

## **BILL ANALYSIS**

Senate Research Center  
81R16992 SJM-D

C.S.S.B. 369  
By: Carona  
Transportation & Homeland Security  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Gang Intelligence Database (TxGang) is operated and maintained by the Department of Public Safety and contains information on individual gang members throughout the state. Section 61.06 (Removal of Records Relating to an Individual Other than a Child), Code of Criminal Procedure, requires that TxGang be purged every three years. C.S.S.B. 369 amends Section 61.06, Code of Criminal Procedure, to conform Texas law with the federal regulation found at 28 C.F.R. 23, which provides that information contained in a criminal database is authorized to be stored for a maximum of five years. Having information for a longer period of time increases law enforcement's ability to track criminal gang activity. In addition, making Texas law consistent with federal requirements is logistically beneficial for law enforcement because databases will be maintained under consistent standards.

Section 61.02 (Criminal Combination and Criminal Street Gang Intelligence Database; Submission Criteria), Code of Criminal Procedure, identifies criteria under which information about a person is authorized to be included in the database. These criteria include circumstances where there is a judgment against a person finding that the person is a member of a criminal street gang, a person has admitted to being a member of a gang, or any two of a list of certain elements are present.

When determining whether information about a person should be added into TxGang, the "real-world" application of these elements has proven to be too narrow because some reliable indicators that a person is in fact a member of a criminal street gang are not included in the list of elements in Section 61.02, Code of Criminal Procedure.

C.S.S.B. 369 adds to the list of criteria to be considered when determining whether a person should be added to TxGang: using the Internet or other electronic format or medium to post photographs or other documentation identifying the individual as a member of a criminal street gang; visiting a gang member, other than a family member, in prison; and evidence of the use of technology, such as the Internet or other electronic format or medium, to recruit new gang members. C.S.S.B. 369 amends Section 61.06, Code of Criminal Procedure, to require that information contained in TxGang be purged every five years rather than the current three-year requirement.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 61.02, Code of Criminal Procedure, by amending Subsection (c) and adding Subsections (d) and (e), as follows:

- (c) Requires that criminal information collected under this chapter relating to a criminal street gang be relevant to the identification of an organization that is reasonably suspected of involvement in criminal activity and consist of, except as provided by Subsection (d), any two of certain types of evidence or information, including a self-admission by the individual of criminal street gang membership that is not made during a judicial proceeding, including the use of the Internet or other electronic format or medium to post photographs or other documentation identifying the individual as a

member of a criminal street gang; evidence that the individual uses, 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 how or the means by, rather than the format or medium in, which the symbols are displayed, that are associated with a criminal street gang that operates in an area frequented by the individual and described by Subparagraph (iv) (relating to evidence that the person frequents a certain area with known criminal street gang members); evidence that the individual has visited a known criminal street gang member, other than a family member of the individual, while the gang member is confined in or committed to a penal institution or evidence of the individual's use of technology, including the Internet, to recruit new criminal street gang members.

(d) Provides that evidence described by Subsections (c)(2)(C)(iv) (relating to an individual frequenting a documented area of a criminal street gang) and (vii) (relating to an individual visiting a known criminal street gang member) is not sufficient to create the eligibility of a person's information to be included in an intelligence database described by this chapter unless the evidence is combined with information described by another subparagraph in Subsection (c)(2)(C) (relating to two requirements of criminal information).

(e) Defines "family member" and "penal institution."

SECTION 2. Amends Article 61.06(b), Code of Criminal Procedure, to require that, subject to Subsection (c), information collected under this chapter relating to a criminal street gang be removed from an intelligence database established under Article 61.02 (Criminal Combination and Criminal Street Gang Intelligence Database; Submission Criteria) and the intelligence database maintained by the Department of Public Safety (DPS) under Article 61.03 (Release of Information) after five, rather than 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 criminal activity reported to DPS under Chapter 60 (Criminal History Record System).

SECTION 3. Reenacts Article 61.06(c), Code of Criminal Procedure, as amended by Chapters 258 (S.B. 111), 263 (S.B. 103), and 1308 (S.B. 1909), Acts of the 80th Legislature, Regular Session, 2007, and amends it to provide that, in determining whether information is required to be removed from an intelligence database under Subsection (b), the five-year, rather than three-year, period does not include any period during which the individual who is the subject of the information is committed or confined under certain circumstances.

SECTION 4. Provides that the change in law made by this Act in amending Article 61.06 (Removal of Records Relating to an Individual Other Than a Child), Code of Criminal Procedure, applies to any applicable information maintained in an intelligence database under Chapter 61 on or after the effective date of this Act.

SECTION 5. Effective date: September 1, 2009.