

SUBJECT: Creating a statewide database of gang information

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 7 ayes — Goodman, Pickett, Isett, P. King, Morrison, E. Reyna, Truitt
0 nays
2 absent — Naishtat, A. Reyna

SENATE VOTE: On final passage, April 27 — 30-0

WITNESSES: For — Scott Forbes, City of Houston
Against — None

BACKGROUND: Code of Criminal Procedure, art. 61.02 allows criminal justice agencies to compile criminal information into a system to investigate or prosecute the criminal activities of criminal combinations. The information may be released to another criminal justice agency, a court, or a defendant in a criminal proceeding. This section also allows the compilation and release of criminal information on children associated with criminal combinations.

Local criminal justice agencies may not send the information to a statewide database but may send it to a regional database. Information must be destroyed after two years if the individual has not been charged with criminal activity. This requirement has been suspended until September 1, 1999.

The Penal Code defines criminal combinations as three or more persons who collaborate in carrying on criminal activities, although the participants may not know each other's identity, membership in the combination may change from time to time, and participants may stand in a wholesaler-retailer or other arm's-length relationship in illicit distribution operations.

The code defines criminal street gangs as three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in committing criminal activities.

DIGEST: CSSB 8 would expand the criminal combination database to allow information to be included on adults and juveniles involved with criminal street gangs. Information could be compiled on criminal combinations and criminal street gangs only if:

- ! it were relevant to the identification of and criminal activity of an individual who or whose organization was reasonably suspected of involvement in criminal activity; and
- ! it consisted of any *two* of the following:
 - ! an admission by the person of membership in a criminal street gang;
 - ! an identification of the person as a criminal street-gang member by a reliable informant or other person;
 - ! a corroborated identification of the person as a criminal street-gang member by an informant or other person of unknown reliability;
 - ! evidence that the person frequented a documented area of a criminal street gang and associated with known gang members;
 - ! evidence that the person used criminal street-gang dress, hand signals, tattoos, or symbols; or
 - ! evidence that the person had been arrested or taken into custody with known criminal street-gang members for an offense or conduct consistent with criminal street-gang activity.

The Department of Public Safety (DPS) would have to establish and maintain a statewide database of the information and to distinguish information relating to children from that relating to adults. Criminal justice agencies compiling information would have to send it to the statewide database. Local criminal justice agencies no longer could send information to regional databases.

CSSB 8 would eliminate the current requirement that information be destroyed after two years. Information in the local and statewide databases would have to be removed from an information system after five years if the information related to the investigation or prosecution of criminal activity engaged in by an individual other than a child and if the individual had not been arrested for criminal activity reported to DPS under the criminal history record system. The five-year period would not include any period for which the person was confined in a prison or state jail.

Criminal street-gang information relating to a child would have to be removed from the local and statewide databases after three years if it related to the investigation or prosecution of criminal activity engaged in by a child and if the child had not been arrested for criminal activity reported to DPS under the criminal history record system or had not been taken into custody for delinquent conduct. The three-year period would not include time the child had spent committed to the Texas Youth Commission or in an adult prison or state jail.

Upon request of a child, the child's parent or guardian, or a person about whom information was collected when the person was a child, a criminal justice agency would have to review information sent to the statewide database and determine whether it complied with the statutory submission criteria. If the agency found that the information did not comply with the submission criteria, the agency would have to remove all records containing the information and notify DPS and the person of the removal. DPS would have to remove the records from the database immediately.

CSSB 8 would take effect September 1, 1999, and would apply to criminal information collected before, on, or after that date.

Criminal justice agencies would not have to send information to the statewide database until September 1, 2000, and DPS would not have to establish the database until then.

By September 1, 2000, each criminal justice agency that collected this type of information would have to review information in their systems that was collected before September 1, 1999, to determine if it met the submission criteria in CSSB 8. They would have to remove all records containing information that did not comply with the submission criteria, except for information consisting solely of a person's admission to being a member of a criminal street gang.

**SUPPORTERS
SAY:**

CSSB 8 would increase the effectiveness of a valuable tool already used by law enforcement authorities to combat gang activity and to solve gang-related crimes. The bill would balance the need to protect public safety and aid law enforcement authorities with the rights of citizens.

Current law hampers law enforcement authorities by allowing information to be shared on only a regional level. Street gangs, estimated to have 84,000 members statewide, are becoming increasingly mobile and organized, and they have increasing contact with prison gangs.

If law enforcement authorities are to combat gang crimes effectively, they must share information. Creation of a statewide database would help police apprehend gang criminals and track gang members' criminal activities across the state. Gang members often commit crimes in one area but live in another area or move throughout the state. Gang databases have been used to identify crime suspects by their nicknames and to produce pictures of suspects for victims to identify.

CSSB 8 would ensure that a statewide gang database was used only to investigate and prosecute criminal activity. One criterion for admission into the database would be that an individual was reasonably suspected of involvement in criminal activity. Database information could not be used for other reasons, such as background checks for jobs or credit checks.

This bill would not infringe on anyone's right to free association. The mere fact that a person was a friend of a gang member would not qualify that person for entry into the database, because CSSB 8 would require that objective criteria be met before information could be included.

CSSB 8 would allow information to be kept for five years so that law enforcement authorities would not lose valuable data that had been gathered only recently. Other databases are not purged after two years, as the law now requires, and other states do not require the destruction of two-year-old gang intelligence files. The bill would require information to be removed from the database but not destroyed. The information could be warehoused and used later — for example, if a subpoena were issued because a file contained information of evidence of a crime.

The original idea behind the destruction-of-records requirement was to protect juveniles who extricated themselves from a gang and did not commit criminal offenses. However, because no distinction was made for adult gang intelligence files, all files are in jeopardy of being destroyed. Therefore, law enforcement could lose a valuable tool if CSSB 8 is not approved.

CSSB 8 would help protect juveniles by allowing only a three-year retention of records if no arrest was made and by authorizing juveniles to challenge information about them in the database. It is proper to treat juvenile files differently from adult files, since the criminal justice system makes numerous distinctions between juveniles and adults. Adults do not need the same level of protection as juveniles and are more likely to maintain their association with a gang. Allowing adult records to be retained for five years would be in line with federal guidelines for retention of criminal records and would require the records to be removed after a reasonable time.

Allowing all persons to seek review of a law enforcement decision to retain information about them could lead to an unworkable situation in which every prison inmate included in the database challenged their inclusion.

CSSB 8 would allow information to be collected on “criminal street gangs” as well as “criminal combinations” to eliminate current constraints on law enforcement monitoring of criminal gang activities.

Allowing a local option to send information to the database would limit the utility of the statewide system. For the database to be a truly useful tool for law enforcement, it must be statewide and include all jurisdictions keeping these records.

Persons always could appeal their inclusion in the database to a court. It would be better to allow people to operate through standard court procedures than to enumerate a specific process in the bill.

**OPPONENTS
SAY:**

CSSB 8 would further erode Texans’ right to privacy. One important reason that gang information thus far has been limited to being kept on a local or regional level is to accommodate rights to privacy and freedom of association. For example, a police officer could conclude in error that a juvenile was a gang member because the juvenile regularly played basketball with acquaintances, one of whom was a “known gang member.” The juvenile might not be a gang member at all, or he might be a gang member who had not taken up a life of crime.

The statewide database could unfairly include the names of persons who never had even been arrested for a crime. Anyone “reasonably suspected” of criminal activity could be included in the database simply because a

confidential informant considered a reliable source had identified the person as a gang member and because the person wore the clothes and tattoos and used the hand signals of a gang.

CSSB 8 could exacerbate and extend statewide the problems with local and regional databases. Police can use databases to “round up the usual suspects” whenever a crime is committed. In addition, if a person were entered wrongfully into the database, that faulty designation could follow them throughout the state.

OTHER
OPPONENTS
SAY:

CSSB 8 should allow city councils or commissioners courts to decide whether to send information to the statewide database. This would ensure that the public was aware of the decision to include citizens in the database and would give them the opportunity to voice their opinions.

The bill should include an opportunity for adults to challenge information in the database that pertained to them. Also, all persons should have an explicit right to seek a judicial review of an agency’s decision to retain information about them.

NOTES:

The fiscal note estimates that the bill would cost the state \$784,626 in general revenue for fiscal 2000-01.

The committee substitute added the specific criteria that would have to be met for information to be submitted to the statewide database and eliminated a requirement that law enforcement agencies could compile and maintain gang database information only in accordance with operating policies for criminal intelligence systems established under federal law. The substitute made other changes, including eliminating authorization for law enforcement agencies to adopt policies to notify parents or guardians of an agency’s observations relating to a child’s association with a criminal street gang; eliminating the ability of anyone to request a review of database information on them; and eliminating a procedure for persons to seek judicial review of a decision about the retention of records about themselves.