

**CALIFORNIA DEPARTMENT OF JUSTICE**

**TITLE 11. LAW**

**DIVISION 1. ATTORNEY GENERAL**

**CHAPTER 19. RACIAL AND IDENTITY PROFILING ACT OF 2015**

**TITLE 11. DEPARTMENT OF JUSTICE**

**NOTICE OF PROPOSED RULEMAKING ACTION**

**Notice published July 9, 2021**

The Department of Justice (Department) proposes to amend sections §§ 999.224-999.229 of Title 11, Division 1, Chapter 19, of the California Code of Regulations (CCR) concerning California's Racial and Identity Profiling Act of 2015 (Act or AB 953).

**PUBLIC HEARINGS**

The Department will hold a virtual public hearing to provide all interested persons with an opportunity to present statements or comments, either orally or in writing, with respect to the proposed regulations, as follows:

**First hearing:**

Friday, August 20, 2021  
12:00 p.m. – 2:00 p.m. PST  
Online via BlueJeans

<https://bluejeans.com/564571798/8333>

[Join Meeting](https://bluejeans.com/564571798/8333)

(Join from computer or phone)

(NOTE: You will be prompted to join via the BlueJeans app if you have it installed. You may also join via your browser without installing the app.)

OR

Dial: (408) 317-9254  
Meeting ID: 564 571 798

**Second hearing:**

Wednesday, September 1, 2021  
6:00 p.m. – 8:00 p.m. PST  
Online via BlueJeans

<https://bluejeans.com/564571798/8333>

[Join Meeting](#)

(Join from computer or phone)

(NOTE: You will be prompted to join via the BlueJeans app if you have it installed. You may also join via your browser without installing the app.)

OR

Dial: (408) 317-9254  
Meeting ID: 564 571 798

At the hearings, any person may present statements or comments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests but does not require that persons who make oral statements or comments at the hearing also submit a written copy of the comments made at the hearing.

A person may make a request for a reasonable accommodation, pursuant to the Americans with Disabilities Act, to the Contact Person listed below.

#### **WRITTEN COMMENT PERIOD**

Any interested party, or their duly authorized representative, may submit written comments relevant to the proposed regulatory action to the Contact Person listed below. The written comment period closes on September 3, 2021. The Department will consider only comments received by that time. Please address comments to:

Tanya Koshy  
Deputy Attorney General  
Civil Rights Enforcement Section  
California Office of the Attorney General  
1515 Clay Street  
Oakland, CA 94612  
Phone: (510) 897-1983  
Fax: (213) 897-7605  
Email: [Tanya.Koshy@doj.ca.gov](mailto:Tanya.Koshy@doj.ca.gov)

NOTE: Written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

#### **AUTHORITY AND REFERENCE**

Government Code section 12525.5, subdivision (e) authorizes the Department to adopt these regulations which implement, interpret, and make specific the provisions of Government Code section 12525.5.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

##### **Summary of Existing Laws and Regulations**

Assembly Bill 953 (AB 953), or California's Racial and Identity Profiling Act of 2015 (RIPA), took effect on January 1, 2016.

AB 953 enacted multiple provisions to uncover and address the unlawful practice of racial and identity profiling. Among other things, AB 953 enacted Government Code section 12525.5, which requires state and local law enforcement agencies (LEAs), as specified, to collect detailed data regarding stops of individuals, including perceived demographic information on the person stopped. Government Code section 12525.5, subdivision (g)(2) defines "stops" to mean "any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person's body or property in the person's possession or control."

Government Code section 12525.5, subdivision (b) provides a non-exclusive list of the information that must be reported for each stop:

The reporting shall include, at a minimum, the following information for each stop:

- (1) The time, date, and location of the stop.
- (2) The reason for the stop.
- (3) The result of the stop, such as, no action, warning, citation, property seizure, or arrest.
- (4) If a warning or citation was issued, the warning provided or violation cited.
- (5) If an arrest was made, the offense charged.
- (6) The perceived race or ethnicity, gender, and approximate age of the person stopped, provided that the identification of these characteristics shall be based on the observation and perception of the peace officer making the stop, and the information shall not be requested from the person stopped. For motor vehicle stops, this paragraph only applies to the driver, unless any actions specified under paragraph (7) apply in relation to a passenger, in which case the characteristics specified in this paragraph shall also be reported for him or her.
- (7) Actions taken by the peace officer during the stop, including, but not limited to, the following:
  - (A) Whether the peace officer asked for consent to search the person, and, if so, whether consent was provided.
  - (B) Whether the peace officer searched the person or any property, and, if so, the basis for the search and the type of contraband or evidence discovered, if any.

Finally, Government Code section 12525.5, subdivision (e) requires LEAs to report this data to the California Attorney General, whose duty is to issue regulations regarding this data collection and submission.

On November 7, 2017, the Attorney General issued regulations, which set forth additional information required to be reported by officers, definitions of terms used in the regulations, and specific guidance regarding the reporting required under Government Code section 12525.5, subdivision (b).

## **Effect of the Proposed Rulemaking**

This proposed action builds on the 2017 regulations by adding new and revising existing data elements, adding new and revising existing data values, and clarifying existing reporting requirements in various ways.<sup>1</sup> As examples, the proposed amendments include the addition of two new data elements, Person Stopped Perceived to be Unhoused and Stop Made During the Course of Performing a Welfare Check or an Officer's Community Caretaking Function. These data elements provide additional context to the stops. The Department also proposes adding data values to existing data elements so that officers can report their stops more accurately. These various proposals streamline the officers' reporting obligations, make those obligations clearer, and provide additional context and information to improve the data analysis conducted by the Racial and Identity Profiling Advisory Board ("the Board").

The proposed action would also permit reporting agencies to disclose their stop data, on a confidential basis, for the purposes of advancing public policy, scientific study, or analysis of the data for use by the agency itself. This would incentivize agencies to address any disparities that are uncovered from those analyses.

Finally, the proposed action eases various administrative burdens on the Department. For example, the Department proposes agencies attest, by submitting a stop data entry, that they are ensuring that neither personally identifiable information nor any other information that is exempt from disclosure is included in the entry.

## **Anticipated Benefits of Proposed Regulations**

The California Legislature, in its findings regarding RIPA's amendments to California's prohibition on racial and identity profiling, set forth in Penal Code section 13519.4, succinctly explained the broad objectives of RIPA.

Specifically, the objectives of RIPA are: (1) to create the stop data reporting program that is the subject of these regulations (Gov. Code, § 12525.5); (2) to require the Department of Justice to receive and report on citizen complaints that allege racial or identity profiling, as part of its annual reporting on citizen complaints (Pen. Code, § 13012); and (3) to amend Penal Code section 13519.4 to expand the definition of racial and identity profiling and ensure that officers receive adequate training regarding how to recognize and prevent racial and identity profiling. As the Legislature explained, "racial or identity profiling alienates people from law enforcement, hinders community policing efforts, and causes law enforcement to lose credibility and trust among the people whom law enforcement is sworn to protect and serve." (Gov. Code, § 13519.4, subd. (d)(3).)

RIPA expands the definition of racial or identity profiling<sup>2</sup>, and specifically provides that the consideration of a person's personal characteristics cannot be a basis for deciding which persons

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<sup>1</sup> Data elements are the categories of information (such as the Perceived Race or Ethnicity of the Person Stopped) that an officer must collect for each stop (Cal. Code Regs., tit. 11, § 999.224(a)(4).) Data values are the components or characteristics of each data element, such as the "Asian" or "Hispanic/Latino(a)" under the data element, Perceived Race or Ethnicity of the Person Stopped. (*Id.* § 999.224(a)(5).)

<sup>2</sup> "Racial or identity profiling" is defined as "the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or

to stop or how to treat a person who has been stopped. RIPA further identifies the types of activities that are subject to California’s ban on racial and identity profiling, noting that “[these] activities include, but are not limited to, traffic or pedestrian stops, or actions during a stop, such as asking questions, frisks, consensual and nonconsensual searches of a person or any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest.” (Pen. Code, § 13519.4, subd. (e).)

The existing regulations, and the proposed amendments to those regulations, advance RIPA’s objectives. Further, the benefits of the proposed amendments build off of the benefits of the existing regulations. The existing regulations implement Government Code section 12525.5, which provides LEAs, the Board, advocates, academics and other members of the community with the ability to analyze, stops by officers, as well as the actions taken during a stop, all of which can reveal whether racial or identity profiling exists. This data is essential to understanding whether there are biases (either implicit or explicit) in law enforcement activities and are an important first step in addressing these biases if they exist.

If disparities are apparent, LEAs, the Board, and researchers can determine why those disparities are occurring—whether they are attributed to a systemic problem or a small percentage of officers—what, if any part of those disparities can be explained by legitimate policing activities, and what can and should be done to address the disparities observed. Indeed, collecting stop data is not only invaluable to researchers and the public, but will also provide critical guidance to LEAs, particularly with respect to training of their officers, if this stop data suggests patterns of discriminatory treatment or biases.

Several amendments streamline the reporting process for officers by clarifying existing reporting obligations 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 an officer to understand when they are required to report interactions and what types of information they are required to collect. As another example, the Department proposes adding examples describing scenarios where an officer would need to report, 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 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 small number of data elements that officers are required to collect for each stop. One such proposed new data element is whether an officer

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expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop or in deciding upon the scope or substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description.” (Pen. Code, § 13519.4, subd. (e).)

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 data values from which officers can choose 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.

### **Comparable Federal Regulations**

There are no existing federal regulations or statutes comparable to the proposed regulations.

### **Determination of Inconsistency/Incompatibility with Existing State Regulations**

Government Code section 11346.5(a)(3)(D) requires the Department of Justice to evaluate whether the proposed regulations are inconsistent or incompatible with existing state regulations. The Department has determined these proposed regulations are neither inconsistent nor incompatible with any existing state regulations, because there are no existing regulations that address the specific subject matter of the proposed regulations.

### **Other Statutory Requirements**

Section 12525.5 requires the Attorney General to consult with a variety of stakeholders in drafting regulations implementing the Racial and Identity Profiling Act of 2015; these stakeholders include the Board, "federal, state, and local law enforcement agencies and community, professional, academic, research, and civil and human rights organizations." (Gov. Code, § 12525.5, subd. (e).)

Consistent with the Attorney General's statutory obligations, the proposed amendments set forth in this proposed action are the result of informal and formal recommendations by, and consultation with, stakeholders. For example, the Department has informally collected feedback and commentary on the existing regulations from LEAs, since the time the Department began to train LEAs on their reporting requirements and the first wave of LEAs began to collect stop data. The Department has also evaluated the stop data entries submitted by LEAs and have identified revisions to the regulations that would improve consistency and accuracy of the data. The Department has also revisited commentary provided by the public and representatives from civil rights, community and social and criminal justice organizations during the rulemaking process for the existing regulations during 2016-2017.

Once the Department developed draft proposals, it sought feedback from a social psychologist with expertise and research interest in racial profiling, stereotyping, prejudice, and discrimination. The Department also solicited feedback from the Board's Stop Data Analysis Subcommittee.<sup>3</sup>

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Department of Justice has made the following initial determinations:

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<sup>3</sup> The minutes from the Stop Data Analysis Subcommittee meeting can be found here: <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/mm-board-111220.pdf>.

Mandate on local agencies or school districts: None.

AB 953 requires the Department of Justice to draft and issue regulations to implement the stop data reporting requirements of Government Code section 12525.5. The Legislative Counsel's Digest of AB 953 notes that costs incurred by local agencies because of this state-mandated program are reimbursable:

By imposing a higher level of service on local entities that employ peace officers, the bill would impose a state-mandated local program.

The California Constitution requires the state 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, the costs incurred as a result of the proposed amendments to existing regulations are mandated by statute, and not created as a result of them.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Costs or savings to any state agency: None or negligible.

State agencies that are subject to reporting requirements (the Department of Justice, the California Highway Patrol, the University of California, the California State University, and California Community Colleges) and are already reporting stop data would incur negligible costs, if any, to modify existing stop data reporting systems. For any state agencies that are still developing their stop data collection systems, there would no costs to incorporating these amendments.

Other nondiscretionary costs of savings imposed on local agencies: None or negligible.

Local agencies that are subject to reporting requirements and are already reporting stop data would incur negligible costs, if any, to modify existing stop data reporting systems. For agencies that are still developing their stop data collection systems, there would no costs to incorporating these amendments.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete:

The Department of Justice has made an initial determination that this proposed action will not have a significant, statewide adverse impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost impacts on representative private person or businesses:

The Department of Justice is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Small businesses determination:

The Department has determined that these proposed amendments may have a positive impact on some small businesses in the information technology sector.

Significant effect on housing costs: None.

Business reporting requirement: None.

The reporting requirements in the proposed amendments do not apply to businesses. Rather, only law enforcement agencies, as specified in Government Code section 12525.5 and the existing regulations, will be required to collect and report stop data to the Department.

Results of Economic Impact Analysis:

The Department concludes that it is unlikely the proposed amendments will (1) create or eliminate jobs in California, (2) create new businesses or eliminate existing businesses in California, or (3) result in the expansion of businesses currently doing business in California. The proposed amendments will not adversely impact the health and welfare of California residents, worker safety, nor the State's environment.

Benefits of the proposed action: The proposed amendments benefit the public and California's peace officers by strengthening the existing guidance on stop reporting requirements of RIPA. 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.

**CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The proposed amendments to the existing regulations 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.

The Department has determined that there are no reasonable alternatives to the proposed amendments that would be more effective in carrying out the intent of RIPA. 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. In order 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 law enforcement agencies, the Board, researchers and the public, and so that meaningful review and analysis of this data is possible.

**CONTACT PERSON**



General or substantive comments concerning this proposed rulemaking, including requests for copies of documents associated with this action such as the text of the proposed amendments, initial statement of reasons, should be directed to:

Tanya Koshy  
Deputy Attorney General  
Civil Rights Enforcement Section  
California Office of the Attorney General  
1515 Clay Street  
Oakland, CA 94612  
Phone: (510) 897-1983  
Email: [Tanya.Koshy@doj.ca.gov](mailto:Tanya.Koshy@doj.ca.gov)

In the event the Contact Person is unavailable, inquiries regarding this proposed rulemaking may be directed to the below backup Contact Person:

Anna Rick  
Associate Governmental Program Analyst  
Civil Rights Enforcement Section  
California Office of the Attorney General  
1515 Clay Street  
Oakland, CA 94612  
Phone: (510) 897-3095  
Email: [AB953@doj.ca.gov](mailto:AB953@doj.ca.gov)

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS, PROPOSED TEXT, AND RULEMAKING FILE**

The Department of Justice will make copies of the following documents available on the Department of Justice's website at <https://oag.ca.gov/ab953/regulations>: this notice, the text of the proposed modified regulations, the initial statement of reasons, the economic and fiscal impact statement (STD 399) and attachment, and the notice of publication/regulations submission (STD 400). The entire rulemaking file is available for inspection and copying throughout the rulemaking process during business hours at the following locations:

California Office of the Attorney General  
1515 Clay Street  
Oakland, CA 94612

Copies of these documents are also available upon request by contacting Tanya Koshy, Deputy Attorney General, at the contact information above (Contact Person).

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After considering all timely and relevant comments, the Department of Justice may adopt the proposed amendments substantially as described in this notice. If the Department of Justice makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before it adopts the proposed amendments, as revised. Copies of any modified text will be available on the Department of Justice's website at <https://oag.ca.gov/ab953/regulations>. Please send requests for copies of any modified regulations to Tanya Koshy, Deputy Attorney General, at the contact information above (Contact Person). The Department of Justice will accept written

comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the final statement of reasons may be obtained by contacting Tanya Koshy, Deputy Attorney General, at the contact information above (Contact Person), or by visiting the Department of Justice's website at: <https://oag.ca.gov/ab953/regulations>.

**AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of this notice, the initial statement of reasons, and the text of the proposed modified regulations will be posted and available for downloading on the Department of Justice's website at: <https://oag.ca.gov/ab953/regulations>.