

SUBJECT: Revising processes related to criminal street gang intelligence database

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 7 ayes — White, Bowers, Goodwin, Harless, E. Morales, Schaefer, Tinderholt

2 nays — Hefner, Patterson

WITNESSES: For — Warren Burkley and Chas Moore, Austin Justice Coalition; Scott Henson, Just Liberty; Rick Briscoe, Open Carry Texas; Jim Harris and Paul Landers, Texas Council of Clubs and Independents; William Apodaca-Fisk; Dylan Price; Emily Taylor; Chris Ward; (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Guadalupe Cuellar, City of El Paso; M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Kathy Mitchell, Just Liberty; Ryan Brabandt, Adam Knudtson, and Edwin Riquelme, Texas Council of Clubs and Independents; Bjarte Moe, Texas Council of Club)

Against — (*Registered, but did not testify*: Jennifer Szimanski and Charley Wilkison, Combined Law Enforcement Associations of Texas; Mitch Landry, Texas Municipal Police Association; Justin Berry; Julie Campbell; Dee Chambless)

On — (*Registered, but did not testify*: Thomas Parkinson)

BACKGROUND: Code of Criminal Procedure art. 67.052 requires the Department of Public Safety to establish an intelligence database and maintain information from an agency relating to a criminal street gang.

Some have suggested that citizens who are not part of a criminal street gang are being entered into the Department of Public Safety gang database (TxGANG) with no recourse for disputing their inclusion. Some suggest processes and procedures should be revised to provide greater transparency for those whose information would be included in TxGANG.

DIGEST: CSHB 1838 would require the Department of Public Safety (DPS) to provide to a person in DPS' intelligence database on criminal street gang:

- notification regarding the inclusion of the person's information in the intelligence database;
- a description of the process for disputing the inclusion of information in the database, including associated costs or fees, processes and timelines, and any potential evidence necessary for purposes of a dispute; and
- a description of the process for removing information from the database following renunciation of criminal street gang membership.

DPS would have to provide the information by certified mail to the person's last known address within 60 days after the information was included in the database.

DPS would have to post on its website information on the processes for disputing the inclusion of information in and for removing information from the database.

A person's inclusion in the intelligence database could not be made available for or used in a determination of the person's employment eligibility. The inclusion also could not limit any rights given by the U.S. or Texas constitutions or limit the person's ability to obtain any federal or state license, permit, or benefit.

The bill would require the state auditor annually to conduct an audit of information held in the intelligence database. If the auditor found that information had remained for more than 10 years, the auditor would have to request that DPS reestablish sufficient evidence for inclusion of the information in the database. If DPS was unable to establish evidence, DPS promptly would have to remove the information.

The state auditor would have to create a summary of the audit,

disaggregating the total number of persons with information in the intelligence database by race, age, gender, ethnicity, and residential zip code. The summary would have to specify the number of persons whose information had been retained in the database for more than five years and for more than 10 years. DPS would have to make the summary available on its website.

A person who was no longer a member of a criminal street gang could renounce gang membership. The person's information would have to be removed from the database two years after the renunciation. DPS would adopt rules and forms for the process of renouncing, providing evidence, and removing from the database.

The bill would revise the reasons for and standard of review for requests made to review the accuracy and compliance of criminal information included in the database. The bill would provide that after review, the agency would have to notify the person who requested the review within 10 business days of whatever determination the agency made.

If the information was found to be inaccurate or noncompliant, the agency would have to notify DPS within 10 business days, and DPS would have to destroy all records containing that information within 10 business days of being notified.

If the agency determined the information to be accurate and compliant, the agency also would have to inform the person who requested the review that the person was entitled to seek judicial review within 60 days. A court could grant judicial review of a petition filed after 60 days if the petitioner showed good cause for filing after that date. The bill also would revise the method of judicial review from in-camera review to a hearing. If after a hearing the court found that information was inaccurate or noncompliant, DPS would have to destroy all records containing the information within 10 days of being notified by the court.

Information subject to review would be subject to disclosure as required by laws governing discovery, under a subpoena, or other legal process.

The bill would take effect September 1, 2021.