

CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

CHAPTER 19. RACIAL AND IDENTITY PROFILING ACT OF 2015

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

California's Racial and Identity Profiling Act of 2015 (AB 953) took effect on January 1, 2016. AB 953 enacted multiple provisions to uncover and address the unlawful practice of racial and identity profiling. As an example, AB 953 expanded the definition of racial profiling to include "identity profiling" and specifically provided that the consideration of a person's personal characteristics cannot be a basis for deciding whom to stop or how to treat a stopped person. (Pen. Code, § 13519.4, subd. (e).)

AB 953 requires state and local law enforcement agencies (LEAs), as specified, to annually report data on all stops conducted by their peace officers to the California Attorney General (the "Department of Justice" or "Department") (Gov. Code, § 12525.5, subd. (a)(1)), and further, that the Department "shall issue regulations for the collection and reporting of [this stop] data." (Id. at subd. (e).)

To that end, the Department prepared implementing regulations, which were approved by the Office of Administrative Law on November 7, 2017. These implementing regulations set forth the information required to be reported by officers, definitions of terms, and specific guidance regarding the reporting required under the Government Code section 12525.5, subdivision (b).

The Department has since identified several revisions and additions to AB 953's implementing regulations. These proposed amendments arise from the questions and insight of a variety of stakeholders, including the first groups of LEAs to collect stop data starting in July 2018, other LEAs that are preparing to collect stop data, community members, advocacy groups, and the Racial and Identity Profiling Advisory Board ("the Board"), consisting of stakeholders in law enforcement, civil and human rights, and academia. (Pen. Code, § 13519.4, subds. (j) & (1).)

The Department submits these proposed amendments to existing regulations to provide clarity on stop data collection requirements, improve accuracy and consistency in reporting, and to enhance review and analyses of stop data.

The purpose of each proposed amendment to AB 953 regulations is set forth in Section III below.

BENEFITS ANTICIPATED FROM REGULATORY ACTION

There are many benefits to the proposed amendments. Several amendments streamline the reporting process for officers by clarifying existing reporting obligations that are required by the statute and specified in the regulations. For example, the Department proposes defining terms

referenced in existing regulations or revising existing definitions, such as “custodial settings” to make it easier for officers to understand when they are required to report an interaction with an individual and what types of information they are required to report during the stop or search. As another example, the Department proposes adding examples describing scenarios explaining how an officer would record a particular interaction, which would likewise help officers understand the scope of their reporting obligations.

Other proposed amendments would benefit LEAs, the Board, advocates, academics, the public, and other stakeholders by improving data reporting consistency and, ultimately, data analysis. The Board, in particular, benefits from all of these amendments because they would help it serve its function specified by law, including: “analyz[ing] the data[,]” producing “detailed findings on the past and current status of racial and identity profiling” in California, “mak[ing] policy recommendations for eliminating” profiling, and working with “state and local law enforcement agencies to review and analyze racial and identity profiling policies and practices across geographic areas in California.” (Pen. Code, § 13519.4, subd. (j)(3).)

For example, the Department proposes adding a few new data elements¹ that officers are required to collect for each stop. One such proposed new data element is whether an officer perceived a stopped individual as unhoused. Adding this data element could reveal potential disparities in the demographics of the people stopped by officers, how these persons are treated during stops, and the outcomes of these stops. LEAs, the Board, researchers, and the public can use this and other data to determine why any disparities are occurring.

Other proposals would fill in gaps in the data collection by adding or editing existing data values² that officers can choose from when collecting information on each data element. For example, the Department proposes adding several data values under the Actions Taken by Officer During Stop data element (including whether the officer asked for the person’s supervision status or conducted a pat search), which provides more context to the stop and improves data analysis.

SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION

Throughout the regulations, references to gendered pronouns were amended to the gender-neutral pronouns to comply with Assembly Concurrent Resolution No. 260 (2017-2018 Reg. Sess.)

Article 1. Definitions.

The Department proposes revising existing definitions and adding definitions for new and existing data elements and data values. The purpose of these amendments is to provide clarity and guidance to LEAs and the public regarding the reporting requirements of Government Code section 12525.5 and to ensure the accuracy, uniformity, and consistency in the data reported.

¹ As an example, one data element officers are required to collect for each stop is the Perceived Race or Ethnicity of the Person Stopped. (Cal. Code Regs., tit. 11, § 999.224(a)(4).)

² As examples, “Asian” or “Hispanic/Latino(a)” are data values under the data element, Perceived Race or Ethnicity of the Person Stopped. (*Id.* § 999.224(a)(5).)

1. Section 999.224, subd. (a)(3): Amend the definition of “Custodial Setting”

The Department proposes amending the definition of “Custodial setting” in subdivision (a)(3) to include courtroom or courthouses, in the limited circumstances where a court orders a person remanded to custody. LEAs have sought clarification from the Department as to whether they must report the act of remanding a person into custody pursuant to a judge’s order. Government Code section 12525.5, subdivision (g)(1) provides that “officers in a custodial setting” are not required to report stop data under the Act. This proposed amendment is necessary to make clear that officers enforcing a judicial remand in a court or courthouse constitute “officers in a custodial setting,” excluding them from reporting obligations under Government Code section 12525.5.

2. Section 999.224, subd. (a)(5): Amend the language in the definition of “Perceived Gender of Person Stopped”

The Department proposes amending language within the definition of “Perceived Gender of Person Stopped,” which is an existing data element. As discussed in more detail below in paragraph 10, the Department proposes revising the data values under this data element, from “Male,” “Female,” and “gender-nonconforming” to “Cisgender man/boy,” “Cisgender woman/girl,” and “Nonbinary person,” respectively. Consistent with these proposed revisions to the data values under this data element, the Department proposes revising the data values referenced in the definition for consistency. The Department also proposes capitalizing “Transgender man/boy,” “Transgender woman/girl,” which is referenced in this definition, to be consistent with the capitalization of these data values under the “Perceived Gender of Person Stopped” data element. These proposed revisions are necessary to avoid any confusion when officers are collecting information on this data element.

3. Section 999.224, subd. (a)(new)(10)-(11): Add definitions of “Matched suspect description” and “Matched description of suspect’s vehicle or vehicle observed at the scene of a crime”

The Department proposes adding subdivision (a)(10), which would define “Matched suspect description,” which is an existing secondary data value under the data value “Reasonable suspicion that the person was engaged in criminal activity,” which is under the data element “Reason for Stop.” The Department also proposes adding subdivision (a)(11), which would define “Matched description of suspect’s vehicle or vehicle observed at the scene of a crime” and adding a corresponding secondary data value.

These proposed definitions and the secondary data value are necessary because the existing data value of “Matched suspect description” could account for both the scenario where the stopped person matched the physical description of a suspect or someone at the scene or where the stopped person’s vehicle matched the description of a suspect’s vehicle or a vehicle observed at the scene of a crime. In evaluating submitted stop data, the Department determined that agencies may interpret this data value differently from other agencies, which would prevent “uniform reporting practices across all reporting agencies.” (Gov. Code, § 12525.5, subd. (e).) To ensure the accuracy, consistency, and “uniform reporting practices across all reporting agencies” for data reported, the Department determined that two separate data values were necessary, with corresponding definitions to provide guidance to officers as to which data value they should choose in reporting stop data.

4. Section 999.224, subd. (a)(new)(12): Add definition of “Personally identifying information”

The Department proposes defining “personally identifying information” (PII) as referenced throughout the existing regulations. Existing regulations designate LEAs solely responsible for ensuring that neither PII of the person stopped, nor any other information that is exempt from disclosure, is transmitted to the Department. As described below, the Department proposes adding a requirement that agencies attest that, by transmitting a stop data report to the Department, it has ensured that it has not transmitted to the Department either (1) PII of the person stopped, or (2) any other information that is exempt from disclosure in the data element entitled “Location of Stop,” “Reason for Stop,” and “Basis for Search” open text fields. Consistent with this proposed attestation requirement, the proposed definition of PII is necessary to provide agencies guidance on what types of information would constitute PII that is exempt from disclosure.

Because the Legislature has already defined “personal identifying information” in Penal Code section 530.55, subdivision (b), the Department proposes that PII have the same meaning as set forth in that statutory provision to ensure consistency of the information that LEAs are prohibited to report. The Department has already used this same definition in the context of other regulations. (See, e.g., Cal. Code Regs., tit. 11, § 820.)

The Department further proposes defining PII as including officer’s badge number. The Department determined that defining officer’s badge number as PII is consistent with the requirement that badge number “or other unique identifying information of the peace officer involved” shall not be made available to the public (Gov. Code, § 12525.5, subd. (d)), as well as the current definition of “Unique Identifying Information” in the regulations which “means personally identifying information, the release of which, either alone or in combination with other data reported, is reasonably likely to reveal the identity of the individual officer who collected the stop data information.” (Cal. Code Regs., tit. 11, § 999.224(a)(17).)

5. Section 999.224, subd. (a)(new)(14)-(15): Add definitions of “Probable cause to arrest or search” and “Reasonable suspicion”

The Department proposes adding subdivision (a)(14), which would define “Probable cause to arrest or search.” As described below, the Department proposes adding “Probable cause to arrest or search” as a data value under “Reason for Stop.” The Department also proposes adding subdivision (a)(15), which would define “Reasonable suspicion.” “Reasonable suspicion that the person was engaged in criminal activity” is an existing data value under the data element “Reason for Stop.”

These proposed definitions and data value are necessary because LEAs have reported that the existing data value of “Reasonable suspicion that the person was engaged in criminal activity” does not account for the scenario where an officer already formed probable cause to arrest or search at the time the officer initiated the stop. To ensure the accuracy, consistency, and “uniform reporting practices across all reporting agencies” for data reported, the Department determined that a data value of “Probable cause to arrest or search” was necessary, with the corresponding definitions to provide guidance to officers as to which data value—“Reasonable suspicion that the person was engaged in criminal activity” or “Probable cause to arrest or search”—they should choose in reporting the Reason for Stop. (Gov. Code, § 12525.5, subd. (e).)

6. Section 999.224, subd. (a)(new)(24): Add a definition and examples of “Welfare or Wellness Check/Community Caretaking”

The Department proposes adding subdivision (a)(24), which would define and provide examples of what constitutes “Welfare or Wellness Check/Community Caretaking.” This definition relates to a proposal to add subdivision (a)(13) to Section 999.226, which would add a new data element of “Stop made during the course of performing a welfare check or an officer’s community caretaking function.” The definition is drawn from case law defining welfare checks and community caretaking, which are the non-criminal investigation functions of modern LEAs. (See, e.g., *Cady v. Dombroski* (1973) 413 U.S. 433.)

LEAs have reported that existing data elements and data values do not adequately account for scenarios where an officer stops a person during the course of performing a welfare check or the officer’s community caretaking function. These amendments are thus necessary to provide additional context and to better understand the circumstances under which a stop occurred. These amendments would also enhance the Board’s analyses, and in turn, help it to serve its function of producing “detailed findings on the past and current status of racial and identity profiling.” (Pen. Code, § 13519.4, subd. (j)(3).) Further, this proposed definition and examples provide officers’ guidance on the type of interactions that would constitute a welfare check or community caretaking, which would help to ensure the accuracy, consistency, and “uniform reporting practices across all reporting agencies” for data reported. (Gov. Code, § 12525.5, subd. (e).)

Article 3. Data Elements to be Reported

The Department proposes adding five data elements that officers subject to Government Code section 12525.5 must collect and report to the Department. The purpose of additional data elements is to enable the public, the Board, LEAs, and other stakeholders to analyze the extent to which racial and identity profiling exists in California communities.

The Department also proposes other amendments to this provision, each of which fall under one of the following categories:

- (1) Clarifying the existing obligations of officers when reporting information under certain data elements;
- (2) Revising existing data elements;
- (3) Revising existing data values and adding new data values;
- (4) Clarifying existing reporting obligations and adding new reporting obligations that are triggered when an officer has probable cause to arrest or search a person or when the stopped person is a passenger in a vehicle or is inside of a residence.

The purpose of these proposed amendments is to ensure consistency in the data reported pursuant to Government Code section 12525.5. Specifically, Section 12525.5, subdivision (e) requires these regulations to “specify all data to be reported, and provide standards, definitions, and technical specifications to ensure uniform reporting practices across all reporting agencies.” These proposed amendments serve the additional purpose of ensuring that the information reported is uniform. Without these proposed amendments, agencies may interpret their reporting obligations and specific categories of information differently from other agencies, which would

prevent “uniform reporting practices across all reporting agencies.” (Gov. Code, § 12525.5, subd. (e).)

7. Section 999.226, subd. (a)(new)(2): Add a new data element entitled “Type of Stop” and provide examples

The Department proposes adding a new subdivision (a)(2), which would be a new data element of “Type of Stop” that requires an officer to categorize a stop as a “Vehicular Stop,” “Bicycle Stop,” or a “Pedestrian Stop.” The Department also proposes two examples to provide guidance to officers on the appropriate data value to select in various scenarios.

Existing regulations require officers to report the reason for any stop. Existing regulations provide officers six options to describe the reason for stop, including “Traffic violation,” “Reasonable suspicion that the person was engaged in criminal activity,” and “Consensual encounter resulting in a search.”

The Center for Policing Equity (CPE) has identified best practices on stop data collection, drawn from 13 years of partnering with LEAs nationwide and producing analyses that identify the causes of racial disparities in policing. CPE cautions against “rely[ing] on traffic code violations [as a way] to differentiate vehicle stops from pedestrian stops.” (Center for Policing Equity, Collecting, Analyzing, and Responding to Stop Data: A Guidebook for Law Enforcement Agencies, Government, and Communities (2020) (“CPE Report”) p. 14.) Because not all stops that occur in a vehicle are triggered by a traffic code violation, the Board and other stakeholders cannot use the responses under the “Reason for Stop” data element to differentiate vehicular stops from pedestrian stops. (Id.) CPE advises that it is “essential that stop data differentiate between vehicle and pedestrian stops.” To that end, this proposed data element with three data values of “Vehicular Stop,” “Bicycle Stop,” or a “Pedestrian Stop” are necessary to readily differentiate different types of stops for purposes of analysis. In considering this proposed data element, the Board’s Stop Data Analysis Subcommittee recommended the Department include “Bicycle Stop” as a data value to account for the growing use of bicycles as a primary mode of transportation in some jurisdictions. The proposed new data element would enable the Board to more readily analyze and compare different types of stops, consistent with its function of producing “detailed findings on the past and current status of racial and identity profiling.” (Pen. Code, § 13519.4, subd. (j)(3).) Further, providing examples would help to ensure the accuracy, consistency, and “uniform reporting practices across all reporting agencies” for data reported. (Gov. Code, § 12525.5, subd. (e).)

8. Section 999.225, subd. (a)(new)(3)(C): Revise the description of the existing data element “Duration of Stop,” revising an existing example, and provide an additional example

The Department proposes amending the description, revising an existing example, and providing an additional example, of the existing data element of “Duration of Stop.” Existing regulations describe the duration of a stop as “the approximate length of the stop measured from the time the reporting officer, or any other officer, first detains or, if no initial detention, first searches the stopped person until the time when the person is free to leave or taken into physical custody.” (Cal. Code Regs., tit. 11, § 999.226, subd. (a)(2)(C).) The Department proposes new language that explains that a person is “taken into physical custody” for purposes of this data element when the person is booked. The Department also proposes revising an existing example and providing another example that describes a scenario where the duration of the stop is measured

from the time the officer initiates the stop until the time the stopped person is booked. These examples make clear that the stop does not end at the time the officer placed handcuffs on the stopped person, or some other moment in the interaction, but rather, it ends when the person is booked.

In evaluating submitted stop data and in training LEAs on their reporting obligations, the Department found some officers wanted additional clarification on how to time the start and end of a stop. The Department determined that these proposed amendments are necessary to clarify that, for purposes of measuring the duration of a stop, a person is not taken into physical custody—and the stop does not end—at the time an officer places handcuffs on the person; the stop ends at the time a person is free to leave or is booked. This proposed additional language would guide officers in calculating the duration of a stop and, in turn, would help to ensure the accuracy, consistency, and “uniform reporting practices across all reporting agencies” for data reported. (Gov. Code, § 12525.5, subd. (e).)

9. Section 999.226, subd. (a)(new)(4)(A)(new)4: Permit officers to provide geographic coordinates under existing the data element “Location of Stop”

The Department proposes adding new subdivision (a)(4)(A)4, which would be a new data value under “Location of Stop” that would permit officers to provide geographic coordinates. This proposed amendment is necessary because LEAs have recommended that providing geographic coordinates is more efficient for some agencies and by adding this choice, it may decrease the time spent on completing a stop data entry. Providing geographic coordinates is also necessary because it would also make the coding of stop locations more precise for statistical analysis, and would help prevent officers from inadvertently disclosing the residence of the person stopped, which furthers the directive in Government Code section 12525.5. (Gov. Code, § 12525.5, subd. (d) [“State and local law enforcement agencies shall not report the name, address, social security number, or other unique personal identifying information of persons stopped, searched, or subjected to a property seizure, for purposes of this section.”].)

Moreover, researchers have recommended geographic coordinates as the most accurate means of identifying location. Geographic coordinates also enable researchers to compare stops against the demographic profile for a particular census tract. (See, e.g., Jennifer L. Eberhardt, et al., Data for Change: A Statistical Analysis of Police Stops, Searches, Handcuffings, and Arrests in Oakland, Calif. (“Data for Change Report”), p. 52, fn. 95 (June 20, 2016) [explaining that Stanford research personnel geocoded the addresses of Oakland Police Department stops to perform location-based analysis].)

10. Section 999.226, subd. (a)(new)(4)(B): Permit officers to report an unincorporated area and require the Department to expand an existing list of cities to include unincorporated areas under existing the data element “Location of Stop”

The Department proposes permitting officers to report an unincorporated area as the “Location of Stop.” Relatedly, the Department proposes requiring that it provide a list of unincorporated areas. Existing regulations already require the Department to provide a list of cities; therefore, this proposed requirement would be consistent with existing practices.

LEAs have commented that the regulations do not provide a way to report the location of a stop when officers make stops in unincorporated areas. Thus, these amendments are necessary because permitting officers to report unincorporated areas as the location of stop would help to

ensure the accuracy, consistency, and “uniform reporting practices across all reporting agencies” for data reported. (Gov. Code, § 12525.5, subd. (e).)

11. Section 999.226, subd. (a)(new)(6): Revise the terminology under the existing data element “Perceived Gender of Person Stopped”

The Department proposes revising the data values, and corresponding definitions, under “Perceived Gender of Person Stopped.” Existing regulations require an officer to choose one of five data values: “Male,” “Female,” “Transgender man/boy,” “Transgender woman/girl,” and “Gender nonconforming.”

First, the Department proposes replacing “Male” and “Female” with “Cisgender man/boy” and “Cisgender woman/girl,” respectively. This proposed amendment is necessary to reflect more accurately the gender identity of a person whose gender identity and gender expression aligns with the sex they are assigned at birth. (National LGBTQIA+ Health Education Center, LGBTQIA+ Glossary of Terms for Health Care Teams (2020) p. 10; American Psychological Association, Guidelines for Psychological Practice With Transgender and Gender Nonconforming People. American Psychologist (Vol. 70, No. 9, 2015) p. 861; New York City Municipal Code, Charter and Rules. Title 47 Commission on Human Rights. Chapter 2 Unlawful Discriminatory Practices, Sec. 2-01 Definitions.) The terms “Male” and “Female,” by contrast, implies that the default gender identity is a person whose gender identity and gender expression align with the sex the person is assigned at birth; this implication, in turn, normalizes a gender binary, which does not adequately recognize the wide range of gender identities. (See generally Adam R. Chang, Stephanie M. Wildman, *Gender in/sight: Examining Culture and Constructions of Gender* (2017) 18 Geo. J. Gender & L. 43.) This lack of clarity in the existing data values presents a problem in making comparisons across and between these data elements. For example, the problem with comparing existing data values of “female” and “transgender woman/girl” would be resolved by, and allow for a more accurate comparison, if replaced with “cisgender woman/girl” and “transgender woman/girl.”

Second, the Department also proposes replacing “Gender nonconforming” with “Nonbinary person” to describe a person whose gender identity falls outside of the gender binary structure of woman/girl and man/boy. This proposed amendment is necessary because the existing term “Gender nonconforming” is considered by many people to be outdated. (National LGBTQIA+ Health Education Center, *supra*, p. 10; National Center for Transgender Equality, *Understanding Non-Binary People: How to Be Respectful and Supportive* (2018); National Center for Transgender Equality, *Frequently Asked Questions about Transgender People* (2016).) Furthermore, this proposal is consistent with recent California legislation that recognizes the nonbinary gender identity, permitting residents to amend the gender marker on their birth certificate to nonbinary (Health & Saf. Code, § 103426) and to choose a nonbinary gender marker on their driver’s license (Veh. Code, § 12800, subd. (a)(2)-(3).)

Finally, the Department proposes replacing all references to “he or she” or “his or her” with the singular “they” or “their,” respectively. This amendment is necessary to be consistent with this data element, which recognizes more than two gender identities. Further, this amendment is consistent with the recommendation of various American writing style guides to use the singular “they” and “their” “when referring to a generic person whose gender is unknown or irrelevant to the context.” (See, e.g., American Psychological Association, *Welcome, singular “they”* (Oct. 31, 2019).)

12. Section 999.226, subd. (a)(new)(7): Revise the existing data element “Person Stopped Perceived to be LGBT”

Existing regulations require an officer to provide their perception as to whether or not the stopped person is “LGBT.” Further, whenever an officer chooses either “Transgender man/boy” or “Transgender woman/girl” as the “Perceived Gender” of the person under the “Perceived Gender of the Person Stopped” data element, existing regulations require an officer to select “Yes” in response to the question of whether the stopped person is perceived to be LGBT. (Cal. Code Regs., tit. 11, § 999.226, subd. (a)(5)-(6).) The Department proposes, in place of these two requirements, that an officer provide their perception as to whether the stopped person is “LGB+” or “Straight/Heterosexual.” There are several reasons why this proposed amendment is necessary.

First, it is necessary to require officers to provide their perception of whether a stopped individual is “LGB+” or “Straight/Heterosexual,” instead of the officer’s perception of whether or not the person to be “LGBT,” because there is now a commonly held understanding that gender identity is separate from sexual orientation. (Adam R. Chang, Stephanie M. Wildman, *supra*, p. 54.) Existing regulations conflate the two by (1) asking an officer to provide their perception of whether the stopped individual is “LGBT” and (2) requiring an officer to answer in the affirmative to this data element if the officer perceives the person to be a “Transgender man/boy” or “Transgender woman/girl.”

Second, it is necessary to replace “LGBT” with “LGB+” to account for the wide range of sexual orientations beyond lesbian, gay, and bisexual. (Catalyst, LGBTQ+ Terms to Know . (2019) p. 2 PFLAG, PFLAG National Glossary of Terms (2019) California Rural Legal Assistance, Glossary of Terms for Sexual Orientations and Gender Identities (2019). Third, the addition of the “Straight/Heterosexual” data value is necessary to allow for greater specificity in the reporting of perceived sexual orientation and for comparisons between people perceived to be LGB+ and people perceived to be straight/heterosexual. The comparison of LGB+ and heterosexual categories is in line with contemporary research practices (Kann, L., Olsen, E. O., McManus, T., et al., Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 — United States and Selected Sites, 2015 (Aug. 12, 2016); Poteat, V. P., Scheer, J. R., & Chong, E. S. K, Sexual orientation-based disparities in school and juvenile justice discipline: A multiple group comparison of contributing factors (Journal of Educational Psychology, Vol. 108 No. 2, 2016) p. 229-241; Price-Feeney, M., Ybarra, M. L., Mitchell, K., Health Indicators of Lesbian, Gay, Bisexual, and Other Sexual Minority (LGB+) Youth Living in Rural Communities (The Journal of Pediatrics Vol. 205, 2019) p. 236-243.)

Finally, the inclusion of the word “straight” together with “heterosexual” in the data value would improve understanding. Studies show that “heterosexual” is a less familiar term and including the word “straight” would improve the accuracy of and consistency in the data collected. (Miller, K., Ryan, J. M., Design, Development and Testing of the NHIS Sexual Identity Question. Questionnaire Design Research Laboratory, Office of Research and Methodology, National Center for Health Statistics (2011) pp. 3-4.)

13. Section 999.226, subd. (a)(new)(11): Add a new data element entitled “Person Perceived Stopped Perceived to be Unhoused”

The Department proposes adding new subdivision (a)(11), which would add a new data element of “Person Stopped Perceived to be Unhoused” and to provide explanatory language. This

proposed data element is consistent with Penal Code section 13519.4(d)(4), which recognizes that “[p]edestrians, users of public transportation, and vehicular occupants who have been stopped, searched, interrogated, and subjected to a property seizure by a peace officer for no reason other than . . . housing status,” among other identities and statuses, “are the victims of discriminatory practices.”

Additionally, criminalization of activities associated with people who are unhoused—in the form of policies that prohibit, inter alia, sleeping in public places or in vehicles, loitering, and panhandling—has increased in the last decade, resulting in an increase in interactions between unhoused people and law enforcement. (National Law Center on Homelessness & Poverty, No Safe Place: The Criminalization of Homelessness in U.S. Cities (2019) pp. 7-8, 16-29). Unhoused people in turn have reported harassment by law enforcement (*ibid.* pp. 16-17) as well as widespread confiscation by law enforcement of their property (University of California, Berkeley School of Law, California’s New Vagrancy Laws: The Growing Enactment and Enforcement of Anti-Homeless Laws in the Golden State (June 2016) p. 3) Additionally, because houselessness falls disproportionately on people of color, LGB+ individuals, people with disabilities, and women and families escaping domestic violence, there is concern that interactions with unhoused people may also result in other forms of discrimination or profiling. (National Law Center on Homelessness & Poverty, Violations of the Right to Privacy for Persons Experiencing Homelessness in the United States (May 31, 2017) p. 1) Researchers have also recommended that officers report the housing status of the stopped person. (CPE Report at 55.)

Given the concerns described above and the recommendations of researchers, adding this new data element is necessary so that the Board may more readily track and analyze officer interactions with people perceived as homeless, and in turn, serve its function of producing “detailed findings on the past and current status of racial and identity profiling.” (Pen. Code, § 13519.4, subd. (j)(3)).

14. Section 999.226, subd. (a)(new)(12): Reorder the “Stop Made in Response to a Call for Service” to come before “Reason for Stop”

The Department proposes reordering this data element to come before the “Reason for Stop” data element so that the sequencing of the data elements is consistent with how a stop would unfold. Because a call for service would come before the officer forms the reason for a stop and makes the stop, it would follow logically that the “Stop made in Response to a Call for Service” should come before “Reason for Stop” in the regulations. This regulation is necessary because it streamlines the officer’s process of collecting data on a stop by making the categories of information to be collected follow logically. Adding this clarifying language and additional example would thus help to ensure the accuracy, consistency, and “uniform reporting practices across all reporting agencies” for data reported. (Gov. Code, § 12525.5, subd. (e).)

15. Section 999.226, subd. (a)(new)(13): Add a new data element of “Stop Made During the Course of Performing a Welfare Check or an Officer’s Community Caretaking Function” and provide examples

The Department proposes adding subdivision (a)(13), which would add a new data element of “Stop Made During the Course of Performing a Welfare Check or an Officer’s Community Caretaking Function.” The Department further proposes requiring officers who select this data element to include a description of the nature of the welfare check or community caretaking

function during which the stop arose in the brief explanation under the already existing Reason for Stop narrative field. The Department also proposes three examples to provide guidance to officers on the appropriate data value to select in various scenarios.

LEAs have reported to the Department that existing data elements and data values do not adequately account for scenarios where an officer stops a person during the course of performing a welfare check or the officer's community caretaking function. These amendments are thus necessary to provide additional context and to better understand the circumstances under which a stop occurred. These amendments would also enhance the Board's analyses, and in turn, help it to serve its function of producing "detailed findings on the past and current status of racial and identity profiling." (Pen. Code, § 13519.4, subd. (j)(3).)

16. Section 999.226, subd. (a)(new)(14)(A)2-(new)3: Add a new data value entitled "Probable cause to arrest or search" under the existing data element "Reason for Stop"

The Department proposes adding subdivision (a)(14)(A)3, which would add a new data value of "Probable cause to arrest or search" under "Reason for Stop" to provide officers an option to describe a scenario where an officer formed probable cause to arrest or search at the time the officer initiated the stop. As described above, the Department also proposes defining "Reasonable suspicion" and "Probable cause" in Section 999.224.

This proposed data value, and related proposed definitions, are necessary because LEAs have reported to the Department that the existing data value of "Reasonable suspicion that the person was engaged in criminal activity" does not account for the scenario where an officer formed probable cause to arrest or search at the time the officer initiated the stop. To ensure the accuracy, consistency, and "uniform reporting practices across all reporting agencies" for data reported, (Gov. Code, § 12525.5, subd. (e)), the Department determined that a data value of "Probable cause to arrest or search" and the corresponding definitions were necessary to provide a more precise mechanism for officers to report the data.

Existing regulations include specific reporting obligations when an officer selects "Reasonable suspicion that the person was engaged in criminal activity." In line with the proposal to add "Probable cause to arrest or search" as a data value under "Reason for Stop," the Department proposes applying those same reporting obligations when an officer selects "Probable cause to arrest or search."³ This proposed amendment is necessary to ensure the consistency of the data reported.

17. Section 999.226, subd. (a)(new)(14)(A)2(new)c: Add a new secondary data value entitled "Matched description of suspect's vehicle or observed at the scene of a

³ Those reporting obligations that would apply when a person selects either "Reasonable suspicion that the person was engaged in criminal activity" or the proposed new data value of "Probable cause to arrest or search" would be: 1) require an officer not to select "Reasonable suspicion that the person was engaged in criminal activity" or "Probable cause to arrest or search when a "Traffic violation" is the reason for the stop; 2) require an officer to select all enumerated secondary data values describing the applicable circumstances that gave rise to the officer's reasonable suspicion or probable cause; and 3) require an officer to identify the primary code section and subdivision of the suspected violation that formed the officer's reasonable suspicion or probable cause.

“crime” under the existing data value “Reasonable suspicion that the person was engaged in criminal activity” under the existing data element “Reason for Stop”

The Department proposes adding “Matched description of suspect’s vehicle or vehicle observed at the scene of a crime” as a secondary data value under the data value “Reasonable suspicion that the person was engaged in criminal activity,” and the proposed data value of “Probable cause to arrest or search,” which are both under the data element “Reason for Stop.” Relatedly, and as described above, the Department proposes adding definitions of this proposed secondary data value and the existing secondary data value of “Matched suspect description” in Section 999.224.

This proposed secondary data value and related proposed definitions are necessary because the existing data value of “Matched suspect description” could account for both the scenario where the stopped person matched the physical description of a suspect or someone at the scene or where the stopped person’s vehicle matched the description of a suspect’s vehicle or a vehicle observed at the scene of a crime. In evaluating submitted stop data, the Department determined that agencies may interpret this data value differently from other agencies, which would prevent “uniform reporting practices across all reporting agencies.” (Gov. Code, § 12525.5, subd. (e).)

18. Section 999.226, subd. (a)(new)(14)(A)2(new)d: Revise the secondary data value of “Witness or victim identification of suspect at the scene” under the existing data value “Reasonable suspicion that the person was engaged in criminal activity” and the proposed data value of “Probable cause to arrest or search”

The Department proposes revising the secondary data value of “Witness or victim identification of suspect at the scene” under “Reasonable suspicion that the person engaged in criminal activity” and the proposed “Probable cause to arrest or search,” which are both data values under “Reason for Stop.” Currently, this secondary data value could be interpreted to mean that the stopped person was a witness or victim. This proposed amendment is necessary to make clearer to an officer that they must select this secondary data value when the officer stops a person whom a witness or victim identified as a suspect of a crime. In evaluating submitted stop data, the Department determined that agencies may interpret this data value differently from other agencies, which would prevent “uniform reporting practices across all reporting agencies.” (Gov. Code, § 12525.5, subd. (e).)

19. Section 999.226, subd. (a)(new)(14)(A)2(new)j: Revise the secondary data value of “Other reasonable suspicion of a crime” under the existing data value “Reasonable suspicion that the person was engaged in criminal activity”

In line with the two proposals described above to add “Probable cause to arrest or search” as a data value under “Reason for Stop” and to require an officer to select all enumerated secondary data values describing the applicable circumstances that gave rise to the officer’s reasonable suspicion or probable cause, the Department proposes revising the secondary data value of “Other reasonable suspicion of a crime” to be “Other reasonable suspicion or probable cause that a crime has occurred.” This proposed amendment is necessary to ensure the consistency of the data reported.

20. Section 999.226, subd. (a)(new)(14)(A)(new)4: Add a data value entitled “Probable cause to take into custody under Welfare and Institutions Code section 5150” under the existing data element “Reason for Stop”

The Department proposes adding “Probable cause to take into custody under Welfare and Institutions Code section 5150” as a proposed data value under the data element “Reason for Stop.” This proposed amendment is necessary to give officers an option to describe a scenario where the primary reason for effectuating the stop is that the officer has probable cause at the time of initiating the stop to take a person into custody under Welfare and Institutions Code section 5150.

Currently, when officers initiate a stop for the purposes of taking someone into custody under Welfare and Institutions Code section 5150, they must select “Reasonable suspicion that the person was engaged in criminal activity” as the reason for their stop and from there, select “community caretaking” as the offense code.

However, probable cause to detain under Welfare and Institutions Code section 5150 is different from reasonable suspicion that the person was engaged in criminal activity. (Compare People v. Triplett (1983) 144 Cal.App.3d 283, 287–288 [“To constitute probable cause to detain a person pursuant to section 5150, a state of facts must be known to the peace officer . . . that would lead a person of ordinary care and prudence to believe, or to entertain a strong suspicion, that the person detained is mentally disordered and is a danger to himself or herself or is gravely disabled.”] with People v. Coulombe (2000) 86 Cal.App.4th 52, 56 [The issue is whether the officers can point to specific and articulable facts that give rise to reasonable suspicion of criminal activity. Reasonable suspicion is a less demanding standard than probable cause and is determined in light of the totality of the circumstances.].) Given the different standards for lawful detention for criminal activity and custody under Welfare and Institutions Code section 5150, it is critical to have two separate data values under Reason for Stop. LEAs have likewise provided feedback that the existing data value of “Reasonable suspicion that the person was engaged in criminal activity” does not adequately describe the reason for a stop involving taking someone into custody under Welfare and Institutions Code section 5150. Adding this data value would help to ensure the accuracy, consistency, and “uniform reporting practices across all reporting agencies” for data reported. (Gov. Code, § 12525.5, subd. (e).)

Moreover, by functionally requiring officers to categorize the reason for taking someone into custody under Welfare and Institutions Code section 5150 as the officer having reasonable suspicion the person was engaged in criminal activity, existing regulations inadvertently treat mental health conditions or crises as criminal. Nationally, LEAs have already recognized in their policies that officers should not treat a mental health condition as a crime and that having a mental health condition is not a sufficient reason to stop the person. (See, e.g., Detroit Police Department Policy Manual, Directive 201.5 (2014) [“Mental illness is not a crime and does not, in itself, justify or require police intervention.”]; Albuquerque Police Department General Order SOP 1-4 (2018)[“People with mental disabilities, including people who appear to be homeless, are free to frequent public places without being questioned or searched. Officers may not initiate contact with an individual solely because the individual appears to have a mental disability, or because the person appears to be homeless.”].) Thus, this amendment is necessary to reinforce the notion that a mental health condition or crisis is not criminal and not a sufficient basis on its own to stop a person.

21. Section 999.226, subd. (a)(new)(14)(B): Require officers to describe any welfare check or community caretaking function from which the stop arose.

Consistent with the above proposal to add a new data element entitled “Stop Made During the Course of Performing a Welfare Check or an Officer’s Community Caretaking Function.” The Department further proposes requiring officers who select this new data element to describe the nature of the welfare check or community caretaking function from which the stop arose in the brief explanation officers are required to provide under the Reason for Stop data element. As noted above, this requirement is necessary to provide additional context and to better understand the circumstances under which a stop occurred. This amendment would also enhance the Board’s analyses, and in turn, help it to serve its function of producing “detailed findings on the past and current status of racial and identity profiling.” (Pen. Code, § 13519.4, subd. (j)(3).)

22. Section 999.226, subd. (a)(new)(14)(new)(C)1: Add a new requirement to report when a stopped person is a passenger in a vehicle under the existing data element “Reason for Stop”

The Department proposes adding subdivision (a)(14)(C)1, which would require an officer to make clear when the subject of a stop is a passenger in a vehicle by selecting this new data element. Existing regulations already require an officer to report interactions with a passenger in a vehicle stop if the passenger was observed or suspected of violating the Vehicle Code or any other law or ordinance, or if the officer takes any actions enumerated in Actions Taken By Officer During Stop (excluding “Vehicle impounded” and “None”). (Cal. Code Regs., tit. 11, § 999.226, subd. (b).) This new requirement does not change the circumstances of when an officer must collect data regarding a stopped passenger. It would now only make clear in the stop data report that the person who was stopped is a passenger in a vehicle. In evaluating submitted stop data, the Department determined that this proposed amendment is necessary so that the Board may more readily track and analyze officer interactions with passengers, and in turn, serve its function of producing “detailed findings on the past and current status of racial and identity profiling.” (Pen. Code, § 13519.4, subd. (j)(3).).

23. Section 999.226, subd. (a)(new)(14)(new)(C)2: Add a new requirement to report when a person is stopped inside of a residence under the existing data element “Reason for Stop”

The Department proposes adding subdivision (a)(14)(C)2, which would require an officer to indicate under the “Reason for Stop” data element that the person was stopped inside a residence where an officer is executing a warrant naming another person, conducting a search pursuant to a condition of another person’s parole, probation, post release community supervision, or mandatory supervision, or conducting a compliance check on another person under home detention or house arrest.

Existing regulations already require an officer to report interactions with a person inside of a residence when the officer is executing a warrant naming another person, conducting a search pursuant to a condition of another person’s state or county supervision, or conducting a compliance check on another person under home detention or house arrest. (Cal. Code Regs., tit. 11, § 999.227, subd. (d)(2)-(3).) This new data element does not change those reporting requirements. It would now make clear in the stop data report that the subject of the stop data entry is inside of a residence when the officer is executing a warrant naming another person, conducting a search pursuant to a condition of another person’s state or county supervision, or conducting a compliance check on another person under home detention or house arrest.

In evaluating submitted stop data, the Department determined that this proposed amendment is necessary so that the Board may more readily track and analyze officer interactions with people inside of residences, and in turn, serve its function of producing “detailed findings on the past and current status of racial and identity profiling.” (Pen. Code, § 13519.4, subd. (j) (3).) Further, this proposed new requirement would help to ensure consistency of stop data.

24. Section 999.226, subd. (a)(new)(15): Clarify reporting obligations and provide an example under the existing data element “Actions Taken by Officer During Stop”

The Department proposes clarifying the reporting obligations under “Actions Taken by Officer During Stop” and providing an example of this data element. Specifically, the Department proposes adding language that explains that all actions taken during the entire duration of the stop, as defined under the new proposed definition of “Duration of Stop” (see above), should be reported. Relatedly, the Department proposes providing an example that makes clear that an officer must report all actions taken from the time the stop is initiated until the person is booked (that is, at the end of the stop) or when the person is free to leave.

In evaluating submitted stop data, the Department determined that the above proposed additional language and the corresponding example is necessary to clarify that officers must report all actions taken until the stopped person was free to leave or is booked. These proposals remove any ambiguity as to whether actions taken after a person is handcuffed, such as any use of force, but prior to the end of the stop must be reported. Adding this clarifying language and additional example would help to ensure the accuracy, consistency, and “uniform reporting practices across all reporting agencies” for data reported. (Gov. Code, § 12525.5, subd. (e).)

25. Section 999.226, subd. (a)(new)(15)(new)(B)7 and (new)9: Amend the existing data value “Canine removed from vehicle or used to search” and add an additional data value under the existing data element “Actions Taken by Officer During Stop”

26. Section 999.226, subd. (a)(new)(15)(new)(B)8: Amend and reorder the existing data value “Canine bit or held person.”

The Department proposes revising the existing data value of “Canine removed from vehicle or used to search” by separating it out into two data values: (1) “Peace officer’s canine deployed for purposes of apprehending stopped person” and (2) “Peace officer’s canine used to search for, locate, and/or detect contraband.” These two data values reflect two, distinguishable actions with different implications. Consistent with this revision, the Department proposes reordering the existing data value of “Canine bit or held person” to follow the data value of “Peace officer’s canine deployed for purposes of apprehending stopped person.” Reordering this data value and grouping it next to the other data values related to canine use is necessary so that the data values flow more logically. In evaluating submitted stop data, the Department determined that these proposed amendments are necessary so that the Board may more readily track and analyze stops involving the different uses of a canine, and in turn, serve its function of producing “detailed findings on the past and current status of racial and identity profiling.” (Pen. Code, § 13519.4, subd. (j)(3).) The Department also proposes specifying that the canine referenced in these data values is the “peace officer’s canine,” and not some other canine, such as the stopped person’s canine. These two different data values and the revision to specify that these data values refer to the peace officer’s canine are necessary to ensure the accuracy, consistency, and “uniform reporting practices across all reporting agencies” for data reported. (Gov. Code, § 12525.5, subd. (e).)

27. Section 999.226, subd. (a)(new)(15)(new)(B)(new)12-(new)13: Add a new data value entitled “Electronic control device pointed at person or sparked” and provide an example for the data value of “Electronic control device used” under the existing data element “Actions Taken by Officer During Stop”

The Department proposes adding subdivision (a)(15)(B)12, which would add a data value of “Electronic control device pointed at a person or sparked” and to clarify that “using” an electronic control device” for purposes of the existing data value “Electronic control device used” means to deploy it. In evaluating submitted stop data, the Department determined that officers could interpret the existing data value “Electronic control device used” as encompassing a number of actions, including pointing an electronic control device, sparking it, and deploying it. However, pointing or sparking an electronic control device is distinguishable from deploying it and each action has different connotations, depending on the circumstances. Given this, the proposed amendments of adding a data value of “Electronic control device pointed at a person or sparked” and revising the existing data value of “Electronic control device used” are necessary so that the Board may more readily track and analyze stops involving the different uses of an electronic control device, and in turn, serve its function of producing “detailed findings on the past and current status of racial and identity profiling.” (Pen. Code, § 13519.4, subd. (j)(3).) Further, two different data values would help to ensure the accuracy, consistency, and “uniform reporting practices across all reporting agencies” for data reported. (Gov. Code, § 12525.5, subd. (e).)

Finally, adding a data value of “Electronic control device pointed at person or sparked” is consistent with the existing data value of “Firearm pointed at person.” Because a person may perceive the act of pointing a weapon, whether lethal or less lethal, as a use of force, it is valuable for the Board to track and analyze officers’ decisions to use an electronic control device.

28. Section 999.226, subd. (a)(new)(15)(new)(B)(new)14: Add a new data value entitled “Impact projectile weapon pointed at person” under the existing data element “Actions Taken by Officer During Stop”

The Department proposes adding subdivision (a)(15)(B)14 which would add a new data value of “Impact projectile weapon pointed at person” under “Actions Taken by Officer During Stop.” Adding this data value is consistent with the existing data value of “Firearm pointed at person” and the proposed additional data value of “Electronic control device pointed at person or sparked,” as described above. Because a person may perceive the act of pointing a weapon, whether lethal or less lethal, as a use of force, this proposed amendment is necessary for the Board to track and analyze officers’ decisions to point an impact projectile weapon and in turn, serve its function of producing “detailed findings on the past and current status of racial and identity profiling.” (Pen. Code, § 13519.4, subd. (j)(3).)

29. Section 999.226, subd. (a)(new)(15)(new)(B)(new)16 and 17: Amend the existing data value “Baton or other impact weapon used” under the existing data element “Actions Taken by Officer During Stop”

The Department proposes revising the existing data value of “Baton or other impact weapon used” under the data element “Actions Taken by Officer During Stop” by separating it out into two data values: (1) “Baton or other impact weapon drawn” and (2) “Baton or other impact

weapon used to strike or prod.” The existing data value does not differentiate between different uses of an impact weapon.

Adding a data value for the act of drawing a baton is consistent with the existing data value of “Firearm pointed at person” and the proposed additional data value of “Electronic control device pointed at person or sparked,” as described above. Because a person may perceive the act of drawing a weapon, whether lethal or less lethal, as a use of force, this proposed amendment is necessary for the Board to track and analyze officers’ decisions to draw a baton and in turn, serve its function of producing “detailed findings on the past and current status of racial and identity profiling.” (Pen. Code, § 13519.4, subd. (j)(3).)

30. Section 999.226, subd. (a)(new)(15)(new)(B)(new)19: Remove “carotid restraints” from the “Other physical or vehicle contact” data value under the existing data element “Actions Taken by Officer During Stop”

The Department proposes deleting “carotid restraints” as an example of what constitutes “Other physical or vehicle contact,” which is an existing data value under “Actions Taken By Officer During Stop.” This proposed removal is consistent with Assembly Bill 1196 (2019-2020 Reg. Sess.), which was recently signed into law. AB 1196 added section 7286.5 to the Government Code, which prohibits LEAs from authorizing carotid restraints and choke holds. Deleting “carotid restraints” as an example of what constitutes “Other physical or vehicle contact,” is necessary to remove any ambiguity as to whether carotid restraints is a lawful use of force under California law.

31. Section 999.226, subd. (a)(new)(15)(new)(B)(new)21: Add a new data value entitled “Asked whether the person is on parole, probation, PRCS, or some other form of mandatory supervision” under the existing data element “Actions Taken by Officer During Stop”

The Department proposes adding subdivision (a)(15)(B)21, which would add a data value of “Asked whether the person is on parole, probation, PRCS, or some other form of mandatory supervision.” This proposed amendment is necessary so the Board may more readily track and analyze whether any characteristics of the stopped person, such as perceived race or gender, informs an officer’s decision to ask about their supervision status. In turn, the Board would be able to review and analyze whether any characteristics of the stopped person, such as perceived race or gender, informs an officer’s decision to search the stopped person, given that a waiver of Fourth Amendment protections against unwarranted searches and seizures is a standard term of supervision. These analyses would in turn enable the Board to serve its function of producing “detailed findings on the past and current status of racial and identity profiling.” (Pen. Code, § 13519.4, subd. (j)(3).)

32. Section 999.226, subd. (a)(new)(15)(new)(B)(new)23 and 24: Add a new data value entitled “Terry v. Ohio frisk/pat search of the person’s outer clothing was conducted” under the existing data element “Actions Taken by Officer During Stop”

The Department proposes adding subdivision (a)(15)(B)23, which would add a data value of “Terry v. Ohio frisk/pat search of the person’s outer clothing was conducted.” Existing regulations permit an officer to select “Search of person was conducted” under the Actions Taken By Officer During Stop data element. “Search of person was conducted” accounts for

both the act of conducting a full search of the stopped individual’s person and the act of conducting a pat search/frisk of the stopped individual’s outer clothing for weapons. Members of the Board’s Stop Data Analysis Subcommittee recommended that the Department propose an additional data value that accounts specifically for a Terry frisk/pat search. The Department further proposes adding explanatory language for the data value of “Search of person was conducted” as well as examples under both “Terry v. Ohio frisk/pat search of the person’s outer clothing was conducted” and “Search of person was conducted” to provide guidance to officers about when they select either data value, or when they would select both.

This proposed data value is necessary to provide an option for officers to accurately describe their search decisions, which would, in turn, help to ensure the accuracy, consistency, and “uniform reporting practices across all reporting agencies” for data reported. (Gov. Code, § 12525.5, subd. (e).)

This proposed data value also enables the Board to more readily track and analyze whether any characteristics of the stopped person, such as perceived race or gender, informs an officer’s decision to exercise their discretion specifically to conduct a Terry v. Ohio frisk/pat search. These analyses would in turn enable the Board to serve its function of producing “detailed findings on the past and current status of racial and identity profiling.” (Pen. Code, § 13519.4, subd. (j)(3).)

33. Section 999.226, subd. (a)(new)(15)(new)(B)(new)29-30: Add new data values entitled “Ran name of stopped person’s passenger (e.g., either using patrol car computer or through a request to dispatch) and “Asked for identification of stopped person’s passenger” under the existing data element “Actions Taken by Officer During Stop”

The Department proposes adding subdivision (a)(15)(B)29-30, which would add two data values of “Ran name of stopped person’s passenger (e.g., either using patrol car computer or through a request to dispatch)” and “Asked for identification of stopped person’s passenger” under “Actions Taken by Officer During Stop.” More specifically, the Department proposes that an officer select these data values when these actions are taken towards a passenger in the stopped person’s vehicle. The proposed language would also note that an officer must only select this data value in the stop data entry for the stopped person (and not the stop data entry of the passenger, if any).

These amendments are necessary so that the Board may more readily track and analyze officer interactions with passengers, which may reveal patterns that illuminate whether or not racial or identity profiling of either drivers or passengers has occurred. More specifically, the Board may wish to review and analyze whether any characteristics of the driver, such as perceived race or gender, informs an officer’s interactions, if any, with the stopped driver’s passengers. These analyses would in turn enable the Board to serve its function of producing “detailed findings on the past and current status of racial and identity profiling.” (Pen. Code, § 13519.4, subd. (j)(3).)

34. Section 999.226, subd. (a)(new)(15)(new)(C)1a: Add secondary data values under the existing data value under the existing data element of “Basis for Search”

35. Section 999.226, subd. (a)(new)(15)(new)(C)2b: Add explanatory language and an example for the brief explanation for the basis for search

The Department proposes adding new language to subdivision (a)(15)(C)1a, which would add three secondary data values under the existing data value of “Consent given” under the existing data element of “Basis for Search”: (i) “Verbal,” (ii), “Written,” and (iii) Implied by conduct.” The Department also proposes adding subdivision (a)(15)(C)2b which would provide another example of the type of narrative an officer must provide to describe the basis for their search. This example focuses on a stop where consent to search was implied by the stopped person’s conduct and notes that the officer must provide the specific behavior of the person that gives rise to the reasonable interpretation that the person consented to a search. (See People v.

Guyette (1964) 231 Cal.App.2d 460, 465 [consent can be indicated by actions].) The Department also proposes adding explanatory language explaining to officers that, when a consent search is conducted, they must describe in the “Basis for Search” narrative field the conduct of the stopped person which the officer reasonably interpreted as consent.

Existing regulations require an officer to provide the basis for their search, with “Consent given” as an option. In evaluating submitted stop data and after consulting with a social psychologist with expertise and research interest in racial profiling, stereotyping, and prejudice, the Department determined that additional information describing the basis for consent would benefit the Board in contextualizing the stop and the officer’s actions.

These amendments are necessary so that the Board may review and analyze the types of scenarios where certain types of consent are given and whether any characteristics of the stopped person, such as perceived race or gender, informs the type of consent the officer perceives was given. In the context of implied conduct consent searches, the requirement to provide a narrative may provide additional context and information as to whether there are patterns of conduct that officers interpret as implying consent. These analyses would in turn enable the Board to serve its function of producing “detailed findings on the past and current status of racial and identity profiling.” (Pen. Code, § 13519.4, subd. (j)(3).)

36. Section 999.226, subd. (a)(new)(16)(I): Revise the data value of “Contacted parent/legal guardian or other person responsible for the minor” under the existing data element “Result of Stop”

The Department proposes revising the data value of “Contacted parent/legal guardian or other person responsible for the minor” to “Contacted parent/legal guardian or other person legally responsible for the person.” In evaluating the existing text of the regulations and after consulting with a social psychologist with expertise and research interest in racial profiling, stereotyping, and prejudice, the Department determined that the existing data value does not account for scenarios where an officer may contact the guardian or legal guardian of a stopped individual who is an adult. This amendment is necessary to provide an option for officers to accurately describe the action of contacting a person legally responsible for a stopped adult person, which would, in turn, help to ensure the accuracy, consistency, and “uniform reporting practices across all reporting agencies” for data reported. (Gov. Code, § 12525.5, subd. (e).)

37. Section 999.226, subd. (a)(new)(17): Revise the data element of Officer’s Identification Number

The Department proposes revising reporting agencies’ obligations concerning officers’ permanent identification number. Existing regulations require each stop to include the officer’s Officer’s Identification (I.D.) Number, which is a “permanent identification number assigned by the reporting agency to the reporting officer.” (Cal. Code Regs., tit. 11, § 999.226(a)(14).) The

Department proposes requiring reporting agencies not to assign a reporting officer a new Officer's I.D. Number under any circumstances. The Department further proposes prohibiting reporting agencies, in the event that an officer leaves the agency, from reassigning that Officer's I.D. Number to another officer. These amendments are necessary because agencies have expressed to the Department that the regulations do not provide guidance as to whether they are permitted to assign a new identification number to an officer when that officer's status changes (such as, when an officer changes from active duty status to reserve status). These amendments are further necessary because changes in assignments of Officer's I.D. Numbers will skew analyses of stop data of a reporting agency. Thus, these amendments would, in turn, help to ensure the accuracy, consistency, and "uniform reporting practices across all reporting agencies" for data reported. (Gov. Code, § 12525.5, subd. (e).)

38. Section 999.226, subd. (a)(new)(19)(new)(J): Add a new data value entitled "Off duty and/or working private event" under the existing data element "Type of Assignment of Officer"

The Department proposes adding a data value of "Off duty and/or working private event" under "Type of Assignment of Officer." Government Code section 12525.5 does not limit reporting obligations to on-duty officers but existing regulations do not provide an option under the data element "Type of Assignment of Officer" for an officer to report a stop conducted while they were off-duty. Given this, providing officers an option to select "Off Duty" when they make reportable stops while off duty is necessary to ensure the accuracy, consistency, and "uniform reporting practices across all reporting agencies" for data reported. (Gov. Code, § 12525.5, subd. (e).) This amendment is necessary so that the Board may more readily track and analyze officer interactions when off-duty and the types of stops, actions taken, among other characteristics, that may be impacted by officers' off-duty status. These analyses would in turn enable the Board to serve its function of producing "detailed findings on the past and current status of racial and identity profiling." (Pen. Code, § 13519.4, subd. (j)(3).)

39. Section 999.226, subd. (a)(new)(19)(new)(K): Revise existing data value entitled "Other" under the existing data element "Type of Assignment of Officer"

The Department proposes revising the existing data value of "Other" under "Type of Assignment of Officer" to be "Contracted by another law enforcement agency or other." At least some agencies, such as the Cal Expo Police Department, contract with officers from other law enforcement agencies to work for their agency. Existing regulations do not provide an option under the data element "Type of Assignment of Officer" for an officer to report a stop conducted while they were contracted by another law enforcement agency. Given this, providing officers a data value option when they make reportable stops while they are contracted to work with another agency is necessary to ensure the accuracy, consistency, and "uniform reporting practices across all reporting agencies" for data reported. (Gov. Code, § 12525.5, subd. (e).) This amendment is necessary so that the Board may more readily track and analyze officer interactions when they are contracted by another law enforcement agency and the types of stops, actions taken, among other characteristics, that may be impacted by officers' work at another agency. These analyses would in turn enable the Board to serve its function of producing "detailed findings on the past and current status of racial and identity profiling." (Pen. Code, § 13519.4, subd. (j)(3).)

- 40. Section 999.226, subd. (a)(new)(20): Add a new data element entitled “Race or Ethnicity of Officer”**
- 41. Section 999.226, subd. (a)(new)(21): Add a new data element entitled “Gender of Officer”**

The Department proposes adding subdivision (a)(20), which would add a data element of “Race or Ethnicity of Officer.” The Department also proposes adding subdivision (a)(21), which would add a data element of “Gender of Officer.”

Researchers have observed that the gender and the race of officers impact the frequency and outcome of stops, and the actions taken during those stops. (See Data for Change Report at pp. 158-177.) Given this, researchers recommend officers report their gender and race, among other characteristics of the officer, to “analyze the decision making of particular officers.” (CPE Report at 15; see also Jennifer L. Eberhardt, et al., Strategies for Change: Research Initiatives and Recommendations to Improve Police-Community Relations in Oakland, Calif. (2016) at p. 45.)

Given these researchers’ recommendations, these amendments are necessary to enable the Board to determine whether there is a link between officer’s race and/or gender and (1) racial and identity profiling and/or (2) the decision making of the officer. These amendments would thus enable the Board to serve its function of producing “detailed findings on the past and current status of racial and identity profiling.” (Pen. Code, § 13519.4, subd. (j)(3)).

Article 4. Reporting Requirements

The Department proposes clarifying existing and adding new reporting obligations that are triggered for only certain stops, such as when an officer searches someone during the course of executing a search warrant inside of a residence. These types of stops take place in settings that differ from the general reporting requirements of this chapter due to differing applicable legal standards in some settings, practical considerations, and because the regulations seek to ensure that data collection and reporting is consistent with the Legislature’s intent and goals in enacting RIPA. The purpose of amendments to this provision is to provide clarity to officers regarding their reporting obligations under Government Code section 12525.5.

- 42. Section 999.227, subd. (a)(4): Require an officer from a reporting agency to report if the officer is involved in a stop, where the primary agency involved in effectuating the stop is not subject to reporting requirements and provide example**

Existing regulations require an officer working under an agency subject to reporting requirements to report a stop done in conjunction with an agency that is not subject to reporting requirements, even if the non-reporting agency is the primary agency responsible for the stop. (Cal. Code Regs., tit. 11, § 999.227, subd. (a)(4).) The Department proposes requiring an officer, under this scenario, to report that the officer works for the non-primary agency. The Department further proposes adding an example to clarify the officer’s reporting obligation.

These amendments are necessary because LEAs have reported to the Department that reporting that the officer did not work with the primary agency provides context to the stop, and the actions taken during and outcome of that stop. Further, these amendments are necessary because stops primarily effectuated by a non-reporting agency could skew the stop data of a reporting agency and impact an analysis of whether or not racial or identity profiling has occurred within the reporting agency. Thus, these amendments ensure the accuracy, consistency, and “uniform

reporting practices across all reporting agencies” for data reported. (Gov. Code, § 12525.5, subd. (e).)

43. Section 999.227, subd. (d)(1)(new)(E): Add a transit sweep as a type of peace officer interaction that is reportable if the person is detained based upon individualized suspicion or personal characteristics and/or the officer takes specified actions or if the person is detained

The Department proposes adding transit sweeps as a type of uniform search for which an officer need not report stop data unless the person is detained based upon individualized suspicion or personal characteristics and/or the officer takes additional specified actions. As with other programmatic searches and seizures already enumerated in subdivision (d)(1), this amendment is necessary for several reasons. First, if officers were required to report transit sweeps under all circumstances, the Department would be inundated with information that does not further the purpose of the Racial and Identity Profiling Act and effectively obscure the utility of the data. Second, the officer’s actions in transit sweeps, like with other programmatic searches and seizures, are less likely to result from racial and identity bias. Third, data collection of all transit sweeps would present significant practical challenges for LEAs.

44. Section 999.227, subd. (d)(new)(2): Expand the list of specified actions taken during the course of mass detentions and programmatic searches and seizures that would trigger the obligation to report

Section 999.227(d)(1) does not require an officer to report certain mass detentions and programmatic searches and seizures, unless the officer stopped a person based on individualized suspicion or the person’s personal characteristics and/or if the officer took certain additional specified actions.

The Department proposes adding subdivision (d)(2), which would require an officer to report any mass detention or programmatic search or seizure, not already enumerated in subdivision (d)(1), if the officer takes certain actions not based on any individualized suspicion or personal characteristics of the stopped persons. The actions that would trigger an obligation to report are: “Asked for consent to search person,” “Search of person was conducted,” and/or “Search of property was conducted.” This amendment is necessary because the Department received feedback from LEAs, asking for clarification as to whether various programmatic searches or seizures not listed in subdivision (d)(1)—such as the stopping and searching of every vehicle in a parking lot where a child has disappeared—would trigger an obligation to report. The Department determined that, to balance the need for information that would further the purpose of the Racial and Identity Profiling Act with the need to streamline officers’ reporting requirements, this catch-all amendment for all other programmatic searches and seizures would be necessary to track and analyze only certain actions that went beyond the normal scope of the mass detentions and programmatic searches and seizures.

45. Section 999.227, subd. (d)(new)(3): Clarify that the limited reporting requirement applies to certain interactions with people inside a residence during the course of executing both arrest warrants and search warrants

Existing regulations require an officer to report, under limited circumstances, interactions that take place inside of a residence during the course of executing a warrant with “persons in the home who are not the subject of the warrant or search condition.” (Cal. Code Regs., tit. 11,

§ 999.227(d)(2).) The Department proposes adding language clarifying that this limited reporting requirement applies to interactions during the course of executing both arrest warrants and search warrants. This amendment is necessary because the Department evaluated the existing text and determined that the text did not make clear that all warrants would trigger an obligation to report interactions with persons not subject to the warrant. This amendment would thus ensure the accuracy, consistency, and “uniform reporting practices across all reporting agencies” for data reported. (Gov. Code, § 12525.5, subd. (e).)

46. Section 999.227, subd. (d)(new)(3)-(4): Clarify that an officer must report any interactions with a person who is the subject of an arrest or search warrant, search condition, house arrest, or home detention when the interactions took place outside of the person’s residence

Existing regulations do not require an officer to report interactions that take place with a person inside their residence during the course of executing a search or arrest warrant against the person, conducting a search pursuant to a condition of the person’s supervision, or conducting a compliance check on the person on house arrest or home detention. The Department proposes clarifying that interactions that take place outside the person’s residence should be reported, even if the initial reason for the officer’s visit to the residence was to execute a search or arrest warrant, conduct a search pursuant to a supervision condition, or conduct a compliance check on person on house arrest or home detention. The Department has added an example in subdivision (d)(3) to provide additional guidance. These amendments are necessary because the Department evaluated the existing text and determined that the text did not make clear that interactions outside of the residence trigger the obligation to report. Clarifying officers’ reporting obligations under these circumstances would help to ensure the accuracy, consistency, and “uniform reporting practices across all reporting agencies” for data reported. (Gov. Code, § 12525.5, subd. (e).)

47. Section 999.227, subd. (d)(new)(3)-(4): Expand the limited reporting requirement that applies to certain interactions with people inside a residence by requiring an officer to report when the officer points an electronic control device or impact projectile weapon

Existing regulations do not require an officer to report interactions that take place with a person inside their residence during the course of executing a search or arrest warrant against the person, conducting a search pursuant to a condition of the person’s supervision, or conducting a compliance check on the person on house arrest or home detention. Existing regulations, however, require an officer to report interactions with any person who is not a subject of the warrant, supervision condition, or house arrest/detention in the scenarios described above, if the officer takes certain, enumerated actions, including pointing a firearm at a person. The Department proposes expanding the list of enumerated actions that would trigger the obligation to report to include pointing an electronic control device or impact projectile weapon.

This amendment is necessary to be consistent with the existing requirement to report the pointing of a firearm at a person inside of a residence under the circumstances described above. Because community members may perceive the act of an officer pointing a weapon, whether lethal or less lethal, as a use of force, it is valuable for the Department and other stakeholders to track and analyze these actions to determine whether or not racial or identity profiling has occurred. This

amendment would thus enable the Board to serve its function of producing “detailed findings on the past and current status of racial and identity profiling.” (Pen. Code, § 13519.4, subd. (j) (3).).

48. Section 999.227, subd. (d)(new)(3)-(4): Provide examples of the limited reporting requirement that applies to certain interactions with people inside a residence

The Department proposes providing examples of scenarios that fall under the limited reporting requirement applying to interactions that take place with people in a residence during the course of executing a search or arrest warrant, conducting a search pursuant to a supervision condition, or conducting a compliance check on a person on house arrest or home detention. These amendments are necessary to provide officers guidance on what circumstances trigger the limited reporting requirement. Clarifying officers’ reporting obligations would help to ensure the accuracy, consistency, and “uniform reporting practices across all reporting agencies” for data reported. (Gov. Code, § 12525.5, subd. (e).)

Article 5. Technical Specifications and Uniform Reporting Practices

49. Section 999.228, subd. (c): Require reporting agencies to report that no stops were conducted when their officers have not conducted any stops in the preceding calendar year.

The Department proposes requiring reporting agencies to report to the Department when their officers have not conducted any stops in the preceding calendar year. Government Code section 12525.5, subdivision (a) requires “[e]ach state and local agency that employs peace officers” to “annually report to the Attorney General data on all stops conducted by that agency’s peace officers for the preceding calendar year.” Agencies that may employ peace officers but do not regularly conduct stops, including district attorney’s offices and coroner’s offices for example, have inquired whether they are required to report stops even if their officers do not regularly conduct stops as defined by Government Code section 12525.5. Because these agencies fall within the definition of a reporting agency for purposes of RIPA, this amendment is necessary to clarify reporting obligations and ensure the accuracy, consistency, and “uniform reporting practices across all reporting agencies” for data reported. (Gov. Code, § 12525.5, subd. (e).)

50. Section 999.228, subd. (e): Require LEAs to attest that neither personally identifiable information nor any other information exempt from disclosure is included in a stop data entry

The Department proposes requiring LEAs to attest that, by transmitting a stop data report to the Department, it has ensured that it has not transmitted to the Department either (1) personally identifiable information (PII) of the person stopped, or (2) any other information that is exempt from disclosure in the data element entitled “Location of Stop” and the explanatory fields.

Existing regulations designate LEAs solely responsible for ensuring that neither PII of the person stopped, nor any other information that is exempt from disclosure, is transmitted to the Department. The proposed attestation requirement is necessary to provide the Department further assurance that the stop data entries it discloses in response to PRA requests neither includes PII nor other information exempted from disclosure. This attestation requirement would also ease the Department’s administrative burden of coordinating with a LEA prior to responding to a PRA request to ensure that no PII or exempted information is included in their entries.

51. Section 999.228, subd. (h): Permit the Department to confidentially disclose stop data for purposes of advancing public policy

The Department proposes revising existing language in the regulations that permit it to disclose all stop data, in a confidential manner, “to advance public policy through scientific study.” As it reads now, the language limits the disclosure of data to academic researchers. The language appears not to permit confidential disclosure to non-academic organizations seeking to analyze the data to advance public policy. The Department proposes revising the language to permit confidential disclosure for the purposes of both “advance[ing] public policy” and/or “for scientific study.” This proposed revision is necessary because it would permit a wider range of entities to analyze the stop data and enable stakeholders, including the Board, to analyze stop data to identify and address disparities.

The Department also proposes revising the language requiring the disclosure of data to be done pursuant to the Department’s data security protocols to be its own sentence for the purpose of clarity.

52. Section 999.228, subd. (new)(i): Permit LEAs to confidentially disclose stop data to advance public policy, for scientific study, or for analysis for the use of the agency itself.

The Department proposes permitting LEAs to disclose all of its stop data, on a confidential basis, for purposes of advancing public policy, scientific study, or for use of the data for the agency itself. While existing regulations permit the Department to disclose stop data for purposes of advancing public policy through scientific study, they do not provide the same option for LEAs. As a result, LEAs are not able to have their stop data analyzed without first entering into an agency relationship with another entity as a way to protect that data’s confidentiality. This amendment is necessary because it would permit LEAs to disclose their stop data on a confidential basis, thus encouraging LEAs to continuously assess their policing practices. Further, permitting disclosure of stop data for the additional purpose of analysis for the use of the agency itself would enable LEAs to use stop data for purposes outside of advancing public policy or scientific study, such as a needs assessment. This amendment is necessary to encourage LEAs to use a data-driven approach to making decisions about various issues, such as operational needs.

53. Section 999.228, subd. (new)(j): Require all LEAs, regardless of how they transmit data to the Department, to retain (1) a record of source data for three years and (2) a record of the information contained in the source data indefinitely. Require all LEAs to be responsible for responding to public records requests and prohibit referral of requestors to the Department.

Existing regulations require LEAs to keep a record of their source data for a period of three years but any LEA that transmits its data through the Department’s Web Application may elect to have the Department host its data for those three years. The Department proposes removing the provision in the existing regulations that requires the Department either to host data for any LEA that transmits its data through the Department’s Web Application for a period of three years or transfer that data back to the LEA for storage, at the LEA’s election. Removing this provision would thus mean that all LEAs, regardless of their method of data transmission, must retain a record of their source data for three years.

The Department further proposes requiring all LEAs to keep the information contained in their source data in some other format indefinitely. Existing regulations do not require LEAs to keep this information for any amount of time.

Finally, the Department proposes adding language that holds LEAs responsible for responding to requests for their stop data, consistent with their obligations under California Public Records Act (CPRA). The Department further proposes adding language that prohibits LEAs from referring requestors to the Department to make CPRA requests of the Department for information required to be retained by the LEAs.

These amendments are necessary because existing regulations impose an administrative burden on the Department. The Department devotes significant resources to responding to CPRA requests seeking stop data of individual LEAs; these CPRA requests at times are made to the Department rather than to the subject LEA, because the subject LEA may not still retain all the data, or underlying information, requested. The Department anticipates that this administrative burden will increase significantly once all LEAs begin to submit their stop data to the Department.

With these proposed amendments, members of the public, advocates, and other stakeholders would be able to directly seek requested data and/or information from individual LEAs in all circumstances, thus easing the administrative burden on the Department. Further, these two proposals would incentivize LEAs to ensure that its data is free of errors and does not contain personally identifiable information or other information exempt from disclosure.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department concludes that the proposed regulations are unlikely to: (1) create or eliminate jobs within the state; (2) create new businesses or eliminate existing businesses within the state; or (3) result in the expansion of businesses currently doing business within the state. The proposed amendments impose mandates only upon local and state agencies, and not upon businesses. Businesses are not legally required to comply with or enforce these proposed amendments. Nor will they derive a detriment from the enforcement of these amendments. However, information technology vendors may experience an increase in business as a result of these changes, because some LEAs may contract with them to incorporate these amendments into their existing stop data reporting collection systems.

Regarding the impact on state and local agencies, the Department seeks to have the proposed amendments go into effect in January 2023, with the goal of giving all agencies as well as the Department several months to modify systems to incorporate any amendments approved by the Office of Administrative Law. This will decrease any costs associated with expediting modifications.

The Department estimates that, by the time the proposed amendments go into effect in early January 2023, around 175 local and state agencies statewide will be using the Department-hosted web application to submit stop data. These agencies would thus not incur any costs associated with modifying any stop data collection systems because the Department will absorb the cost of updating its web application. The Department further estimates that around 325 local and state agencies will use their own in-house or vendor-developed stop data reporting systems and will incur one-time costs to make modifications to incorporate these amendments. Private information technology vendors have provided the Department estimates on how many hours it would take to make the modifications, ranging from 12 to 240 hours. One private vendor, which works with over 180 agencies, has indicated that it does not charge its client agencies for its software that enables those agencies to input stop data. Thus, there are likely no costs associated with modifications for this vendor's client agencies. For the remaining 145 agencies, the costs

associated with this would depend on the vendors' rates. At least one vendor indicated to the Department that it charges \$150 an hour for senior developers to work on modifying existing systems, which is consistent with the Department's estimate for this type of work. Thus, assuming that 145 agencies work with vendors that charge for modifications, modifying existing stop data reporting systems would cost roughly \$1,800 to \$36,000 per agency, or \$261,000 to \$5,220,000 in total statewide.

Officers would be required to input information on five additional data elements as well as additional information in limited circumstances (for example, indicating, where relevant, that the stopped person was a passenger in a vehicle). However, the costs associated with entering this information would be offset in the long-run. First, agencies can link two of the five data elements—race and gender of the officer—to the officer's Identification Number, thus obviating the need to input this information for every stop. Second, several other amendments would clarify existing reporting obligations, which would decrease confusion and streamlining the process of completing a stop data entry. Thus, the costs associated with entering information for additional data elements will likely be offset in the long run by the savings realized by the decrease in costs associated with the decrease in officer's time spent completing a stop data entry.

Finally, the state is required to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. (Legis. Counsel's Dig., Assem. Bill No. 953, Stats. 2015, ch. 466, pp. 4153-4154.) Further, Section 5 of AB 953 provides: If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. (Stats. 2015, ch. 466, § 5, p. 4159.) Accordingly, costs imposed on local agencies and school districts by these proposed amendments to RIPA are already reimbursable by operation of AB 953 through the state mandates process.

Finally, the Department also offers regular, free training on the regulations to any agency and, to the extent an agency offers its own training, any associated training costs would be negligible as the Department can readily incorporate the changes in its existing POST certified training material.

The Department also concludes that:

- (1) The proposal would benefit the health and welfare of California residents because by strengthening the existing guidance on stop reporting requirements of AB 953. Reporting law enforcement contacts with individuals will provide law enforcement agencies, the public and researchers with the opportunity to uncover, address, and eradicate racial and identity profiling.
- (2) The proposal would not benefit worker safety because it does not regulate workers or working conditions
- (3) The proposal may have a slight benefit on the state's environment because the use of electronic reporting may reduce paper consumption and waste.

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

The Department relied on the following studies, reports, and documents in proposing these amendments:

- American Psychological Association, Guidelines for Psychological Practice With Transgender and Gender Nonconforming People. *American Psychologist* (Vol. 70, No. 9, 2015) available at <https://www.apa.org/practice/guidelines/transgender.pdf>.
- Adam R. Chang, Stephanie M. Wildman, *Gender in/sight: Examining Culture and Constructions of Gender* (2017) 18 *Geo. J. Gender & L.* 43.
- Albuquerque Police Department General Order SOP 1-4 (2018), available at <https://documents.cabq.gov/police/standard-operating-procedures/1-04-biased-based-policing-and-profiling.pdf>.
- California Rural Legal Assistance, *Glossary of Terms for Sexual Orientations and Gender Identities* (2019) available at <https://www.crla.org/tips-using-gender-inclusive-language>.
- Catalyst, *LGBTQ+ Terms to Know* (2019) available at https://www.catalyst.org/wp-content/uploads/2019/01/lgbt_terms_to_know.pdf.
- Center for Policing Equity, et al., *Collecting, Analyzing, and Responding to Stop Data: A Guidebook for Law Enforcement Agencies, Government, and Communities*, available at https://policingequity.org/images/pdfs-doc/COPS-Guidebook_Final_Release_Version_2-compressed.pdf.
- Detroit Police Department Policy Manual, Directive 201.5 (2014), available at https://detroitmi.gov/sites/detroitmi.localhost/files/2021-01/201.5_Mentally%20Ill%20and%20Homeless%20Persons.pdf.
- Jennifer L. Eberhardt, et al., *Data for Change: A Statistical Analysis of Police Stops, Searches, Handcuffings, and Arrests in Oakland, Calif.* (June 20, 2016), available at <https://stanford.box.com/v/Data-for-Change>.
- Jennifer L. Eberhardt, et al., *Strategies for Change: Research Initiatives and Recommendations to Improve Police-Community Relations in Oakland, Calif.* (2016) available at <https://stanford.app.box.com/v/Strategies-for-Change>.
- Kann, L., Olsen, E. O., McManus, T., et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 — United States and Selected Sites, 2015* (Aug. 12, 2016) available at <https://www.cdc.gov/mmwr/volumes/65/ss/ss6509a1.htm>.
- Miller, K., Ryan, J. M., *Design, Development and Testing of the NHIS Sexual Identity Question. Questionnaire Design Research Laboratory, Office of Research and Methodology, National Center for Health Statistics* (2011) available at https://www.cdc.gov/qbank/report/Miller_NCHS_2011_NHIS%20Sexual%20Identity.pdf.
- National LGBTQIA+ Health Education Center, *LGBTQIA+ Glossary of Terms for Health Care Teams* (2020) available at <https://www.lgbthealtheducation.org/publication/lgbtqia-glossary-of-terms-for-health-care-teams/>.
- National Center for Transgender Equality, *Understanding Non-Binary People: How to Be Respectful and Supportive* (2018) available at

<https://transequality.org/issues/resources/understanding-non-binary-people-how-to-be-respectful-and-supportive>.

- National Center for Transgender Equality, Frequently Asked Questions about Transgender People (2016) available at <https://transequality.org/issues/resources/frequently-asked-questions-about-transgender-people>.
- National Law Center on Homelessness & Poverty, No Safe Place: The Criminalization of Homelessness in U.S. Cities (2019) available at https://nlchp.org/wp-content/uploads/2019/02/No_Safe_Place.pdf.
- National Law Center on Homelessness & Poverty, Violations of the Right to Privacy for Persons Experiencing Homelessness in the United States (May 31, 2017) available at <https://nlchp.org/wp-content/uploads/2018/10/Special-Rapporteur-Right-to-Privacy.pdf>.
- PFLAG, PFLAG National Glossary of Terms (2019) available at <https://pflag.org/glossary>.
- Poteat, V. P., Scheer, J. R., & Chong, E. S. K., Sexual orientation-based disparities in school and juvenile justice discipline: A multiple group comparison of contributing factors (Journal of Educational Psychology, Vol. 108 No. 2, 2016).
- Price-Feeney, M., Ybarra, M. L., Mitchell, K., Health Indicators of Lesbian, Gay, Bisexual, and Other Sexual Minority (LGB+) Youth Living in Rural Communities (The Journal of Pediatrics Vol. 205, 2019).
- Racial and Identity Profiling Advisory Board, Stop Data Analysis Subcommittee Meeting Video (November 12, 2020) available at https://www.youtube.com/watch?v=ymawA3ZVd_w.
- University of California, Berkeley School of Law, California's New Vagrancy Laws: The Growing Enactment and Enforcement of Anti-Homeless Laws in the Golden State (June 2016) available at https://raphome.org/wp-content/uploads/2016/06/NVL-Update-2016_Final.pdf.

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION AND THE AGENCY'S REASON FOR REJECTING THOSE ALTERNATIVES

The Department finds that no alternatives were presented to, or considered by, the Department that would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

Performance Standard as Alternative:

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

To ensure accurate and uniform reporting, the information collected must be uniform both in its categories of information collected and in the responses to these categories, in order for this information to be submitted electronically and for the data to be accessible to LEAs, the Board, researchers and the public, and so that meaningful review and analysis of this data is possible. As a result, the Department has determined that performance standards are not reasonable alternatives that would be more effective in carrying out the intent of AB 953.

**REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION
THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

The proposed amendments will not have any adverse impact on small business.

**EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

These proposed amendments will not have a significant adverse economic impact on business. Related to the costs incurred by state and local LEAs subject to these provisions, it is anticipated that these agencies will be required to either purchase new or modify existing computer systems, software and potentially other types of devices, to report the data required to the Department. These purchases will positively, not adversely, impact vendors and businesses that sell this equipment.