

SUBJECT: Information contained in a criminal street gang intelligence database

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Peña, Vaught, Riddle, Escobar, Mallory Caraway

0 nays

4 absent — Hodge, Moreno, Pierson, Talton

WITNESSES: For — Dib Waldrip, Texas Violent Gangs Taskforce

Against — David Gonzalez, Texas Criminal Defense Lawyers Association; (*Registered, but did not testify*: Benny Hernandez, ACLU of Texas)

On — (*Registered, but did not testify*: Paul Jordan, Texas DPS Criminal Intelligence Service; Veronica Norris, Texas DPS Criminal Intelligence Service)

BACKGROUND: Under Code of Criminal Procedure, art. 61.02, a criminal justice agency may compile criminal information into an intelligence database for the purpose of investigating or prosecuting the criminal activities of gangs. This may include references to individuals if certain conditions are met.

Criminal information collected must be relevant to the identification of an organization reasonably suspected of involvement in criminal activity and consist of any two of the following:

- a self-admission by the individual of criminal street gang membership;
- an identification of the individual as a criminal street gang member by a reliable informant or other individual;
- a corroborated identification of the individual as a criminal street gang member by an informant or other individual of unknown reliability;
- evidence that the individual frequents a documented area of a criminal street gang, associates with known criminal street gang members, and uses criminal street gang dress, hand signals, tattoos,

or symbols; or

- evidence that the individual has been arrested or taken into custody with known criminal street gang members for an offense or conduct consistent with criminal street gang activity.

Code of Criminal Procedure, art. 61.06 provides for the removal of a person's name from these lists after three years if the information relates to the investigation or prosecution of criminal activity engaged in by an individual other than a child and the individual who is the subject of the information has not been arrested for certain criminal activities.

DIGEST:

CSHB 1658 would amend Code of Criminal Procedure, art. 61.02(c)(2) to re-structure the triggers that would add a person to a gang intelligence database. A person could be added if the information were relevant to the identification of an organization reasonably suspected of involvement in criminal activity and:

- a judgment against the person was entered under any law that included, as a finding or as an element of a criminal offense, participation in a criminal street gang; or
- a self-admission by the individual of criminal street-gang membership that was made during a judicial proceeding.

The bill also would re-structure and amend the current list of elements, any two of which are required for inclusion in the database, so that any two of the following would be required:

- a self-admission by the individual of criminal street gang membership that was not made during a judicial proceeding;
- an identification of the individual as a criminal street gang member by a reliable informant or other individual;
- a corroborated identification of the individual as a criminal street gang member by an informant or other individual of unknown reliability;
- evidence that the individual frequented a documented area of a criminal street gang and associated with known criminal street gang members;
- evidence that the individual used, in more than an incidental manner, criminal street gang dress, hand signals, tattoos, or symbols, including expressions of letters, numbers, words, or marks, regardless of the format or medium in which the symbols

were displayed, that were associated with a criminal street gang that operated in an area frequented by the individual and was a documented area of a criminal street gang;

- evidence that the individual 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 bill would amend Code of Criminal Procedure, art. 61.06(c) to require that in determining whether a person's name would be removed from an intelligence database after three years, that period would not include any period during which the individual was in prison or committed to a facility operated by or under contract with TDCJ or TYC or a juvenile board facility.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 1658 would strengthen criminal street gang intelligence databases by expanding the eligibility criteria for data that a criminal justice agency could use to compile the database. These databases are critical in the effort to combat gangs, which are a scourge in Texas cities, schools, and prisons. In addition, CSHB 1658 would exempt time spent in prison, TYC, or a juvenile board facility from the three-year period after which data would be removed. This would strengthen the ability of TDCJ, TYC, juvenile boards, and other groups to monitor gang activity in their facilities, which can be hotbeds of criminal activity. An amendment allowing individuals to discover whether information about them was included in a database could address fears about secret lists maintained by the government. Once a person knew that person was in a database, the person could initiate procedures to be removed from it if there were no basis for that person to be included.

**OPPONENTS
SAY:**

CSHB 1658 could increase the authority of the state to track and monitor individuals. Criminal street gang intelligence databases can be inaccurate and poorly updated. In addition, people can be added to these lists on the basis of evidence that is too dubious to be admissible in a court.

NOTES:

Rep. Hochberg plans to offer a floor amendment that would provide a right to inquire about the existence of criminal information in a criminal street gang intelligence database. It would amend Code of Criminal

Procedure, art. 61.075 to allow a person or the parent or guardian of a child to request that a law enforcement agency determine whether the agency had collected or was maintaining criminal information relating solely to that person or the child in a criminal street gang intelligence database.

The law enforcement agency would have 10 business days after receipt of the request to respond to it. Before responding to the request, the law enforcement agency could require reasonable written proof of the identity of the person making the request and the relationship between the parent or guardian and the child, including written verification of an address, date of birth, driver's license number, state identification card number, or social security number.