

## **BILL ANALYSIS**

C.S.H.B. 1838  
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Homeland Security & Public Safety  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Concerns have been raised that citizens who are not part of any criminal street gang are being entered into the Department of Public Safety gang database known as TxGANG without reasonable cause, without their knowledge, and with no practical recourse for disputing their inclusion. Because inclusion in TxGANG can have serious consequences, processes and procedures surrounding TxGANG need to be updated to address these due process concerns. C.S.H.B. 1838 seeks to revise these processes and procedures to increase evidentiary standards, improve communication, and provide greater transparency and due process for those whose information would be included in TxGANG.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Public Safety in SECTION 7 of this bill.

### **ANALYSIS**

C.S.H.B. 1838 amends the Code of Criminal Procedure to require the Department of Public Safety (DPS) to provide the following to a person not later than the 60th day after the date DPS includes information relating to the person in the DPS intelligence database regarding combinations and criminal street gangs known as TxGANG:

- notification regarding the inclusion of the person's information in TxGANG;
- a description of the process for disputing the inclusion of information in TxGANG, including related costs, fees, time lines, and necessary evidence; and
- a description of the process for removing information from TxGANG following renunciation of criminal street gang membership.

The bill requires DPS to post information regarding both processes on the DPS website.

C.S.H.B. 1838 prohibits a person's inclusion in TxGANG from being made available for or used in a determination of the person's employment eligibility or from being used to do either of the following:

- limit any rights given to the person by state or federal law; or
- limit the person's ability to obtain any federal or state license, permit, or benefit.

C.S.H.B. 1838 requires the state auditor to annually conduct an audit of the information held in TxGANG and requires the removal of information that the auditor finds has remained in TxGANG for more than 10 years, unless DPS is able to reestablish sufficient evidence for the inclusion of the information. The bill requires the state auditor to create a summary of the audit

and requires DPS to make the summary available on its website. The bill sets out requirements for the content of the summary.

C.S.H.B. 1838 authorizes a person who is no longer a member of a criminal street gang to renounce gang membership and requires the removal of that person's information from TxGANG on the second anniversary of the renunciation. The bill requires DPS to adopt rules and forms for the process by which a former member of a criminal street gang may renounce membership, provide evidence that the person is no longer a member of the gang, and be removed from TxGANG.

C.S.H.B. 1838 revises provisions establishing a person's right to request review of criminal information regarding themselves or their child included in an intelligence database on criminal street gang activity and submitted to DPS for inclusion in TxGANG as follows:

- includes collecting the information in violation of federal criminal intelligence systems operating policies, the Texas Constitution, or the U.S. Constitution as grounds for the removal of information from the database;
- changes the requisite evidentiary standard regarding accuracy of the information to justify its inclusion in the database following review from reasonable suspicion to probable cause;
- specifies that the destruction of all recordings containing information found to not meet that evidentiary standard must be prompt;
- establishes a 10-business-day deadline following that destruction for the applicable law enforcement agency to notify DPS and the person requesting the review of the agency's determination on the request and the destruction of the records; and
- establishes a 10-business-day deadline following receipt of that notice for DPS to destroy all records containing the applicable information that is in TxGANG.

C.S.H.B. 1838 makes those same revisions with respect to the judicial review of the determination made by a law enforcement agency and further revises provisions relating to the judicial review as follows:

- establishes a 60-day deadline following receipt of the written notice of the agency's determination for a person to file a petition for judicial review, but authorizes a court to grant judicial review of a petition filed after that date if the petitioner shows good cause for filing after that date;
- changes the nature of the review from an in-camera review of the information that is the subject of the determination to a hearing in which the court must make available to the person's counsel under procedures for discovery all such criminal information; and
- makes the information that is the subject of the review subject to disclosure as required by discovery procedures under a subpoena or other legal process.

### **EFFECTIVE DATE**

September 1, 2021.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1838 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute omits provisions that appeared in the original revising the criteria for submission of information for inclusion in TxGANG.

The substitute revises the original's provisions establishing a notification requirement following inclusion of a person in a gang database as follows:

- narrows the scope of the provisions to apply only to TxGANG rather than to any local or regional gang database, as in the original;
- changes the entity responsible for providing the notice from a law enforcement agency that submits the information for inclusion in TxGANG, as in the original, to DPS; and
- changes the date on which the 60-day deadline period for providing the notice begins from the date the information was submitted to DPS, as in the original, to the date DPS includes the information in TxGANG.

The substitute narrows the scope of the original's provisions regarding the prohibited release and use of information in a gang database and the right to removal of information in a gang database following renunciation of gang membership so as to apply only to information in TxGANG, rather than also to information in local and regional gang databases, as in the original.

Whereas the original required DPS to annually summarize the information in TxGANG, the substitute requires the state auditor instead to annually conduct an audit of that information and create a summary of the audit that has the same elements as the original's DPS summary. The substitute includes provisions absent from the original requiring the state auditor to request that DPS reestablish sufficient evidence for the inclusion of any information that has remained in TxGANG for more than 10 years and requiring DPS to remove from TxGANG any such information for which sufficient evidence to justify continued inclusion cannot be established.