

- SUBJECT:** Intelligence database information regarding criminal street gangs
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Gallego, Christian, Fletcher, Hodge, Miklos, Moody, Riddle, Vaught, Vo
- 0 nays
- 2 absent — Kent, Pierson
- SENATE VOTE:** On final passage, April 23 — 30-0, on Local and Uncontested Calendar
- WITNESSES:** For — (*Registered, but did not testify*: Rebecca Forest, Immigration Reform Coalition of Texas; MerryLynn Gerstenschlager, Texas Eagle Forum; James Jones, Texas Police Chiefs Association; Maria Martinez, Brent Munhofen, Immigration Reform Coalition of Texas; Gary Tittle, Dallas Police Department)
- Against — Matt Simpson, American Civil Liberties Union; (*Registered, but did not testify*: Katie Brewer, Texans for Accountable Government Political Action Committee; John Bush, Texans for Accountable Government; Erica Grignon)
- BACKGROUND:** Code of Criminal Procedure, art. 61.02 allows a criminal justice agency to compile criminal information into an intelligence database for the purpose of investigating or prosecuting the criminal activities of criminal combinations or criminal street gangs. A database must be relevant to the identification of an organization reasonably suspected of involvement in criminal activity and must consist of a judgment under any law that includes participation in a criminal street gang as a finding or an element of a criminal offense, a self-admission of gang membership made during a judicial proceeding, or two items from the following:
- a self-admission of gang membership not made during a judicial proceeding;
  - an identification of the individual as a gang member by a reliable informant or other individual;

- a corroborated identification of the person as a gang member by an informant or other individual of unknown reliability;
- evidence that the individual frequents a documented area of a gang and associates with known gang members;
- evidence that the person uses, in more than an incidental manner, criminal street gang dress, hand signals, tattoos, or symbols, regardless of the format or medium in which the symbols are displayed, that are associated with a gang that operates in an area frequented by the individual; or
- evidence that the person has been arrested or taken into custody with known gang members for an offense or conduct consistent with gang activity.

Intelligence database information must be removed 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 has not been arrested for criminal activity reported to the Department of Public Safety.

DIGEST:

SB 369 would amend Code of Criminal Procedure, art. 61.02 by adding to the list of the items in a criminal information intelligence database:

- a self-admission of gang membership not made during a judicial proceeding, including the use of the Internet or other electronic format or medium to post photographs or other documentation that identified the person as gang member;
- evidence that the person had visited a known gang member, other than a member of the person's family, while the gang member was confined in or committed to a penal institution; or
- evidence of the person's use of technology to recruit new gang members.

Evidence that a person visited a gang member in a penal institution or used technology to recruit new members would not be sufficient to create the eligibility of a person's information to be included in an intelligence database unless it was combined with other information from the enumerated list.

Intelligence database information would have to be removed after five years, subject to existing conditions. Code of Criminal Procedure, art. 61.06(c) would be reenacted and amended to provide that the five year

period could not include any period during which the individual was incarcerated.

The bill would take effect September 1, 2009, and would apply to any applicable information maintained in an intelligence database on or after this date.

**SUPPORTERS  
SAY:**

By expanding the gang database criteria, SB 369 would allow law enforcement to gather intelligence essential to investigating and prosecuting criminal gang activity. Current criteria for inclusion in the database have proven too narrow and omit certain reliable indicators of gang membership. The presence of gangs in Texas has increased in recent years, and transnational gangs have established a foothold in the border area. These gangs are the primary channel for human and drug trafficking into the United States, weapons trafficking into Mexico and Central America, and the violence associated with these activities. By allowing gang members and connections between gangs to be identified, SB 369 would help law enforcement monitor gang activities and track gang assets and make it easier to prosecute these criminals.

**OPPONENTS  
SAY:**

SB 369 would allow for the inclusion of innocent people in the gang database and would not improve public safety. Expanding the list of criteria, any two of which would qualify a person for inclusion in a criminal intelligence database, would increase the likelihood that non-gang members would be included in the database. A person could easily impersonate another on a web posting, and a photograph could be altered to make it appear that someone was in a gang who was not. In addition, visiting gang members in prison is a common activity for counselors, social workers, and faith-based volunteers. The inclusion of innocent Texans in the gang database would diminish its effectiveness as an investigative tool and waste law enforcement resources by encouraging the investigation of innocent people.