

SUBJECT: Regional databases on criminal gang activity

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Place, Talton, Dunnam, Farrar, Hinojosa, Keel, Nixon, A. Reyna
0 nays
1 absent — Galloway

WITNESSES: For — Charles Brawner, Texas Gang Investigators Association; Kim Ogg, Mayor’s Office, City of Houston; Steve Lyons, Houston Police Department; Joe Paniagua, Fort Worth City Council; David P. Weeks

Against — Keith S. Hampton, Texas Criminal Defense Lawyers Association

BACKGROUND : Chapter 61 of the Code of Criminal Procedure, enacted in 1995, authorizes a criminal justice agency to compile criminal information into a computer or other system for the purpose of investigating or prosecuting the criminal activities of criminal combinations, or gangs. Criminal information includes facts, material, photographs, or data reasonably related to the investigation or prosecution of criminal activity. The agency that maintains such information may release it on request to another criminal justice agency, a court, or a defendant in a criminal proceeding entitled to discovery of the information. Criminal information relating to a child associated with a combination may be compiled and released regardless of the age of the child, but the information may not be sent to or compiled in a statewide database. Information on an individual collected under these provisions must be destroyed after two years if the individual has not been charged with criminal activity.

DIGEST: CSHB 2874 would authorize local criminal justice agencies to send information collected under Chapter 61 to regional databases.

The bill would increase to three years the period when information relating to a child must be destroyed and specify that the information would only have to be destroyed during that time frame if the individual had not been:

- arrested for, rather than charged with, criminal activity and reported to the Department of Public Safety for inclusion in the Criminal History Record System or the Juvenile Justice Information System; or
- arrested for the offense of disorderly conduct in connection with fighting in a public place.

Time spent incarcerated in certain divisions of the Texas Department of Criminal Justice or in the Texas Youth Commission for service of a felony sentence or commitment would not count in the three-year time period related to destruction of information related to a child.

CSHB 2874 would take immediate effect if finally approved by a two-thirds record vote of the membership in each house, and would apply to criminal information without regard to when the information originated or was first compiled.

**SUPPORTERS
SAY:**

CSHB 2874 would increase the effectiveness of a valuable tool already being used by law enforcement agencies to combat gang activity and solve gang-related crimes. The new provisions authorizing law enforcement agencies to compile, maintain and disseminate information relating to criminal combinations have allowed police to develop “gangbooks” for collecting information on known or suspected gang members. Under CSHB 2874, the information in local gangbooks could be reported by law enforcement agencies to a regional database, all agencies in a region would have access to the information, and the information could be shared between regions. This would assist police in apprehending gang criminals and tracking particular gang members’ movements around the various regions of Texas.

Juveniles may commit a crime in one region and then return to their home region confident that the authorities in the area where the crime was committed probably lack access to files on gangs in their home region. Those files usually include information on gang colors, types of crimes usually committed by that particular gang, and names and descriptions of members and the cars they drive. This information can be very helpful in identifying and apprehending gang members responsible for a crime.

There are adequate protections for the juveniles who would be entered into a regional database. The information would only be used as an investigatory tool by law enforcement officers, and a prosecutor would still have to prove beyond a reasonable doubt that an individual committed a crime even if that individual was included in a regional gang-related crimes database.

Only criminal information relating to a juvenile associated with a gang could be entered into the regional database system. The mere fact that a person was a friend of a gang member would not qualify that person for entry into the regional database. Many local databases require a certain number of criteria to be met to make sure persons are involved in a gang before their names may be entered into the gang database.

The current requirement that database information on an individual to be destroyed within two years unless the individual has been charged with criminal activity is too difficult to effectively implement. Not all charges against individuals are reportedly uniformly or reported to a central database. CSHB 2874 would solve this problem by basing the time extension for database information retention on an arrest for criminal activity, rather than a charge.

In addition, the bill would limit the information destruction requirements to juveniles, rather than continuing to apply them to adults as well. Adults do not need the same level of protection as juveniles, and they are more likely to maintain their association with a gang.

CSHB 2874 would properly exclude time an individual has spent incarcerated from the calculation of the time limit for maintenance of information about that individual in a database. Currently, if an individual is incarcerated for more than two years, the information on that individual could be required to be destroyed even though that individual may remain involved in a gang.

**OPPONENTS
SAY:**

CSHB 2874 would chip away at the policy of not sending gang information to a statewide database by authorizing police to send such information to a “regional database.” The reason that local criminal justice agencies cannot send information to a statewide database is to accommodate First Amendment rights to freedom of association. For example, a police officer

may conclude in error that a juvenile is in a gang because the juvenile regularly plays basketball with some acquaintances, one of whom is a “known gang member.” The juvenile might not be a gang member at all, or he might be a gang member who has not taken up a criminal life. While police are only allowed to enter criminal information into the database, some police might feel that mere association with a gang member is criminal enough.

If the officer wrongfully enters the juvenile’s name into the gang database, that faulty designation would follow the juvenile wherever the juvenile moves within the region covered by the database and also could be shared with other regions. This would allow statewide dissemination of information through the back door since a statewide database is prohibited.

CSHB 2874 would exacerbate and extend regionally and statewide the problems already associated with local databases. Those databases may be used by police to “round up the usual suspects” whenever a crime is committed. Rather than having particular probable cause or reasonable suspicion for picking up a person suspected of criminal activity, the police may only determine that the person was a gang member in the database belonging to a gang associated with that particular crime.

While some counties have developed guidelines to ensure that people are not fingered as criminally involved gang members without good cause, there is no guarantee that other counties will develop proper criteria to protect an individual’s constitutional right to freedom of association. If some of the counties within a region do not have proper criteria, they may disseminate harmful faulty information through the regional database and the other counties in the region and in other regions would have no way to separate the faulty information from the accurate information.

The bill should define “regional database” because more precisely because a region could include almost the entire state.

OTHER
OPPONENTS
SAY:

Any move to authorize regional databases to share information on suspected gang members without any practical way to verify the accuracy of that information should include some prohibition against taking that information

at face value without corroboration from an act of the suspected gang member or from some other reliable source.

NOTES:

The committee substitute deleted a provision that would have authorized local criminal justice agencies to send information to a statewide database, and added a provision limiting to juveniles required destruction of information.