



Agenda Item: 14.J
Date of Meeting: October 23, 2023
Department: Police

STAFF REPORT

To: City Council
From: Nate Derr
Subject: **Racial and Identity Profiling Mandate Reimbursement**
Prepared On: October 6, 2023
Attachments: Professional Service Agreement with Nichols Consulting

Background/History:

Law Enforcement Prohibited From Racial Profiling. State law prohibits law enforcement from engaging in racial profiling. State law further requires law enforcement to participate in racial profiling-related training prescribed and certified by the Commission on Peace Officer Standards and Training (POST). Such training is required to be completed generally every five years in order to keep current with changing racial and cultural trends.

POST, in turn, is required to develop and distribute guidelines and training on understanding and respecting racial and cultural differences and effective, noncombative ways of carrying out duties in a racially and culturally diverse environment. Such training is also required to include the examination of patterns, practices, and protocols that prevent racial profiling; the negative impact of biases, prejudice, and stereotyping on effective law enforcement; and the specific obligations of law enforcement officers in preventing, reporting, and responding to discriminatory or biased practices by fellow officers.

Law Enforcement Required to Report Certain Data. State law requires the California Department of Justice (DOJ) to report annually to the Governor, various state officials, and members of the public on the state's criminal statistics. Examples of statutorily required statistics include: the amount and types of criminal offenses, certain demographic characteristics of people who commit crimes, and the number of arrests and clearance rates in California as reported by individual law enforcement agencies. To facilitate this reporting, DOJ is required to collect such data from law enforcement and other agencies, instruct them on how to collect and submit such data, and analyze the submitted data. Accordingly, state law also requires law enforcement agencies—as well as other state and local agencies that interact with crimes or people who are arrested or convicted—to collect and report statistical data when requested by DOJ.

State Law Expanded Prohibition on Racial Profiling and Increased Reporting Requirements. Chapter 466 of 2015 (AB 953, Weber) expanded the prohibition on law enforcement engaging in racial profiling to also prohibit identity profiling. Additionally,

Chapter 466 increased law enforcement reporting requirements by requiring each state and local agency that employs law enforcement officers report annually to DOJ on all stops conducted by its officers for the preceding calendar year. Statutorily specific metrics are required to be reported for each stop—including the time, date, and location of the stop; the reason for the stop; the result of the stop (such as whether the officer asked for consent to search the stopped person); and the perceived race or ethnicity, gender, and approximate age of the person stopped based on the observation of the officer conducting the stop. Such reporting was to be implemented in waves between 2019 and 2023. Specifically, state law required that such data first be reported by April 2019 from agencies employing 1,000 or more officers (“Wave 1”), by April 2020 from agencies employing 667 to 1,000 officers (“Wave 2”), by April 2022 from agencies employing 334 to 667 officers (“Wave 3”), and by April 2023 from agencies employing less than 334 officers. Chapter 466 also increased annual DOJ reporting requirements—such as by requiring the reporting of citizen complaints alleging racial or identity profiling disaggregated by the specific type of profiling alleged as well as how such complaints were resolved.

Moreover, Chapter 466 established the state Racial and Identity Profiling Advisory (RIPA) Board—housed within and staffed by DOJ—to (1) analyze the data collected and reported; (2) analyze law enforcement racial and identity profiling related training; (3) review and analyze racial and identity profiling policies and practices across the state; and (4) conduct or consult evidence-based research on intentional and implicit biases and law enforcement stop, search, and seizure tactics. The RIPA Board is also required to issue an annual report providing its analysis, detailed findings on the past and current status of racial and identity profiling, and recommendations for eliminating racial and identity profiling. Finally, the RIPA Board is required to advise DOJ in the collection of data to ensure uniformity, consult with POST on training curriculum, and hold at least three public meetings to discuss racial and identity profiling and potential reforms to prevent such profiling.

Commission Determined Legislation Created a State-Reimbursable Mandate. The Commission found that Chapter 466 requirements—as well as implementing regulations—related to the collection and reporting of stop data created a state-reimbursable mandate. Specifically, the Commission found that this requirement imposed new state-mandated activities and costs on county and city government agencies employing law enforcement officers for police protection services—but not K-12 school districts or community college districts that employ law enforcement. The Commission found that these new activities and costs resulted from agencies needing to (1) identify the peace officers required to report stops and maintain a system to match individual officers to an identification number, (2) collect the stop data, (3) electronically submit data to DOJ and retain stop data, (4) work with DOJ to audit and validate the data after submission and correct any errors, and (5) ensure that information exempt from disclosure is not submitted to DOJ. However, the Commission found that certain other changes made by Chapter 466 did not constitute a state-reimbursable mandate—specifically, the prohibition of identity profiling, the increased annual reporting required of DOJ which requires agencies collect and report certain data, and certain requirements on the RIPA Board that could impact agencies—as they did not impose any activities on local governments.

The Commission estimates \$25.5 million in initial costs of claims from local governments related to the mandate between 2017-18 through 2019-20. The Commission further estimates costs of \$10.8 million to \$11.8 million in 2020-21, \$12.1 million to \$13.2 million in 2021-22, and \$15.2 million to \$16.5 million in 2022-23. Annual costs after 2022-23 are estimated to remain at \$16.5 million. This is because while one-time costs (such as to modify local

database systems to capture the data) will no longer be incurred, more law enforcement departments will be required to report (as a result of the final wave of implementation).

Governor's Budget:

Governor Funds Mandate Reimbursement Cost. The Governor's 2023-24 budget proposes \$50.5 million General Fund to reimburse local governments for the costs they incurred to comply with the law enforcement officer stop data reporting requirements while they were under review by the Commission. This amount consists of \$25.5 million for the initial claiming period between 2017-18 through 2019-20, \$11.8 million for 2020-21, and \$13.2 million for 2021-22. The Governor's budget also includes \$16.5 million ongoing General Fund to support such costs in the future. Funding the mandate would make local compliance with the above requirements mandatory in 2023-24 and the state responsible for the costs incurred by local governments.

Analysis/Discussion:

If not adopted the City will continue to fund the entire cost to implement the mandates. By adopting the contract, the City will be reimbursed for a portion of the incurred cost to implement the mandates.

Economic Impacts:

No significant economic Impact.

Budget Impacts:

Increase in revenue from reimbursement. Revenues generated by the service provided will exceed the cost of the consultant contract being presented for review.

Legal Review:

City Attorney Pucci has reviewed this item and finds that the recommended action complies with the law.

Recommended Action:

Approve the contract with consultant, Nichols Consulting, to file reimbursement claims with the State of California for state-imposed mandates from the execution of this contract through June 30, 2024, in an amount not to exceed \$2,500.00.

Approved By: Ethan Aukee / 10/11/2023

Approved By: Robin Picken / 10/12/2023

Approved By: Deston Dishion 10/12/2023

Approved By: