
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 325 **Hearing Date:** January 11, 2022

Author: Bradford

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Urgency: No

Consultant: SC

Fiscal: No

Subject: *Criminal gangs: shared gang databases*

HISTORY

Source: Author

Prior Legislation: AB 90 (Weber), Ch. 695, Stats. 2017
SB 505 (Mendoza), 2017
AB 2298 (Weber), Ch. 752, Stats. 2016
SB 458 (Wright), Ch. 797, Stats. 2013

Support: California Public Defenders Assoc.

Opposition: Unknown

PURPOSE

The purpose of this bill is to add a member to the Gang Database Technical Advisory Committee that is an attorney with substantial professional experience in contesting an individual's designation as a gang member in a shared gang database.

Existing law defines "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. (Pen. Code, § 186.34, subd. (a)(2).)

Existing law defines "shared gang database" to mean a gang database that is accessed by an agency or person outside the agency that created the records that populate the database. (Pen. Code, § 186.34, subd. (a)(4).)

Existing law makes the Department of Justice (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. (Pen. Code, § 186.36, subds. (a)-(b).)

Existing law requires, commencing February 15, 2018, and annually on February 15 thereafter, DOJ to publish an annual report on the CalGang database. (Pen. Code, § 186.36, subd. (p).)

Existing law states that DOJ shall be responsible for overseeing shared gang database system discipline and conformity with all applicable state and federal regulations, statutes, and guidelines and specifies methods that DOJ may use to enforce a violation. (Pen. Code, § 186.36, subds. (t) - (u).)

Existing law requires DOJ to establish the Gang Database Technical Advisory Committee (“committee”) and specifies that the committee appointees shall have the following characteristics (Pen. Code, § 186.36, subds. (c)-(d)):

- Substantial prior knowledge of issues related to gang intervention, suppression, or prevention efforts;
- Decisionmaking authority for, or direct access to those who have decisionmaking authority for, the agency or organization he or she represents; and,
- A willingness to serve on the committee and a commitment to contribute to the committee’s work.

Existing law requires DOJ, with the advice of the committee, no later than January 1, 2020, to promulgate regulations to provide for periodic audits of each CalGang node and user agency to ensure the accuracy, reliability, and proper use of the CalGang database. DOJ shall mandate the purge of any information for which a user agency cannot establish adequate support. (Pen. Code, § 186.36, subd. (n).)

Existing law provides that the regulations issued by DOJ shall, at minimum, ensure the following (Pen. Code, § 186.36, subd. (k)):

- The system integrity of a shared gang database;
- All law enforcement agency and criminal justice agency personnel who access a shared gang database undergo comprehensive and standardized training on the use of shared gang databases and related policies and procedures;
- Proper criteria are established for supervisory reviews of all database entries and regular reviews of records entered into a shared gang database;
- Reasonable measures are taken to locate equipment related to the operation of a shared gang database in a secure area in order to preclude access by unauthorized personnel;
- Law enforcement agencies and criminal justice agencies notify the department of any missing equipment that could potentially compromise a shared gang database;
- Personnel authorized to access a shared gang database are limited to sworn law enforcement personnel, nonsworn law enforcement support personnel, or noncriminal justice technical or maintenance personnel, including information technology and information security staff and contract employees, who have been subject to character or security clearance and who have received approved training;
- Any records contained in a shared gang database are not disclosed for employment or military screening purposes;
- Any records contained in a shared gang database are not disclosed for purposes of enforcing federal immigration law, unless required by state or federal statute or regulation; and,
- The committee does not discuss or access individual records contained in a shared gang database.

Existing law requires DOJ, with the advice of the committee, to develop and implement standardized periodic training for everyone with access to the CalGang database. (Pen. Code § 186.36, subd. (m).)

Existing law requires the membership of the committee to be as follows (Pen. Code, § 186.36, subd. (e)):

- The Attorney General (AG), or their designee;
- The President of the California District Attorneys Association, or their designee;
- The President of the California Public Defenders Association, or their designee;
- A representative of organizations that specialize in gang violence intervention, appointed by the Senate Committee on Rules;
- A representative of organizations that provide immigration services, appointed by the Senate Committee on Rules;
- The President of the California Gang Investigators Association, or their designee;
- A representative of community organizations that specialize in civil or human rights, appointed by the Speaker of the Assembly;
- A person who has person experience with a shared gang database as someone who is or was impacted by gang labeling, appointed by the Speaker of the Assembly;
- The chairperson of the California Gang Node Advisory Committee, or their designee;
- The President of the California Police Chiefs Association, or their designee; and,
- The President of the California State Sheriffs' Association, or their designee.

This bill adds an attorney with substantial professional experience in contesting an individual's designation as a gang member in a shared gang database, appointed by the Senate Committee on Rules, to the committee membership.

COMMENTS

1. Need for this Bill

According to the author of this bill:

The CalGang database is used by law enforcement agencies across the state to store the names of over 45,000 people suspected of being active gang members or possibly associating with them. Although intended to be used as a resource for law enforcement to solve crime and protect public safety, the database has not been without controversy. In 2016, a state audit found that the database had inadequate oversight which resulted in unreliable information that potentially violated individuals' privacy rights.

In 2020, the Los Angeles Police Department announced its own moratorium on all entries into the database. Among reasons cited for the moratorium, LAPD stated that "based on recent audits and ongoing complaint investigations, the accuracy of the database has been called into question." LAPD found that officers had been accused of falsifying information in order to add people to the database. This improper use of the database has resulted in questionable entries and the inclusion of individuals with no gang affiliation, including children.

The CalGang database allows for an individual to request their removal from the database after receiving notice from a local law enforcement agency. Between October 2019 and September 2020, 40 requests for removal were made to law enforcement agencies, and only 10 were granted. Unfortunately, many individuals often choose not to pursue removal as it may be costly or time-consuming.

It is imperative that representation on the CalGang database technical advisory committee includes individuals with expertise on contesting invalid additions to the database. Including this representation will help ensure the integrity of the database, as well as strengthen community trust in law enforcement, and protect individuals and communities at risk of being inappropriately labelled as gang-affiliated

2. History of 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>>.)

3. CalGang Database

According to the DOJ's website, the CalGang database is a criminal intelligence unit whose goal is to provide law enforcement agencies with an accurate, timely, and electronically-generated database of statewide gang-related intelligence information. All records and information contained in the CalGang database are confidential and are for the use of law enforcement agencies only. (See <<https://oag.ca.gov/calgang/faqs>> [as of Dec. 15, 2021].) As of January 1, 2018, [due to the enactment of AB 90 (Weber), Ch. 695, Stats. 2017] the CalGang unit within DOJ administers and oversees the CalGang database. The units' responsibilities include writing

regulations governing the use, operation, and oversight of any shared gang database, including CalGang, conducting training and audits as subject matter experts, publishing annual reporting on the usage of CalGang, and acting as system administrators of the CalGang database. (See <<http://oag.ca.gov/calgang>> [as of Dec. 15, 2021].)

4. State Auditor Report on CalGang and Ongoing Concerns

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 Dec. 15, 2021].

Subsequently, the Legislature enacted AB 90 (Weber) in 2017 to, among other things, shift responsibility for oversight of the CalGang database from the CalGang Executive Board to DOJ. The bill put in place a moratorium on access to CalGang until DOJ certifies the database has been purged of any records that do not meet the criteria for entry as specified and also required DOJ to promulgate regulations for the operation and oversight of the database by January 1, 2020. After requesting an extension on the original deadline, on October 22, 2020, DOJ adopted regulations pursuant to AB 90. (See *Attorney General's Annual Report on CalGang for 2020*, <<https://oag.ca.gov/sites/all/files/agweb/pdfs/calgang/ag-annual-report-calgang-2020.pdf>> [as of Dec. 15, 2021].)

Even after the enactment of AB 90, the validity of the data in the database continued to raise concerns. In July of 2020, Los Angeles Police Department (LAPD) permanently withdrew from the CalGang program after an internal audit uncovered significant misuse of the gang-tracking database by LAPD personnel, including entry of false information. Following that announcement, the AG revoked access to CalGang records generated by LAPD. (See <<https://oag.ca.gov/news/press-releases/attorney-general-becerra-restricts-access-lapd-generated-calgang-records-issues>> [as of Dec. 15, 2021].)

Several local police departments have reported that they are ceasing or phasing out its use of CalGang. According to DOJ's 2020 annual report on CalGang, agencies operating in the Fresno node ceased utilizing CalGang in 2020, and their records were also removed from the database. San Diego County Sheriff's Department has also reported that it is in the process of phasing out its use. (Figueroa, *San Diego Group, others suing to pause use of state gang database*, The San Diego Union-Tribune (Sept. 24, 2020) [as of Dec. 15, 2021].)

5. Argument in Support

The California Public Defenders Association supports this bill stating:

SB 325 will amend California Penal Code section 186.36. Specifically, it will require the Senate Committee on Rules to appoint an attorney – who specializes in removing individuals from shared gang databases – to the gang database technical advisory committee. The gang database technical advisory committee responsible for making suggestions to the DOJ regarding rules that govern the use of shared gang databases.

Created by Assembly Bill 90, the committee was formed to make gang documentation less unfair. As created, however, the committee had more law-enforcement members than non-law enforcement members. Sadly, in the year following AB 90's enactment, many of the law enforcement members of the

committee refused to compromise on any policing policies during the rule-making meetings. Consequently, this inhibited the body's ability to make any changes that were geared toward fairness and many unfair documentation practices were left in place. SB 325 will increase the likelihood that the committee will be able to create policies that promote, both, effective policing and respect for community members.

-- END --