove a comma.

Article 12. Equipment Security and Inspection and the Reporting of Missing Equipment

This Article title was nonsubstantively amended to add a space between "Security" and "and."

§ 757. Notifying the Node Administrator and the Department of Missing Equipment.

Subdivision (a). This provision was nonsubstantively amended to remove a space before "[a] User Agency."

§ 757.2. System Misuse.

Subdivision (a). This provision was nonsubstantively amended to remove two additional spaces before "[i]nformation."

Subdivision (a)(3). This provision was amended to remove "and/" before "or." This amendment is necessary because these two characteristics would not need to occur simultaneously.

Subdivision (b)(2). This provision was nonsubstantively amended to change "high profile" to "high-profile."

Subdivision (d). This provision was nonsubstantively amended to remove an additional space between "be" and "reported."

§ 757.4. Enforcement of these Regulations.

Subdivision (a). This provision was amended to remove "and/" before "or." This amendment is necessary because these parties would not have to violate the regulations simultaneously for action to be taken. This provision was also nonsubstantively amended for citation consistency.

Subdivision (a)(1)(E). This provision was amended to remove "and/" before "or." This amendment is necessary because the Department could not perform both listed actions at the same time.

New Subdivision (b). This provision is necessary to describe the circumstances that the Department will consider when responding to violations of the regulations. The purpose of this provision is to ensure that the severity and scope of a corrective or additional enforcement action is commensurate with the violation. When determining an appropriate enforcement response, the Department must consider: if the violation was intentional; if the User, User Agency or Node Agency has a past history of violations; if additional training is an adequate response to the violation; and if a person was harmed by the violation.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

On May 20, 2020, the Department gave notice to the public of the addition of documents and information to the rulemaking file. This notice included the addition of the following publication: Gang Member Definitions, Criteria, and Identification: AB 90 Empirical Literature Review Supplement.

This rulemaking proposes criteria for including individuals in the CalGang database, a confidential criminal intelligence tool intended to reduce and prevent gang-related violent crime. Penal Code section 186.36 requires the Department to establish criteria that is, among other things, "consistent with empirical research on gangs and gang membership." (Pen. Code, § 186.36, subd. (*l*)(2).)

In 2018, the Department gathered and reviewed all available empirical research on gang and gang members, and posted on its website the following publication: Gang Membership, Duration and Desistance: Empirical Literature Review (Review). In 2020, the Department supplemented the Review by adding new sources of empirical research. One purpose of the Review was to assist the Department in establishing criteria for law enforcement to use in designating individuals in the CalGang database.

The criteria established by the Department is consistent with the empirical research identified in the Review, and the supplement to the Review.

The Department added the following documents to the rulemaking file after the 45-day public comment period:

- Cal. Dept. of Justice, Executive Summary: Duration between Observation of CalGang Criteria, (Oct. 24, 2019)
- Cal. Dept. of Justice, Executive Summary: CalGang Criteria Hypotheticals, (Oct. 16, 2019)
- Cal. Dept. of Justice, Executive Summary: Number of Criteria Required for Entry into CalGang, (Oct. 24, 2019)
- Gang Member Definitions, Criteria, and Identification: AB 90 Empirical Literature Review Supplement (2020)

All documents listed above were made available to the public pursuant to Government Code 11347.1.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts. These regulations do impose non-reimbursable costs on local law enforcement agencies that choose to use the CalGang database.

The Department has determined that the proposed regulatory actions could result in additional approximate costs to local agencies ranging from $2,013,000 to $2,913,000 in the current State Fiscal Year.

Cost to Any Local Agency or School District Which Must be Reimbursed in Accordance with Government Code Sections 17500 through 17630 (Updated):

None.

Other Nondiscretionary Cost or Savings Imposed on Local Agencies (Updated):

These regulations could result in additional costs to local government to the extent that California law enforcement agencies choose to participate in the CalGang database. However, it is difficult to approximate the potential fiscal effect these proposed changes may have, due to the

fact that participation in the CalGang database is voluntary. The Department has determined that most of the California law enforcement agencies that currently participate in the CalGang database already meet most of the proposed standards and would experience little to no fiscal impact.

California Law Enforcement Agencies that Currently Participate in the CalGang Database

The Department identified two main areas that could potentially result in costs to California law enforcement agencies that choose to participate in the CalGang database (User Agencies): updating and reprinting field interview cards, and training persons who will have access to the CalGang database. These regulations increase the documentation that must be created and maintained by User Agencies. While it is not a requirement set forth in these regulations, some User Agencies may choose to update their field interview cards that are used, for the purposes of the CalGang database, to document interactions with suspected gang member or associates. After conferring with existing User Agencies, the Department determined that updating and reprinting field interview cards would cost a User Agency approximately $13 per booklet.

There are more than 800 law enforcement agencies in California, 140 (or approximately 18%) of which were CalGang User Agencies as of December 5, 2019. According to the 2018 Crime in California report published by the Department, there were 79,113 sworn law enforcement personnel in California in 2018. If the agencies of approximately 25% of those sworn law enforcement personnel update and reprint field interview cards as a result of these regulations, the Department estimates that local agencies could incur a cost of approximately $257,000.

In addition, User Agencies may incur an unknown cost as a result of the list of components that must be included in User training, as outlined in section 751.6 of these regulations. Currently, individuals who require direct access to the CalGang database must undergo training prior to being granted access. The existing training is standardized; however, these regulations add new components that must be incorporated into all training. Expanding the training requirements could result in User Agencies needing to dedicate more work hours to participating in and/or teaching the training if it is conducted by Users of the CalGang database. As the manner in which individuals satisfy the training requirements will differ across User Agencies, it is difficult to estimate the potential cost that expanding the training requirements would pose to each User Agency or the User Agency community as a whole.

As of December 5, 2019, there were approximately 3,000 active CalGang Users, all of whom would need to adhere to the new training requirements. The Department estimates that these requirements could result in as few as two and as many as eight additional hours of training being required of existing active Users. Many of the existing Users are employed at the Detective classification, so the Department is using that as the basis for estimating the cost of additional staff hours. According to the California Employment Development Department, the median salary for a Detective in California was approximately $104,000 annually, or $50 hourly, in 2019 (Retrieved January, 7, 2020, from https://www.labormarketinfo.edd.ca.gov/OccGuides/Detail.aspx?Soccode=333021&Geography= 0604000073). Using this data, the Department estimates that local agencies could incur an approximate cost ranging from $300,000 to $1,200,000.

These regulations require a supervisory review of all related intelligence data and criminal street gang intelligence data before any entry is made in the CalGang database. As noted above, there are more than 800 law enforcement agencies in California, 140 (or approximately 18%) of which were CalGang User Agencies as of December 5, 2019. The Department estimates that these activities would occupy no more than 10% of a designated individual's time. Assuming the responsibility of the supervisory review process would be assigned to a Detective, the Department estimates that a User Agency could incur a cost of approximately $10,400 annually for the performance of the supervisory review process. This would result in local agencies incurring a cost of $1,456,000 annually.

It should be noted that Penal Code section 186.36 requires specified data elements to be included in the annual report published by the Department. The information specified in these regulations is not currently captured in the CalGang database; thus, it was requested from User Agencies in 2017 and 2018. While all User Agencies provided the information, there was no mandate in place for them to do so. As all were able to do so, this requirement of these regulations should not result in additional costs to existing User Agencies.

Existing User Agencies that choose to withdraw from the CalGang database as a result of these regulations would incur non-fiscal impact in the form of decreased access to cross-jurisdictional gang-related intelligence information. The CalGang database is a statewide, low cost, securely networked intelligence database that houses data on suspected members and associates of criminal street gangs, including descriptions, tattoos, vehicles, and field interviews. Withdrawing from the CalGang database would eliminate the easy accessibility of the information housed therein, and require an agency to reach out to each jurisdiction in order to obtain the data.

In summary, the Department estimates that existing User Agencies could incur costs ranging from $2,013,000 to $2,913,000 in order to fully comply with these regulations.

California Law Enforcement Agencies that Do Not Currently Participate in the CalGang Database

It is unknown how many, if any, California law enforcement agencies who do not currently participate would choose to participate in the CalGang database after these proposed regulations are adopted. The Department is assuming that it will receive requests from 10 agencies annually for the purposes of estimating the cost of these regulations.

Such agencies could incur costs as a result of some of the requirements outlined in these regulations, most of which would be related to staff time. For example, agencies that want to begin participating in the CalGang database would be required to designate a point of contact. This individual would be responsible for facilitating training, retrieving source documents, and updating CalGang records, as necessary. The extent of the staff time that would need to be dedicated to this role would depend on the number of individuals who will require direct access to the CalGang database and the records therein, the level of suspected gang activity in the area, and the level of participation in the database, among other factors. The Department estimates

that these activities would occupy no more than 10% of the designated individual's time. Assuming the responsibility would be assigned to a Detective, the Department estimates that a new User Agency could incur a cost of approximately $10,400 annually for the performance of the point-of-contact duties. This would result in local agencies incurring a cost of $104,000 annually.

Pursuant to Penal Code section 186.36, any individual with access to the CalGang database or the records contained therein are required to undergo the comprehensive training. The Department estimates that required training hours could range from four to 16, depending on the method of instruction and length of each component instituted by the Node Administrator. Based on the number of existing User Agencies (140) and active users (3,000), the Department estimates that approximate 21 individuals per new User Agency would need to participate in training. The Department estimates that local agencies could incur approximate costs ranging from $42,000-$168,000 in staff time as a result of attending training.

As noted above, the training is typically provided by Node Agencies; however, the agencies could also choose to work with an outside vendor to provide some specific components of the required training, such as database security or implicit bias. The costs resulting from contracted training would depend on the components being taught, the number of participants, and the length of the class(es), and would vary widely. As such, the Department cannot estimate the potential cost to local agencies.

Pursuant to Penal Code section 186.34, Node Agencies and User Agencies are required to notify an individual prior to designating him/her as a gang member or associate in the CalGang database. It also authorizes an individual to request information from a law enforcement agency as to whether s/he is designated in the CalGang database, requires the agency receiving the request to respond, except as specified, and outlines a process by which an individual can contest his/her designation in the database. While the specific information that must be contained in the designation notifications and information request responses are delineated in sections 753.6, 754, and 754.2 of these regulations, the statute implements the requirements on local agencies. As such, the associated costs are not a result of these regulations. In an effort to alleviate impact to User Agencies, the Department has made every attempt to enact performance standards rather than prescribing actions, as often as possible.

In summary, the Department estimates that local agencies could incur approximate costs ranging from $146,000 to $272,000 annually as a result of new User Agencies being added after enactment of these regulations.

Agencies seeking to become Node Agencies would incur more costs than those that simply want to participate as User Agencies. Section 750.8 of these regulations stipulates the requirements to become a Node Agency, including the ability to provide technical support and pay costs associated with training of Users, designation of staff to manage the Node, and travel expenses for participation in meetings that occur three times per year. Also included in a Node Agency's responsibilities are account management for the User Agencies it services and coordination of any requests for CalGang statistics from external entities.

The Department funds a contract with the vendor responsible for maintenance of the CalGang database, including any systematic changes. As such, technical support services required of Node Agencies is limited to assisting Users in navigation of the database and communicating needs to the Department, the costs of which would be staff time.

Travel expenses for participation in meetings would vary, depending on meeting location. The triannual meetings last three days each, occur in different locations throughout the state, and are attended by Node Administrators or their designees. Taking into account potential airfare, hotel, and per diem costs, the Department estimates that travel costs would average $2,000-$2,500 annually for any new Node Agency.

The Department estimates that each Node Agency could potentially need one-half to one position dedicated to the Node Administrator duties, depending on the size of the Node for which the Node Agency would have oversight responsibilities and the number of User Agencies therein. That individual would be responsible for the technical support, User training, and account management duties identified above. The individual would also be responsible for conducting peer audits as required by these regulations, at each triannual meeting noted above. As there are currently no Node Agencies located in Northern California, the Department estimates that there could be a need for approximately two more Node Agencies. If two new Node Agencies were established and each new Node Agency appointed one Node Administrator at the Detective classification, then the local agencies could incur additional costs of approximately $208,000 annually.

In summary, the Department estimates that local agencies could incur costs totaling approximately $213,000 annually if two new Node Agencies were established after enactment of these regulations.

Cost of Savings to Any State Agency (Updated):

These regulations could result in additional costs to State government, specifically the Department, of approximately $2,188,400 to 2,194,800 in the current State Fiscal Year and ongoing. The Department received an ongoing appropriation and position authority for 11.0 new positions, beginning in the Fiscal Year 2017-2018, in relation to an audit conducted by the California State Audit regarding the CalGang database and Assembly Bill 90 (2017), which requires the CalGang regulations. The appropriation for the current State Fiscal Year was in the amount of $2,284,000. A related regulation pertaining to shared gang databases (OAL file #Z-2019-0430-05) would also impose additional expenditures on state government in the current State Fiscal Year. The total combined costs of the two regulations to state government for new oversight responsibilities include the already appropriated $2,284,000 and $451,500 to $459,500 for three additional positions and travel, as outlined below, for both regulations, 80 percent of which is estimated to pertain to these regulations. This appropriation, based on input from the Department, was designed to enable the Department to address the following areas of responsibility:

- Drafting regulations to establish parameters for usage, data governance, etc.
- Providing administrative support to the technical advisory committee.

- Overseeing the review of the approximately 200,000 individual records in the database at the time.
- Developing marketing materials such as Information Bulletins to increase both agency usage and knowledge and understanding of regulations.
- Developing, implementing, and maintaining training and audits.
- Conducting system User outreach to discuss enhancements and additional features to better meet agency needs.
- Creating and publishing quarterly and annual reports.
- Ensuring implementation of audit recommendations and legislative mandates.
- Building safeguards to protect against entry of incomplete and unverified records, as well as those for which criteria for entry has not been met.
- Ensuring that individuals are notified prior to being designated in the CalGang database.
- Generating relevant CalGang statistics.
- Facilitating coordination between the California Gang Node Advisory Committee, technical advisory committee, and technical and administrative teams within the Department, as well as all associated meetings.

In developing these regulations, the Department has determined that it will need two Associate Governmental Program Analysts (AGPAs) and one Research Data Specialist I (RDS I) in addition to the resources already appropriated. The AGPAs are needed to address the expanded audit and training responsibilities of the Department, as outlined in these regulations. There are currently four positions dedicated to performing the administrative functions outlined above; however, the demand for training has exceeded their capabilities, as has the need to conduct back-end audits of new and existing data within the CalGang database. The RDS II is needed to assist the Department with audit methodology selection, data analysis, visualization, and reporting; conduct empirical research, audits, and data clean-up efforts; interview street gang research scholars; and continue research to inform the Department's decision making deliberations and any future regulations pertaining to the CalGang database.

According to the salary and benefit information provided by California Department of Human Resources, the cost of two AGPAs is approximately $283,000 annually and the cost of one RDS I is approximately $154,000 annually. These estimates are based on the salary and benefits of each position. The Department is currently pursuing a Budget Change Proposal for the necessary positions.

The AGPA positions would participate in the triannual Node meetings, assist with the implementation and maintenance of training and audits, and attend gang-relevant conferences, and as such, there may be additional travel expenses incurred. Travel expenses for participating in meetings and conducting training and audits would vary, depending on location. The triannual meetings last three days each, occur in different locations throughout the state, and are attended by Node Administrators or their designees. The Department estimates that travel for conducting training and/or audits and attending gang-relevant conferences would be necessary eight times per year, take three days each, and occur in different locations throughout the state. Taking into account potential airfare, hotel, and per diem costs, the Department estimates that travel costs would average $7,500-$9,000 annually for each new AGPA position.

The RDS I position would participate in the triannual Node meetings and attend gang-relevant conferences, and as such, there may be additional travel expenses incurred. Travel expenses for participating in meetings and attending conferences would vary, depending on location. The triannual meetings last three days each, occur in different locations throughout the state, and are attended by Node Administrators or their designees. The Department estimates that travel for attending conferences would be necessary two times per year, take three days each, and occur in different locations throughout the state. Taking into account potential airfare, hotel, and per diem costs, the Department estimates that travel costs would average $3,500-$4,500 annually for each new RDS I position.

SUMMARY AND RESPONSE TO COMMENTS

The Department noticed the public on May 10, 2019 of the text of the proposed regulations and Initial Statement of Reasons. In addition to receiving written comments, the Department held two public hearings to receive oral testimony on the proposed regulations. During the first hearing, held in Los Angeles on June 26, 2019, the Department heard testimony from 15 people. Five people gave testimony in the second hearing in Sacramento on June 27, 2019. From May 10, 2019 through June 27, 2019, the Department received a combined total of 66 written and oral comments. Following the end of the comment period and public hearings, the Department received eight untimely comments.

In order to properly manage the volume of public comment, the Department developed a system consisting of a comment/response spreadsheet and comment index to assist with public comment organization. During the interpretive analysis of the public comments, a distinct number was assigned to the summaries of each comment, recommendation, and objection, and entered into the comment/response spreadsheet. Attachment A (86 pages) is a summary of all comments (written and oral) submitted during the 45-day comment period and public hearings as well as the Department's responses. Attachment B is a comment index (5 pages) of the commenters and identifies (by number) the comment(s) made by each person.

The Department noticed the public on July 31, 2019, of modifications to the text of the proposed regulations and an Addendum to the Initial Statement of Reasons. The Department sent a revised notice on August 15, 2019, extending the comment period to August 31, 2019.

During the 30-day comment period, the Department received 51 different comments. Following the end of the comment period, the Department received one untimely comment. Attachment C (74 pages) is a summary of all comments submitted during the 30-day comment period and the Department's responses. Attachment D is a comment index (3 pages) of the commenters and identifies (by number) the comment(s) made by each person.

The Department noticed the public on December 31, 2019, of modifications to the text of the proposed regulations and Second Addendum to Initial Statement of Reasons. The Department sent a revised notice on January 13, 2020, extending the comment period to January 16, 2020.

During the 15-day comment period, the Department received 20 different comments. Following the end of the comment period, the Department received 11 untimely comments. Attachment E (88 pages) is a summary of all comments submitted during the 15-day comment period and the Department's responses. Attachment F is a comment index (2 pages) of the commenters and identifies (by number) the comment(s) made by each person.

The Department noticed the public on May 20, 2020, of modifications to the text of the proposed regulations and Notice of Addition of Documents to the Rulemaking File.

During the second 15-day comment period, the Department received four different comments. Attachment G (29 pages) is a summary of all comments submitted during the second 15-day comment period and the Department's responses. Attachment H is a comment index (1 page) of the commenters and identifies (by number) the comment(s) made by each person.

The Department noticed the public on July 28, 2020, of modifications to the text of the proposed regulations.

During the third 15-day comment period, the Department received 2 different comments. Attachment I (19 pages) is a summary of all comments submitted during the third 15-day comment period and the Department's responses. Attachment J is a comment index (1 page) of the commenters and identifies (by number) the comment(s) made by each person.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

No alternatives were proposed to the Department that would lessen any adverse economic impact on small business.

ALTERNATIVES DETERMINATION

The Department has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which these regulations are proposed, would be as effective as and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Not taking any action was not an alternative considered by the Department because AB 90 requires the Department to promulgate regulations governing CalGang.

NON-DUPLICATION

Some of the regulations may repeat or rephrase in whole or in part a state or federal statute or regulation. This was necessary to satisfy the clarity standard in Government Code section

11349.1, subdivision (a)(3), and to include relevant requirements in regulations without reference to statute for ease of reference.

DOCUMENTS INCORPORATED BY REFERENCE

1. CalGang Gang Audit, Form #CJIS 9005, November 2019

2. CalGang User Agreement, Form #CJIS 9006, November 2019

3. CalGang Proxy Query Agreement, Form #CJIS 9007, November 2019

4. CalGang Misuse Investigation Reporting, Form #CJIS 9008, November 2019

The above forms are incorporated by reference because it would be cumbersome, unduly expensive, or otherwise impractical to publish the forms in the California Code of Regulations. During the rulemaking proceeding, the forms were made available upon request, and were available for viewing on the Department's website.