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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 90                      **Hearing Date:** July 11, 2017  
**Author:** Weber  
**Version:** May 30, 2017  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SC

**Subject:** *Criminal Gangs*

### HISTORY

**Source:** Youth Justice Coalition  
Coalition for Humane Immigrant Rights  
National Immigration Law Center  
Policy Link  
Urban Peace Institute  
Alliance for Boys and Men of Color

**Prior Legislation:** AB 2298 (Weber), Ch. 752, Stats. 2016  
SB 458 (Wright), Ch. 797, Stats. 2013

**Support:** A New Way of Life Reentry Project; American Civil Liberties Union of California; Anti-Recidivism Coalition; Asian-Americans Advancing Justice - California; California Attorneys for Criminal Justice; California Immigrant Policy Center; California Immigrant Youth Justice Alliance Center; California Public Defenders Association; Californians United for a Responsible Budget; Central American Resource Center (CARECEN-LA); Consumer Attorneys of California; Electronic Frontier Foundation; Ella Baker Center for Human Rights; Fathers and Families of San Joaquin; Homeboy Industries; Journey House; LA Voice; Latino Coalition for a Healthy California; Loyola Law School's Immigrant Justice Clinic; National Association of Social Workers, California Chapter; National Day Laborer Organizing Network (NDLON); National Immigration Law Center; Resilience Orange County; Silicon Valley De-Bug; Women's Foundation of California; W. Haywood Burns Institute; three private individuals

**Opposition:** Association for Los Angeles Deputy Sheriffs; California Association of Code Enforcement Officers; Association of Deputy District Attorneys; Association of Orange County Deputy District Attorneys Civic Action Committee; California College and University Police Chiefs Association; California District Attorneys Association; California Narcotic Officers Association; California Police Chiefs Association; California State Sheriffs' Association; Los Angeles County Professional Peace Officers Association; Los Angeles Police Protective League; Orange County Board of Supervisors; Riverside Sheriffs' Association; San Diego County District Attorney's Office

**Assembly Floor Vote:** 42 - 36

ANALYSIS REFLECTS AUTHOR'S AMENDMENTS TO BE OFFERED IN COMMITTEE

## PURPOSE

*The purpose of this bill is to shift responsibilities for the CalGang database from the CalGang Executive Board to the Department of Justice (DOJ) and to modify existing provisions of law related to requests for information from law enforcement and petitions to the court regarding a person's designation as a gang member or associate.*

*Existing law* defines a “criminal street gang” as any ongoing organization, association, or group of three or more persons . . . having as one of its primary activities the commission of one or more enumerated offenses, having a common name or identifying sign or symbol, and whose members individually or collectively engage in a pattern of criminal gang activity. (Pen. Code, § 186.22, subd. (f).)

*Existing law* provides that any person who actively participates in a criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity and who promotes, furthers, or assists in any felonious conduct by members of the gang is guilty of an alternate felony-misdemeanor. (Pen. Code, § 186.22, subd. (a).)

*Existing law* provides that any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in criminal conduct by gang members, shall receive a sentence enhancement, as specified. (Pen. Code, § 186.22, subd. (b).)

*Existing law* provides that any person who is convicted of either a felony or misdemeanor that is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in the county jail for up to one year or by 1, 2, or 3 years in state prison. (Pen. Code, § 186.22, subd. (d).)

*Existing law* defines “pattern of criminal gang activity” as the commission of, attempted commission of, conspiracy to commit, or solicitation of, or conviction of two or more enumerated offenses, provided at least one of the offenses occurred after the effective date of the statute and that the last of the offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons. (Pen. Code §186.22, subd. (e).)

*Existing law* requires the registration a shared gang database with the chief of police of the city in which he or she resides, or the sheriff of the county if he or she resides in an unincorporated area for any person described immediately below. (Pen. Code §186.30, subd. (a).)

- Any person who has who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity and who willfully promotes, furthers, or assists, in any felonious conduct by members of that gang. (Pen. Code §186.30, subd. (b)(1).)
- Any person who has been found convicted a crime which triggers a sentencing enhancement, as specified in Penal Code §186.22, subdivision (b). (Pen. Code §186.30, subd. (b)(2).)

- Any crime that the court finds is gang related at the time of sentencing or disposition. (Pen. Code §186.30, subd. (b)(2).)

*Existing law* qualifies the “CalGang system” as a “shared gang database.” (Pen. Code, §186.34, subd. (c)(3).)

*Existing law* provides that commencing January 15, 2018, and annually on January 15 thereafter, any law enforcement agency that elects to utilize a shared gang database, as defined, shall submit a report to the DOJ, in a format developed by the department, that contains, by ZIP Code, referring agency, race, gender, and age, the following information:

- The number of persons included in the database on the day of reporting;
- The number of persons added to the database during the immediately preceding 12 months;
- The number of requests for removal of a person from the database received during the immediately preceding 12 months;
- The number of requests for removal of a person from the database that were granted during the immediately preceding 12 months; and
- The number of persons automatically removed from the database during the immediately preceding 12 months.

(Pen. Code, § 186.34, subd. (c).)

*Existing law* provides that commencing February 15, 2018, and annually on February 15 thereafter, the DOJ shall post each law enforcement agency’s report that contains the information collected on DOJ’s website. (*Ibid.*)

*This bill* makes DOJ responsible for administering and overseeing the CalGang database, and provides that commencing January 1, 2018, the CalGang Executive Board will no longer administer or oversee the CalGang database.

*This bill* requires DOJ to establish a Gang Technical Advisory Committee (committee) and specifies the following membership on the committee:

- The Attorney General (AG), or his or her designee;
- The President of the California District Attorneys Association, or his or her designee;
- The President of the California Public Defenders Association, or his or her designee;
- A representative of organizations that specialize in gang violence intervention, appointed by the AG;
- A representative of organizations that provide immigration services, appointed by the AG;

- A representative of organizations that specialize in privacy rights, appointed by the AG;
- One representative of community organizations that specialize in civil or human rights appointed by the AG;
- One person who is or was placed on a gang database;
- One person who is the family member of a person who is or was placed on a gang database;
- The President of the California Police Chiefs Association, or his or her designee; and,
- The President of the California State Sheriff's Association, or his or her designee.

*This bill* specifies that the meetings of the committee are subject to the Bagley-Keene Open Meeting Act which generally requires public notice of meetings and conducting meetings in public unless specifically authorized to meet in closed session.

*This bill* requires DOJ, with the advice of the committee, to promulgate regulations governing the use, operation, and oversight of shared gang databases, including, among other things, establishing the requirements for the following:

- Policy and procedures for entering, reviewing, and purging documents;
- Criteria for designating a person as a gang member or associate that are unambiguous, not overbroad, and consistent with empirical research on gangs and gang membership;
- Retention periods for information about a person in a gang database that is consistent with empirical research on the duration of gang membership;
- Criteria for designating an organization as a criminal street gang and retention periods for information about criminal street gangs;
- Policy and procedures for notice to a person in a shared gang database, including when notification would compromise an active criminal investigation or compromise the health and safety of a minor;
- Policy and procedures for responding to an information request, a request for removal, or a petition for removal including when a request or petition could compromise an active criminal investigation or compromise the health or safety of a minor; and,
- Policy and procedures for sharing information from gang database with a federal agency, multi-state agency, or agency of another state who otherwise does not have access, including sharing of information with a partner in a joint task force.

*This bill* requires all gang databases to be used and operated in compliance with all applicable state and federal regulations, statutes, and guidelines.

*This bill* prohibits state and local agencies from allowing any federal agency, multi-state agency, or agency of another state to access a gang database, and from providing bulk data from a gang

database to any federal agency, multi-state agency, or agency of another state, except as provided. Any agreements in existence on January 1, 2018, that conflict with the terms of this provision are terminated on that date.

*This bill* states that a state or local agency may share information in response to an inquiry about a specific person, including a designation of gang membership or association, with a federal agency, multi-state agency, or agency of another state, so long as database access is not granted to the other agency, the information provided is not bulk data, and the inquiry is not for immigration purposes.

*This bill* provides that DOJ, with the advice of the committee, no later than January 1, 2020, shall promulgate regulations to provide for periodic audits of each CalGang node and user agency to ensure accuracy, reliability, and proper use of CalGang.

*This bill* states that DOJ shall mandate the purge of any information for which a user agency cannot establish adequate support.

*This bill* requires DOJ, with the advice of the committee, to develop and implement standardized periodic training for all users authorized to access to CalGang.

*This bill* requires DOJ, commencing February 15, 2018, and annually thereafter, to publish an annual report on CalGang that contains, by ZIP Code, referring agency, race, gender, and age, the following information for each user agency:

- The number of persons included in CalGang on the day of reporting;
- The number of persons added to CalGang during the immediately preceding 12 months;
- The number of requests for removal of information about a person from CalGang received during the immediately preceding 12 months;
- The number of requests for removal of information about a person from CalGang that were granted during the immediately preceding 12 months;
- The number of petitions for removal of information about a person from CalGang adjudicated in the immediately preceding 12 months, including their dispositions;
- The number of persons whose information was removed from CalGang due to the expiration of a retention period during the immediately preceding 12 months;
- The number of times an agency did not provide notice or documentation as requested because providing that notice or documentation would compromise an active criminal investigation, in the immediately preceding 12 months; and,
- The number of times an agency did not provide notice or documentation as requested because providing that notice or documentation would compromise the health or safety of the designated minor, in the immediately preceding 12 months.

*This bill* requires DOJ to post the report on its website.

*This bill* provides that DOJ shall invite and assess public comments following the report's release, and each report shall summarize public comments received on prior reports and any actions taken in response to comments.

*This bill* imposes a moratorium on the use of the CalGang database commencing January 1, 2018, until the regulations and training required by this bill have been developed.

*This bill* states findings and declarations of the Legislature regarding the CalGang database.

*Existing law* defines "shared gang database" to include all of the following:

- Allows access for any local law enforcement agency;
- Contains personal, identifying information in which a person may be designated as a suspected gang member, associate, or affiliate, or for which entry of a person in the database reflects a designation of that person as a suspected gang member, associate, or affiliate; and,
- Is subject to federal regulations related to criminal intelligence gathering, unless funding is no longer available.

*This bill* modifies the definition of "shared gang database" to mean any gang database that is accessed by an agency or person outside of the agency that created the records that populate the database.

*This bill* exempts the following from the definition of a "shared gang database":

- Databases that designate persons as gang members or associates using only criminal offender record information or information collected from the gang registry; and,
- Databases accessed solely by jail or custodial facility staff for classification or operational decisions in the administration of the facility.

*This bill* defines a "gang database" to mean "any database accessed by a law enforcement agency that designates a person as a gang member or associate, or includes or points to information, including, but not limited to, fact-based or uncorroborated information, that reflects a designation of that person as a gang member or associate."

*Existing law* requires local law enforcement to notify a minor and his or her parent or guardian before designating that minor as a gang member, associate, or affiliate in a shared gang database and the basis for the designation. (Pen. Code, §186.34, subd. (d)(1).)

*This bill* clarifies that the notice to a person or a minor's parent or guardian prior to an agency designating a person as a gang member or associate must include a factual basis for the designation.

*Existing law* states that a person, or, if the person is under 18 years of age, his or her parent or guardian, or an attorney working on behalf of the person may request, in writing, information of any law enforcement agency as to whether the person is designated as a suspected gang member,

associate, or affiliate in a shared gang database accessible by that law enforcement agency and what law enforcement agency made the designation. (Pen. Code, § 186.34, subd. (e)(1)(A).)

*This bill* requires the responding agency to provide documentation reflecting the factual basis for the agency's designation, the name of the designated gang, and the documentation reflecting the factual basis for designating the organization as a criminal street gang.

*This bill* provides that if a shared gang database includes information about the subject of the request that was submitted by an agency other than the responding agency, the responding agency shall provide the name of that agency.

*Existing law* provides that a law enforcement agency must respond to a valid request for information regarding a person's designation as a gang member, associate, or affiliate by that agency within 30 days. (Pen. Code, § 186.34, subd. (e)(1)(B)(3).)

*This bill* provides that if an agency does not provide a written response to the request within the existing 30-day deadline, the person may petition a court to order the agency to remove all information about the person from the shared gang database.

*This bill* states that if a law enforcement agency determines a person is not an active gang member, the agency shall provide confirmation that all information about that person has been removed from the shared database.

*Existing law* provides that a person who is listed by a law enforcement agency in a shared gang database as a gang member, suspected gang member, associate, or affiliate and who has contested his or her designation may seek review within 90 calendar days of the agency's mailing or personal service of the verification of the decision by filing an appeal to be heard by the superior court. A proceeding under this subdivision is a limited civil case. A copy of the notice of appeal shall be served in person or by first-class mail upon the agency by the person. (Pen. Code, § 186.35.)

*This bill* clarifies that a person whose request for removal from a shared database has been denied, or if a timely response to the request was not received may petition the court under existing removal procedures of that person's name from the gang database.

*This bill* provides that if more than one agency designates the petitioner as a gang member or associate, or included information about the petitioner in the same shared gang database, the petitioner must request removal from all agencies before petitioning the court.

*This bill* specifies timelines for filing the petition with the court.

*This bill* provides that if a petition is made following a law enforcement agency's failure to make a timely response to an information request, the agency may not present any evidence of gang membership or affiliation in reply to the petition but may present evidence regarding receipt of the request.

*This bill* clarifies that if a court grants the petitioner's request for removal, the court shall order the law enforcement agency or agencies to remove all information about the petitioner entered by that agency or agencies from all shared gang databases.

*This bill* provides that a petitioner may file a new petition no later than 180 calendar days after a previous petition.

*Existing law* establishes the Racial and Identity Profiling Advisory Board (RIPA), among other duties, to investigate and analyze state and local law enforcement agencies' racial and identity profiling policies and practices across geographic areas in California, to annually make publicly available its findings and policy recommendations, to hold public meetings annually, as specified, and to issue the board's first annual report no later than January 1, 2018. (Pen. Code, § 13519.4.)

*This bill* expands RIPA's authority by allowing the board, at its discretion, to review operations of law enforcement agencies' gang databases and make recommendations to DOJ.

## COMMENTS

### 1. Need for this Bill

According to the author:

Local gang databases as well as the CalGang database have existed for nearly 30 years without accountability, consistency or transparency. Outside of the data received through [Public Records Act] PRA requests, there has been no release of information or data to the public or policy makers, and no internal or independent evaluations as to databases' effectiveness. AB 2298 passed last year is the first law ever to require that data added to shared databases be collected and shared.

Once information is captured by local police and entered onto the statewide CalGang database, a person is considered to be "known by law enforcement" as an active gang member, associate or affiliate. But, since their creation, the policies and procedures governing the CalGang Database and local databases have not been clear, not consistent in their application, not widely shared, and not standardized across law enforcement departments and jurisdictions.

Because it is a secret surveillance tool, people labeled as a gang member originally have had no legal right to be notified. It wasn't until the passing of SB 458 (Wright), effective as state law January 1, 2014, that youth under 18 and their parent or guardian had the right to be notified if they were added to the file and to challenge their designation. And, people 18 and older didn't gain those rights until the passing of AB 2298.

In August of 2016, the California State Auditor released findings of the first ever investigation into the workings and impact of CalGang and the other shared gang databases that feed into it across the state. The audit revealed many concerns, including that: 1. CalGang's oversight structure is inadequate and does not ensure that user agencies collect and maintain criminal intelligence in a manner that preserves individuals' privacy rights; 2. The governing entities act without statutory authority, transparency, or public input; 3. There is "little evidence" that the governing entities have ensured user agencies to comply with federal regulations regarding databases; 4. Only 0.2 percent of CalGang's statewide individual records are reviewed each year; 5. The investigators could not



substantiate the validity of numerous CalGang entries; 6. Gang databases were “tracking people who do not appear to justifiably belong in the system;” 7. User agencies that responded to the auditor’s statewide survey admitted that they use CalGang for employment or military-related screenings which is prohibited; 8. User agencies have not ensured that CalGang records are added, removed, and shared in ways that maintain system accuracy and safeguard individuals’ rights; 9. The programming underlying CalGang did not purge all records within the required five-year time frame — some records were not scheduled to be purged for more than 100 years; and 10. Despite the enactment of SB 458 in 2013, many youth and their parents were not properly notified of their designation prior to adding them to CalGang nor afforded the right to contest gang designations.

## 2. History of Shared Gang Databases

In 1987, the Los Angeles County Sheriff’s Department developed the Gang Reporting, Evaluation and Tracking System (GREAT), the nation’s first gang database. “Before GREAT existed, police departments collected information on gang members in locally maintained files, but could not access information that had been collected by other law enforcement agencies.” (Stacey Leyton, *The New Blacklists: The Threat to Civil Liberties Posed by Gang Databases* (a chapter in *Crime Control and Social Justice: The Delicate Balance*, edited by Darnell F. Hawkins, Samuel L. Myers Jr. and Randolph N. Stone, Westport, CT, 2003. *The African American Experience*, Greenwood Publishing Group, Mar. 27, 2013.) Using GREAT, local law enforcement could collect, store, centralize, analyze, and disperse information about alleged gang members.

In 1988, the Legislature passed the Street Terrorism Enforcement and Prevention (STEP) Act, asserting California to be “in a state of crisis... caused by violent street gangs whose members threaten, terrorize and commit a multitude of crimes against the peaceful citizens of their neighborhoods.” (Pen. Code, § 186.21 (1988).) The STEP Act established the nation’s first definitions of “criminal street gang,” “pattern of criminal gang activity,” and codified penalties for participation in a criminal street gang.

In 1997, less than a decade after the regional GREAT database was first created, the regional GREAT databases were integrated into a new unified statewide database, CalGang, with the goals of making the database easier to use and less expensive to access. (Leyton, *supra*, at 113, citing Patrick Thibodeau, *Cops Wield Database in War on Street Gangs*, Computerworld, Sept. 1, 1997, at 4; and Ray Dassault, *GangNet: A New Tool in the War on Gangs*, California Computer News, January 1997 <<http://www.govtech.com/magazines/gt/GangNet-A-New-Tool-in-the.html?page=3>>.) CalGang operates pursuant to the 1968 Omnibus Crime Control and Safe Streets Act, which requires that “all criminal intelligence systems ... are utilized in conformance with the privacy and constitutional rights of individuals.” (Criminal Intelligence Systems, Operating Policies, 28 CFR Part 23.)

## 3. CalGang Database

According to the DOJ Web site, CalGang is a criminal intelligence system that specifically targets members and criminal associates of criminal street gangs. The goal is to provide an accurate, timely, and electronically generated database of statewide gang related intelligence information. Only specifically trained law enforcement officers and support staff may access CalGang. (See <<https://oag.ca.gov/calgang>>.)

According to Policies and Procedure for the CalGang System, an individual can be entered into the CalGang database when two of the following criteria are found through investigation, combined with the officer's training and expertise (the only single criteria allowing for entry is an in-custody jail classification interview):

- a) The individual has admitted to being a gang member;
- b) The individual has been arrested with known gang members for offenses consistent with gang activity;
- c) The individual has been identified as a gang member by a reliable informant/source;
- d) The individual has been identified as a gang member by an untested informant;
- e) The subject has been seen affiliating with documented gang members;
- f) The individual has been seen displaying gang symbols and/or hand signs;
- g) The individual has been seen frequenting gang areas;
- h) The individual has been seen wearing gang dress;
- i) The individual is known to have gang tattoos; or,
- j) The individual is in custody and classified as a gang member pursuant to an interview.

(California Gang Node Advisory Committee, Policy and Procedures for the CalGang System, rev. Sept. 2007, <[https://oag.ca.gov/sites/all/files/agweb/pdfs/calgang/policy\\_procedure.pdf?>](https://oag.ca.gov/sites/all/files/agweb/pdfs/calgang/policy_procedure.pdf?>).)

An individual can be entered into the database as a gang affiliate when the individual is known to affiliate with active gang members and the law enforcement officer has established there is a reasonable suspicion the individual is involved in criminal activity or enterprise. Agencies entering the affiliate information into CalGang must maintain documentation, which adequately supports each entry. (*Id.*)

#### **4. California State Auditor Reported Concerns Regarding Accuracy of the CalGang Database**

In August 2016, the California State Auditor presented a report concerning the CalGang Database to the Joint Legislative Audit Committee.

The State Auditor concluded:

CalGang's current oversight structure does not ensure that law enforcement agencies (user agencies) collect and maintain criminal intelligence in a manner that preserves individuals' privacy rights. Although the California Department of Justice funds it, CalGang is not established in state statute and consequently receives no state oversight. Instead, the CalGang Executive Board and the California Gang Node Advisory Committee (CalGang's governance) oversee

CalGang and function independently from the State and without transparency or meaningful opportunities for public input.

Inadequate oversight contributed to the numerous instances in which the four user agencies we examined could not substantiate the validity of CalGang entries. Specifically, the agencies lacked adequate support for 13 of 100 people we reviewed in CalGang and for 131 of 563 (23 percent) of the CalGang criteria entries we reviewed. Although a person's CalGang record must be purged after five years unless updated with subsequent criteria, we found more than 600 people in CalGang whose purge dates extended beyond the five-year limit, many of which were more than 100 years in the future. Finally, the user agencies have poorly implemented a 2014 state law requiring notifications before adding a juvenile to CalGang. Two agencies we reviewed did not provide juveniles and parents with enough information to reasonably contest the juveniles' gang designations, thereby denying many people their right to contest a juvenile's gang designation.

Although it asserts compliance with federal regulations and state guidelines—standards designed to protect privacy and other constitutional rights—little evidence exists that CalGang's governance has ensured these standards are met. As a result, user agencies are tracking some people in CalGang without adequate justification, potentially violating their privacy rights. Further, by not reviewing information as required, CalGang's governance and user agencies have diminished the system's crime-fighting value. Although CalGang is not to be used for expert opinion or employment screenings, we found at least four appellate cases referencing expert opinions based on CalGang and three agencies we surveyed confirmed they use CalGang for employment screenings. Although these practices do not appear to be common place, they emphasize the effect CalGang can have on a person's life.

We believe that CalGang needs an oversight structure that ensures that information is reliable and that users adhere to requirements that protect individuals' rights. Thus, we recommend that the Legislature adopt state law assigning Justice the responsibility for CalGang oversight and specifying that CalGang must operate under defined requirements, such as supervisory and periodic record reviews.

(Cal. State Auditor, *The CalGang Criminal Intelligence System: As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals' Privacy Rights* (Aug. 2016), <<https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>> [as of June 28, 2017].)

## 5. Similar Legislation

SB 505 (Mendoza) and this bill both seek to address issues regarding the CalGang database that were raised by the State Auditor. Both this bill and SB 505 were introduced this year in response to the findings by the State Auditor. Both bills share the following elements:

- Designate DOJ as the state agency responsible for administering and overseeing CalGang or any equivalent statewide shared gang database;
- Specify that the DOJ's oversight responsibilities include developing and implementing standardized periodic training as well as conducting periodic audits of CalGang; and,
- Specify the standards to which DOJ, in consultation with a proposed advisory committee, will regulate the use, operation, and oversight of CalGang.

SB 505 and this bill also have some differences related to the administration and oversight of the CalGang database which include:

- Membership of the proposed committees: Both bills specify an 11-member advisory committee, however the make-up of those committees specified by each bill are different.
- Moratorium: Both bills impose a moratorium on access to and adding to shared gang databases, but contains differing provisions of when the moratorium shall be lifted. This bill provides that the moratorium shall not be lifted until the regulations and training required by this bill have been developed by DOJ. The deadline set by this bill is January 1, 2020. SB 505 provides that the moratorium shall not be lifted until the AG has certified that the shared gang databases have been purged of any records for a criminal street gang member that does not meet criteria for entry.
- Sharing of data with outside agencies: This bill generally prohibits all sharing of data in CalGang with outside agencies, except data may be shared in response to an inquiry about a specific person, including a designation of gang membership or association, with a federal agency, multi-state agency, or agency of another state, so long as database access is not granted to the federal, multi-state, or other state's agency, the information provided is not bulk data, and the inquiry is not for immigration enforcement purposes. SB 505 states that records in a shared gang database shall not be disclosed for purpose of enforcing federal immigration law, unless required by state or federal statute or regulation.

#### **6. Changes to Existing Procedures Related to Requests for Information from Law Enforcement Agencies and Petitions to the Court Regarding a Person's Designation as a Gang Member or Associate**

AB 2298 (Weber), Chapter 752, Statutes of 2016, imposed specified due process rights on California shared gang databases, including extending the requirements of providing notice and an opportunity to contest designation as a gang member or affiliate to adults, instead of just minors. (Pen. Code, § 186.34.) SB 458 (Wright), Chapter 797, Statutes of 2013, required local law enforcement to notify a minor and his or her parent or guardian before designating that minor as a gang member, associate, or affiliate in a shared gang database and the basis for the designation.

This bill makes modifications to the laws implemented by AB 2298 and SB 458. Specifically, this bill requires the notice prior to designating a person as a gang member or affiliate to include a factual basis for the designation of the organization as a gang. This bill also provides a remedy if the law enforcement agency fails to respond to a valid request for information within the

required 30-day timeline. The bill provides that a person may petition the court under existing provisions that authorize a person to appeal his or her designation as a gang member in a shared gang database if the law enforcement agency fails to respond. However, when there are multiple law enforcement agencies involved, this bill requires the person to first request information from all of the agencies prior to petitioning the court. This bill also provides specified timelines for when the petition must be filed.

This bill also provides that if a law enforcement agency has failed to respond to the request, at a hearing on the petition for appeal of a person's designation as a gang member, the only evidence that may be introduced is whether the agency had received the request and whether their response, if any, was timely. The bill prohibits the agency that failed to respond to the request from presenting evidence of gang membership or affiliation at the hearing. The sponsors of this legislation state that the purpose of this limitation is both fairness (the petitioner should have all documentation supporting the designation prior to the hearing) and court efficiency (new information that the petitioner could not have considered prior to the hearing could lead to motions to continue the hearing or motions to exclude the information which would take up additional court time). The bill also provides that a second petition may not be filed for 180 calendar days.

This bill also contains changes to make the language consistent between existing statutes.

## **7. Argument in Support**

Urban Peace Institute, a sponsor of this bill, writes in support:

Urban Peace Institute is a non-profit organization, and our mission is to develop policy, practice, and systems solutions to reduce violence, achieve safety, and improve community health so that families can thrive. To that end we provide technical assistance to cities and police departments, train community intervention workers, and provide direct legal services to individuals for whom false gang allegations are a barrier to successful social integration. We currently represent approximately 25 clients seeking removal from shared gang databases. These clients are among the first in the state to take advantage of the reforms enacted by AB 2298. As part of that representation, we have been in close communication with nine different law enforcement agencies as they enact local policies to carry out AB 2298. We consulted with the Judicial Council when the council drafted the new Rules of Court to effectuate the implementation of AB 2298. We have also advised public defender offices, law school clinics, legal aid foundations, and private attorneys on how their clients can take advantage of the new law. Based on this experience, we believe that AB 90 will improve the effectiveness and efficiency of the due process provided by AB 2298. AB 90 will do this by providing clarity to some ambiguous language in the current law.

AB 90 will also enact new reforms to shared gang databases based on the shortcomings found in the recent audit of CalGang. The state auditor published the CalGang report after AB 2298's introduction and revealed shortcomings that could only be properly addressed through a new bill. To this end, AB 90 will enact the following reforms:

- Provide for oversight of CalGang by the Department of Justice and for an advisory committee that includes a diversity of voices;
- Place a moratorium on CalGang until DOJ certifies the audit recommendations have been implemented;
- Shorten the length of time a person may remain on a shared gang database without new evidence, thereby better reflecting the length of time most gang members are actually active;
- Allow for the Racial and Identity Profiling Board to consider the role of racial profiling in the use of gang databases;
- Improve reporting of data.

## **8. Argument in Opposition**

The California State Sheriffs' Association writes in opposition to this bill:

Our first concern is the bill's moratorium on the use of CalGang. This bill provides that no data may be added or accessed until training protocols on the use of CalGang are developed and implemented and regulations are promulgated to provide for periodic audits of shared gang databases. While changes to CalGang administration might be necessary, this bill will eliminate the use of an important gang intelligence tool for a period of at least several months, if not longer. The moratorium on CalGang access will jeopardize public safety.

Additionally, the membership of the technical advisory committee created by this bill is required to include a person who is or was on a shared gang database. We believe it is inappropriate to include a person who may well be currently involved in gang activity in a position to influence the recommendations made by a body charged with providing advice on gang databases. We are also concerned about statutorily allowing the Racial and Identity Profiling Advisory (RIPA) Board to review operations of shared gang databases as this expands RIPA Board's purview.

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