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Revisions to Proposed Regulations

The original proposal is in single underline. Changes are illustrated by double underline for proposed additions and ~~double strikethrough~~ for proposed deletions.

California Code of Regulations

Title 11, Division 1

Chapter 7.6: Department of Justice Regulations for the Fair and Accurate Governance of Shared Gang Databases

Article 1. General

§ 770. Title and Scope.

This Chapter shall be known as the “Department of Justice Regulations for the Fair and Accurate Governance of Shared Gang Databases,” and may be cited as such and referred to herein as “these regulations.” Commencing on January 1, 2020, the provisions of these regulations shall govern the policies and procedures of any shared gang database in the state of California except those excluded by subdivision (b) of Penal Code section 186.34. These regulations shall not apply to the CalGang database; that shall be regulated by Chapter 7.5 of the California Code of Regulations, title 11, sections 750 to 757. A shared gang database shall not be used when making street-level determinations on who to stop and detain.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code and Section 70615, Government Code.

Article 2. Definitions

§ 770.2. Definition of Key Terms.

(a) “Access” means the ability to do one or more of the following: view, query, add, delete, or retrieve records in a shared gang database depending on the User’s level of access to the database.

(b) “Agency” means any law enforcement agency.

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(c) “Audit” means the process of objective examination of a shared gang database pertaining to the maintenance of records, as well as the examination of a sample of randomly-selected records to determine whether the shared gang database is in compliance with these regulations.

(d) “Contact” between a law enforcement officer and a potential Gang Member or ~~Gang~~ Associate means any lawful observation of a person by a law enforcement officer or any lawful interaction between a person and a law enforcement officer.

~~(e) “Criminal predicate” means that there exists a reasonable suspicion based on the analysis of legally obtained information that the subject of the information is, or may be involved in, definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct.~~

(~~e~~) “Department” means the California Department of Justice.

(~~f~~) “Dissemination” means the sharing of criminal intelligence among law enforcement authorities in any Agency or Agencies on a need to know and a right to know basis.

(~~g~~) “Gang Member or Associate” means a person who satisfies the requirements to be designated in a shared gang database set forth in subdivision (~~b~~) of section 771.8.

~~(i) “Gang Member” means a person who satisfies the requirements set forth in subdivision (b) of section 771.8.~~

(~~h~~) “Juvenile” means a minor or a person between the ages of 13 through 17.

(~~k~~) “Need to know” means a state of facts that supports the legitimacy of access to specific intelligence by a person or an Agency with a right to know. The need to know shall be pertinent to and necessary to the performance of a specific law enforcement activity.

(~~j~~) “Non-User” means a person or an Agency that does not have access to ~~the~~ shared gang database.

(~~k~~) “Offense consistent with gang activity” means either those offenses that are listed in subdivision (a) or (e) of Penal Code section 186.22; Penal Code section 186.26 or 186.28; or those offenses committed in a manner described in subdivision (b)(1) of Penal Code section 186.22.

(~~l~~) “Purge” means the elimination of any record from a shared gang database and/or any printed form of the record when it is no longer in compliance with these regulations.

(~~m~~) “Reasonable suspicion” means that state of known information which establishes sufficient facts to give a trained law enforcement or criminal investigative agency officer,

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investigator, or employee a basis to believe that there is a reasonable possibility that a person or an organization is involved in a definable criminal activity or enterprise.

~~(n#)~~ “Record” means information contained in a shared gang database that pertains to a particular person.

~~(q)~~ “Reliable source” means someone who provides information that the officer reasonably believes is sufficiently reliable based on the totality of circumstances that may include, but is not limited to, the following factors: (1) basis of knowledge; (2) veracity; and (3) reliability.

~~(o#)~~ “Revoked,” as it applies to a User’s account, means the account is invalid and the User is permanently prohibited from accessing the account.

~~(p#)~~ “Right to know” means the status of being an Agency or a person engaged in a law enforcement activity that, because of official capacity and/or statutory authority, may have access if there is a need to know.

~~(q#)~~ “Shared gang database” means any shared gang database, as defined in subdivision (a)(4) of Penal Code section 186.34, in California, excluding the CalGang database.

~~(r#)~~ “Source documents” means documentation that supports one or more criterion entered into a person’s record in a shared gang database. Such documents may include, but are not limited to, arrest reports, field interview cards, photographs, and jail records.

~~(s#)~~ “Suspended,” as it applies to a User account, means that the User’s access to the account is prohibited for a defined period or until satisfaction of conditions under these regulations.

~~(t#)~~ “System Administrator” means a person who acts as a leader by organizing, training, providing technical support, and coordinating the information collection activities of User Agencies.

~~(u#)~~ “System Administrator’s Designee” means a person selected by the System Administrator to act as the System Administrator when the System Administrator is not available.

~~(v#)~~ “System misuse” or “account misuse” means unauthorized access or misuse of information in a shared gang database.

~~(w#)~~ “Unauthorized access” means access by a person to a shared gang database who does not have a need to know and a right to know or who is not authorized by these regulations to access the database.

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~~(xaa)~~ “User” means authorized employees listed within paragraph (6) of subdivision (k) of Penal Code section 186.36 whose employment duties ~~warrant~~require access to a shared gang database.

~~(ybb)~~ “User Agency” means a law enforcement agency that has access to a shared gang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.22, 186.26, 186.28, 186.34, 186.35, and 186.36, Penal Code.

Article 3. Access to a Shared Gang Database and Dissemination of Intelligence

§ 770.4. Access to a Shared Gang Database.

(a) Prior to creating a new shared gang database, the Agency creating such a database shall notify the Department in writing, and provide contact information for the System Administrator.

(b) Access to a shared gang database is not automatically granted to all employees of a User Agency; rather access shall be limited to employees meeting the definition of User in subdivision ~~(xaa)~~ of section 770.2.

(1) With the approval of the Department, only the System Administrator may grant access to a shared gang database to a User from an out-of-state agency or a federal agency.

(c) Prior to being granted access to a shared gang database, all Users shall undergo the training prescribed in subdivision (b) of section 771.

(d) User Agencies shall enter into a written memorandum of understanding or user agency agreement, consistent with these regulations, with the System Administrator before a person employed by the User Agency may receive access to the shared gang database. System Administrators shall provide a copy of any such agreement to the Department upon request.

(e) An Agency that is interested in accessing a shared gang database shall submit a written request to the System Administrator on the Agency’s letterhead. The written request shall provide the following:

(1) A reason for its need to access the shared gang database.

(A) The Agency shall demonstrate a need to know and a right to know to satisfy this subparagraph.

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(2) The number of Users who will be accessing the shared gang database at that Agency and the level of access that is requested for each User.

(3) The addresses of the facilities within the Agency where Users will access the shared gang database.

(4) The name and contact information for the person(s) designated by the Agency as the point of contact and training coordinator. If the Agency's point of contact and training coordinator are two different persons, the Agency shall identify both.

(A) The point of contact shall meet the definition of User in subdivision (x) of section 770.2.

(5) If data entry access is requested, the Agency shall identify the classification, rank, and related expertise of the person(s) who will be responsible for performing the supervisory review required by section 772.4.

(A) No User from an out-of-state agency or a federal agency shall have the ability to add or delete any records in a shared gang database.

(f) The System Administrator shall determine whether written requests submitted pursuant to subdivision (e) shall be approved.

(1) The System Administrator shall review a request received from an out-of-state agency or a federal agency to determine if the System Administrator will enter into a memorandum of understanding with that agency consistent with these regulations and it shall be kept on file by the System Administrator.

(ge) The Department shall instruct the System Administrator to ensure that a User's account is disabled if the User no longer has a need or right to access a shared gang database due to a separation from employment with a User Agency or for another reason.

(h#) Upon request by the Department, the System Administrator shall provide a list of active, suspended, or revoked accounts.

(i) A Non-User may request information contained within a shared gang database without requesting access via a proxy query conducted pursuant to section 770.8.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

~~§ 770.6. Limitations to Access Provided to an Out-of-State or a Federal Agency.~~

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~~If the System Administrator is contacted by an out-of-state or a federal agency with a request to access records in the shared gang database, the System Administrator shall review the request and determine if the System Administrator will enter into a memorandum of understanding with that agency consistent with these regulations. An out-of-state or a federal agency shall not utilize information from a shared gang database, other than for criminal investigative purposes, as permitted under this chapter, and any such memorandum of understanding shall include an agreement by the out-of-state or federal agency to comply with such restriction and all other requirements of these regulations.~~

~~Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.~~

§ 770.6. Shared Gang Database User Terms and Account Security

(a) Each User Agency shall identify at least one person as the point of contact and report the point of contact to its System Administrator.

(1) The point of contact shall help facilitate training requests, retrieval of source documents, and any updates or changes to the shared gang database.

(2) Any time a User Agency changes its point of contact, it shall notify the System Administrator. The System Administrator shall notify the Department within 30 calendar days from the date it received notice from the User Agency to report the new contact information.

(3) System Administrators shall not delegate account creation to a point of contact.

(b) User Agencies that enter information into a shared gang database are responsible for its legality, relevance, accuracy, timeliness, and completeness.

(c) A System Administrator is responsible for the prompt deactivation of User accounts. The accounts of Users separated from employment with their User Agency shall be suspended, and/or revoked when the System Administrator is notified of the separation.

(1) A User Agency shall inform its System Administrator, or the Department if the System Administrator is unavailable, of a separation within 30 calendar days from the date of the separation.

(2) A System Administrator or the Department shall suspend and/or revoke the account within 10 calendar days after receiving the notice of separation.

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- (d) An account shall be suspended and/or revoked if account privileges are no longer applicable to a User's employment duties or if the User's level of access has been changed.
- (e) An account shall be suspended and/or revoked, if it is determined that the account has been misused. Such an account, if suspended, may only be reinstated at the direction of the Department, the System Administrator, or the System Administrator's Designee.
- (1) Users who share their passwords with others shall be barred from using the shared gang database and their accounts shall be suspended and/or revoked.
- (2) Upon discovery, a User Agency shall report any account misuse to the System Administrator. The System Administrator shall report such account misuse to the Department within five calendar days from the date the User Agency informed the System Administrator of the account misuse.
- (f) Any User account that has been inactive for 90 calendar days shall be suspended. Up to 180 calendar days following a suspension under this subdivision, a User may submit a written request to the System Administrator to reactivate the User's account. If reinstatement is not timely requested, access to the User account shall be revoked.
- (1) Exceptions shall be made to this subdivision for Users who take an authorized leave of absence. The User or User Agency shall notify the System Administrator in writing within 30 calendar days from the date the leave of absence commences.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 770.8. Proxy Query to the Information Contained in a Shared Gang Database.

- (a) A User shall not permit any person access to his or her account. However, a User may disseminate information from the shared gang database via proxy query to a Non-User ~~who~~ that demonstrates a right to know and a need to know.
- (1) The System Administrator shall either create a form that collects the information set forth in subparagraph (2) of this section or create a proxy query feature within the shared gang database and require that the information in subparagraph (2) be directly input into the shared gang database. If the information is directly input into the shared gang database, there shall be a way to print this information so that a physical copy of each proxy query request can be provided to the Department upon request.

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- (2) The User shall require the Non-User to provide the following information:
- (A) First and last name of the requestor.
 - (B) ID number (badge number or other identifier unique to this requestor only).
 - (C) Email of the requestor.
 - (D) Agency the requestor represents.
 - (E) Telephone number of the requestor.
 - (F) The reason for the proxy query.
 - (G) The court case number, if any exists. This shall only be included if it does not compromise an active criminal investigation or the health or safety of a juvenile who is designated in the shared gang database.
 - (H) The direct report number, report number, incident number, or any corresponding number that would identify which source document the person who the record pertains to was referenced within.
- (3) If the System Administrator creates a form that collects the information set forth in subparagraph (2) of this section, and a Non-User has an urgent need to request a proxy query while in the field and is unable to complete the form, a proxy query may be conducted by a User if the following requirements are met:
- (A) The User receiving the urgent proxy query request from the Non-User shall request the same information from the Non-User that is contained in the form and retain that information until a completed form is received from the Non-User.
 - (B) The User shall read the following statement to the Non-User:
 - (1) All information from the shared gang database is protected criminal intelligence data. Under no circumstances shall information from the shared gang database be released to the public or the media. Information in the shared gang database is confidential and shall not be referred to in official reports. The shared gang database shall only be used for criminal investigations or for the lawful prevention of criminal gang activity. In addition, the database shall not be used for the purposes of enforcing federal immigration law, unless required by state or federal statute or regulation; for military or employment screening purposes; or for non-criminal internal affairs investigations. This restriction does not pertain to any information that is regarding a person's immigration or

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citizenship status pursuant to sections 1373 and 1644 of title 8 of the United States Code. Misuse of the shared gang database, or any information within it, may result in penalties, pursuant to Penal Code section 186.36.

(C) The User shall notify the Non-User of the requirement to sign and send a form within 10 working days of the query.

(D) The requesting Non-User shall agree to sign the form pursuant to subdivision (C), and shall send the signed form within 10 working days of the query.

(E) The User is responsible for following up with the Non-User to ensure a signed form is provided. If a User is found to have conducted a proxy query and a signed form has not been sent by the Non-User within 10 working days of the query, the User's access shall be suspended and/or revoked.

(b) A User shall not disseminate information to a Non-User through proxy query on a regular basis. If the same Non-User requests information through a proxy query more than 12 times per year, the User shall refer the Non-User to its System Administrator to inquire about gaining access to the shared gang database pursuant to Article 3 of this chapter.

(1) The System Administrator shall audit proxy query usage annually and track the number of proxy query requests made by each Non-User.

(2) Each calendar year, the System Administrator shall provide a copy of the proxy query audits to the Department. Each calendar year, the Department shall review the proxy query audits to ensure that those requesting information through proxy query have a need to know and a right to know.

(c) Nothing in subdivision (a) limits the sharing of information in the shared gang database if permitted under ~~Article 8 section 773.2~~ or Penal Code sections 186.34 and 186.35.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code.

Article 4. Training, Exam, and Requirements to be an Instructor

§ 771. User Training.

(a) Training shall only be conducted by an instructor approved by the System Administrator. Requirements to become an approved instructor are set forth in section 771.4.

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- (b) At a minimum, instruction from an approved instructor shall address the following:
- (1) Definitions for a “criminal street gang”, ~~criminal predicate~~, and “reasonable suspicion.”
 - (2) The criteria to enter a person as a Gang Member ~~and/or a Gang Associate~~ into a shared gang database.
 - (3) Any federal, state and local laws, policies and ordinances regarding criminal intelligence information.
 - (4) Physical and technical database security and data dissemination.
 - (5) Practical, hands-on system usage.
 - (6) Best practices for gathering criminal intelligence.
 - (7) Best practices for mitigating the entry and dissemination of false or incorrect information into or from a shared gang database.
 - (8) Notices, responses to inquiries, and removal guidelines in accordance with Articles 7, 8 and 9 of this chapter.
 - (9) Any policies, procedures, and guidelines pertinent to the specific shared gang database being accessed.
 - (10) Consequences of system misuse in relation to the specific shared gang database being accessed.
 - (11) The impact of releasing data for unauthorized purposes, including, but not limited to, how the unauthorized release of data may affect immigration proceedings and employment, housing, or military screening.
 - (12) The impact of data collection on community members.
 - ~~(13)~~ Implicit bias, taking into account an agency’s existing training on that topic.
 - ~~(14)~~ How a User Agency shall document sharing information with Non-Users through proxy query, pursuant to section 770.8.
- (c) Additional required training may be added by the training instructor or the System Administrator.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code, and Section 70615, Government Code.

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§ 771.2. Initial Exam Information and Recertification Exam.

- (a) Once instruction is completed, all Users shall take an initial certification exam on the curriculum described in subdivision (b) of section 771 in a manner prescribed by the System Administrator or the System Administrator's Designee.
- (b) Every 24 months after the date of initial certification or recertification, all Users shall take and pass a recertification exam. The exam and results shall be stored either within the shared gang database or in a physical file maintained by the System Administrator.
- (c) The System Administrator shall allow a User no more than three opportunities to retake the exam. If the User fails to pass the exam after three opportunities, the User's access shall be suspended. Once the User's access is suspended, the User shall contact the System Administrator to complete refresher training, the content of which shall be determined by the System Administrator. The System Administrator shall restore access once the User completes the refresher training and passes the recertification exam.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 771.4. Requirements to Become an Approved Instructor.

- (a) Instructors shall be approved by the Department, ~~or~~ a System Administrator, or a System Administrator's Designee and shall be graduates of the training outlined in subdivision (b) of section 771, have User experience with a shared gang database verified by the System Administrator, and be tested in system proficiency. Instructors shall take a Department-approved course of instruction that shall provide an in-depth familiarization with all system applications, intelligence file guideline requirements, proper use, and any additional administrative requirements.
- (b) The name of any instructor approved by a System Administrator or a System Administrator's Designee shall be disclosed to the Department prior to the instructor providing training to any User.
- (~~c~~) Instructors shall be subject to annual recertification training. Recertification training of approved instructors by a training instructor, the System Administrator, or the System Administrator's Designee shall include, but not be limited to, system changes or updates, new mandates, and regulations.

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(d) The Department may revoke instructor training privileges for failure to comply with these regulations.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

Article 5. Criteria for Designation in a Shared Gang Database

§ 771.6. Criteria to be Designated as a Gang Member or a Gang Associate.

(a) A person shall not be designated as a Gang Member or Associate without the law enforcement officer having reasonable suspicion that the person may participate in a criminal street gang with knowledge that its members engage in, or have engaged in, a pattern of criminal gang activity, or the person may willfully promote, further, or assist in any felonious criminal conduct by members of that gang. The law enforcement officer shall document the specific information that serves as the basis for the reasonable suspicion.

(b) In addition to satisfying the requirement of subdivision (a), ~~t~~The criteria to designate a person as a Gang Member or a Gang Associate in a shared gang database are:

(1) The person has admitted to being a ~~currently-active~~ Gang Member or a ~~Gang~~ Associate under circumstances that do not undercut truthfulness. The law enforcement officer shall document the relevant circumstances of the admission including, but not limited to: the location of the contact; the person(s) present during the conversation; the admitting person's demeanor; and whether the admitting person appears to be under the influence of drugs or alcohol.

(2) The person has been arrested for an offense consistent with gang activity.

(A) This criterion shall only be entered into the database when the arrest is documented on an arrest or crime report. A field interview card or report may be used as a source document if it is used in conjunction with an arrest or crime report.

~~(3) The person has been identified as a Gang Member or a Gang Associate by a reliable source.~~

~~(4) The person has been seen associating with persons meeting the criteria for entry or who have previously been entered as a Gang Member into the shared gang database.~~

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~~(35)~~ The person has been seen displaying one or more accessories, symbols, and/or hand signs tied to a specific criminal street gang. The law enforcement officer shall document the specific accessories, symbols, and/or hand signs that are tied to the criminal street gang.

(A) Clothing itself shall not be considered a symbol; rather there shall be a specific symbol on the clothing which is tied to a specific criminal street gang.

~~(6)~~ The person has been seen at one or more gang-related addresses or locations. The law enforcement officer shall document the specific address and/or location(s) and to which criminal street gang such address and/or location(s) is related.

~~(7)~~ The person has been seen wearing a style of dress or accessory that is tied to a specific criminal street gang. The law enforcement officer shall document the specific items and to which criminal street gang the style of dress and/or accessory is related.

~~(48)~~ The person has one or more tattoos, marks, scars, or branding indicating criminal street gang membership or association. The law enforcement officer shall document a description of the tattoos, marks, scars, or branding and the location of each on the person's body.

~~(c)~~ The existence of criteria may be determined as a result of information learned or observed by law enforcement on separate occasions.

(d) A criterion listed in subdivision (b) shall not be satisfied if it occurred more than five years prior to entry in the shared gang database.

~~(e)~~ The existence of all criteria shall be supported by source documents.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 771.8. Minimum Age of Entry and Requirements to Enter a Person into a Shared Gang Database.

(a) No persons under the age of 13 shall be entered into a shared gang database.

(b) A person may be ~~initially~~ entered into a shared gang database and designated as a Gang Member or Associate when at least two criteria listed in subdivision (b) of section 771.6 are found to exist through investigation by a trained law enforcement officer, ~~based on a trained law enforcement officer's reasonable suspicion,~~ provided that the criminal street gang's existence has been, or is concurrently, documented in the database.

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~~(c) A person may be initially entered into a shared gang database and designated as a Gang Associate when the criterion in subdivision (a)(4) of section 771.6 and at least one other criterion listed in subdivision (a) of section 771.6 is found to exist through investigation, based on a trained law enforcement officer's reasonable suspicion, provided that the criminal street gang's existence has been, or is concurrently, documented in the database.~~

~~(1) A Gang Associate shall not be entered into a shared gang database unless the shared gang database was created in a manner that links the record of the person suspected of being a Gang Associate to the record of a Gang Member.~~

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 772. Other Rules Pertaining to the Entry of a Person in a Shared Gang Database.

~~(a) Following the initial designation of a person in a shared gang database, a User may enter subsequent information into the shared gang database that pertains to that person if the person meets a minimum of one criterion during a contact with a trained law enforcement officer. If a person's initial entry has purged, the person may only be entered into the shared gang database again if the person meets the requirements set out in either subdivision (b) or (c) of section 771.8.~~

~~(a) A tattoo, mark, scar, or branding that remains unmodified and on the same place on a person's body that was used previously to satisfy the criterion set forth in subdivision (a)(4) of section 771.6 shall not be used thereafter to satisfy that same criterion again unless it meets the elements set forth in subdivision (c) or the record of that person has since been purged from the shared gang database.~~

~~(b) If a person has multiple tattoos, marks, scars, or brandings that are the same or similar, and each one of those tattoos, marks, scars, or brandings is on a different location on the person's body, each tattoo, mark, scar, or branding may be used to satisfy the criterion set forth in subdivision (a)(4) of section 771.6. However, each one of those tattoos, marks, scars, or brandings shall only be documented to meet that criterion once each, and cannot be re-entered into the shared gang database as a criterion on subsequent occasions, unless it meets the elements set forth in subdivision (c) or the record of that person has since been purged from the shared gang database.~~

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(c~~e~~) A law enforcement officer may document a tattoo, mark, scar, or branding as described in subdivisions (a~~b~~) and (b~~e~~) to meet the criterion in subdivision (b~~a~~)(4~~8~~) of section 771.6 on subsequent occasions only if the person is in a public setting and is openly displaying, presenting, or flashing the tattoo, mark, scar, or branding as a means of intimidation. If the law enforcement officer documents the tattoo, mark, scar, or branding pursuant to this subparagraph, the law enforcement officer shall document the relevant circumstances of the contact including, but not limited to, the type of public setting in which the contact occurred and a description of how the tattoo, mark, scar, or branding was openly displayed, presented, or flashed.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 772.2. Criteria for an Organization to be Designated as a “Criminal Street Gang.”

(a) An organization may be designated and entered into a shared gang database as a criminal street gang only if it meets all of the following:

(1) The User Agency has ~~articulable~~ reasonable suspicion for making the designation.

The User Agency shall document the basis of the reasonable suspicion.

(2) The association or organization comprises three or more persons who meet the criteria to be designated as a Gang Members or Associate pursuant to Article 5 of this chapter. The User Agency shall notify the System Administrator of the association or organization and request that the association or organization be classified as a criminal street gang and be entered as such into the shared gang database. Once the System Administrator approves the request, the User Agency shall create records in the shared gang database for ~~each~~ ~~the~~ ~~three~~ Gang Members or Associate that belongs to the criminal street gang.

(3) The association or organization has a common sign, symbol, and/or name. The User Agency shall document the specific sign, symbol, and/or name that is tied to the association or organization and explain why it is interpreted as belonging to the proposed criminal street gang.

(4) The association, organization, or its members have collectively or individually engaged in a pattern of definable criminal activity. The User Agency shall document the reasonable suspicion stemming from this definable criminal activity. If the association, organization, or its members have collectively or individually been arrested for an offense

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consistent with gang activity, the law enforcement officer shall identify the type of crime that the law enforcement officer reasonably believes was committed and include that as a part of the documentation.

(b) A new criminal street gang shall only be added into a shared gang database by the System Administrator. If a User Agency determines that a new criminal street gang should be added to a shared gang database, it shall submit in writing the information provided in subdivision (a) to the System Administrator.

(c) The record for a criminal street gang shall remain in a shared gang database as long as the organization meets the criteria set forth in this section or until an audit conducted pursuant to section 774.8 determines that the record shall be purged from a shared gang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.34 and 186.36, Penal Code.

Article 6. Supervisory Review and Deleting Unsupported Records

§ 772.4. Supervisory Review Process.

Prior to any entry into a shared gang database, all criminal street gang intelligence data shall be reviewed by the appropriate supervisory classification pertinent to the organizational structure of the User Agency. The review shall determine whether the criminal street gang intelligence data was obtained in violation of any applicable federal, state, or local law, policy, or ordinance. Any intelligence data obtained in violation of any applicable federal, state, or local law, policy, or ordinance shall not be entered into a shared gang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 772.6. A User Agency's Discretion to Delete Unsupported Records.

(a) At its discretion, a User Agency that created a record or entered subsequent criteria for a person in a shared gang database may delete the entry or entries it created if:

- (1) During self-auditing the User Agency finds that the supporting documents are missing or incomplete.

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(2) The User Agency finds that the record is not in compliance with Article 9 of this chapter.

(3) Intelligence was obtained in violation of applicable federal, state, or local law, policy, or ordinance.

(4) For any other reason as long as it is substantiated.

(b) Ten calendar days prior to deleting a record or an entry created by the deleting User Agency, the deleting User Agency shall communicate in writing with other User Agencies that have entered additional information to support that record or entry in the shared gang database. The written communication shall identify the record or entry the deleting User Agency seeks to delete, the reason for its deletion, and the date it anticipates deleting the record or entry.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

Article 7. ~~Notification~~ Notice of Inclusion in a Shared Gang Database

§ 772.8. Notifying a Person of Inclusion in a Shared Gang Database.

(a) Pursuant to subdivision (c) of Penal Code section 186.34, a person, and at least one parent or guardian of the person if the person is a juvenile, shall be notified of the person's inclusion in the shared gang database in writing prior to the person being entered into the shared gang database.

(b) -Any such notice shall ~~may~~, at the discretion of the User Agency delivering the notice, be delivered only: (1) in person at the time of contact or to the physical address provided by the person at the time of contact, or (2) by mail to the physical address provided by the person at the time of contact or a physical address that the User Agency discovered by utilizing other means that are accessible to the User Agency, provided that such access is permitted by law. A law enforcement officer will presume that a juvenile resides with at least one parent or guardian, and that the physical address provided by the juvenile at the time of contact is the correct physical address for at least one parent or guardian.

(1) Each time a law enforcement officer makes contact with a juvenile and suspects that the juvenile will be designated as a Gang Member or ~~a Gang~~ Associate in a shared gang database, at the time of contact, the law enforcement officer shall confirm whether the

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juvenile lives with a parent or a guardian at the physical address provided by the juvenile. If the juvenile does not live with a parent or guardian, the law enforcement officer shall request the physical address of such parent or guardian for the purposes of satisfying the notice requirements set forth by subdivision (c) of Penal Code section 186.34.

(c) In addition to the requirements set forth under subdivision (c) of Penal Code section 186.34, a written notice required thereunder shall clearly indicate:

~~(1) Whether the person is to be designated as a Gang Member or Gang Associate.~~

~~(1~~2~~) The criteria supporting the person's designation as a Gang Member or Associate. The basis for the designation.~~

(2) The date(s) of the contacts or observations on which the criteria for designation were satisfied.

(3) A description of the process to contest the designation, including the name of the User Agency to contact.

(4) A reference to Penal Code section 186.35 regarding the person's right to petition the court to review the designation.

(5) The name of the criminal street gang that the person is connected to in the database.

~~(d) A User Agency that issues the notice may include the name of the criminal street gang that the person is connected to in the database.~~

(de) A User Agency shall document the attempted delivery of each notice. Each record shall contain:

(1) The name of the recipient of the notice and, if different, the person to which the notice pertains.

(2) The date the notice was mailed or attempted to be delivered in person to the recipient and the method of delivery.

(3) If the notice was undeliverable, the User Agency shall, for mailed notices, document the date it received the "returned to sender" notification and retain a copy of the notification in its files, and, for attempts to deliver notices in person, document by notation or otherwise that the notice was undeliverable.

(ef) The notice requirement shall be satisfied upon the first attempt if the notice is: (1) delivered in person to the person to whom it pertains, or in the case of a juvenile, to the person and at least one parent or guardian of the person to whom the notice pertains, or (2) mailed to the

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person to whom it pertains or, in the case of a juvenile, the person and at least one parent or guardian of the person to whom the notice pertains, and the notice is not returned to sender as undeliverable. If a juvenile to whom the notice pertains resides at the same physical address as a parent or guardian, the User Agency shall send two notices to that physical address; one shall be addressed to the juvenile to whom the notice pertains, and the other shall be addressed to the juvenile's parent or guardian. If the first attempt to deliver the notice does not satisfy the foregoing requirements, the notice requirement will nonetheless be satisfied if both of the following are met:

(1) The User Agency has no reasonable alternative method to deliver to that person, or in the case of a juvenile, to the person and at least one parent or guardian of the person to whom the notice pertains.

(2) The User Agency complied with the documentation requirements set out in subdivision (e) of this section.

~~(f)~~ The notice requirement will not be satisfied on the first attempt if the notice fails to be delivered and the User Agency possesses more than one method of contacting the person. In such a situation, the User Agency shall make a second attempt to deliver the notice to the recipient and it shall use a different method of delivery than the one that was used for the first attempt. The User Agency shall document both attempts as set out in subdivision (e) of this section.

~~(g)~~ A User Agency shall not knowingly send notice letters to places of employment, schools, or places of higher education unless such a place is also the residence facility of the recipient, such as a school dormitory.

~~(h)~~ If sending a notice of inclusion to either an adult or a juvenile would compromise an active criminal investigation or the health or safety of a juvenile that is designated in ~~the~~ shared gang database as a Gang Member or ~~a Gang~~ Associate, the User Agency is not required to attempt to deliver a notice under this section or subdivision (c) of Penal Code section 186.34.

(1) If a User Agency does not provide notice pursuant to this subdivision, the User Agency shall nonetheless prepare the form of notice as described in this section and it shall indicate in the shared gang database or maintain documentation that no notice was sent, provide the date the User Agency determined to not send the notice, and provide a summary of the reason(s) for that determination. This documentation shall be retained

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until the record pertaining to that person is purged from the shared gang database. Nothing in this subdivision restricts the release of a notice under court order or for in-camera review by a court. Nothing in this section requires a User Agency to disclose any information protected under sections 1040 or 1041 of the Evidence Code or section 6254 of the Government Code.

(i) All information pertaining to the above sections shall be captured in the shared gang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

Article 8. Information Requests and Responses Pertaining to a Shared Gang Database
§ 773. Information Requests and Verifying the Identity of the Requesting Party.

(a) Each Agency may develop a verification of identity form that the Agency may use to determine whether the information request pursuant to subdivision (d) of Penal Code section 186.34 is made by an authorized person.

(1) An attorney may send an information request to an Agency on behalf of a client that the attorney is representing. The Agency shall verify that the attorney is representing the individual for whom information is being requested and that the attorney is licensed to practice by verifying the attorney's state bar number.

(b) If an Agency chooses to develop a verification of identity form, the form may seek information verifying the requesting person's name, address, date of birth, driver license number, state identification number, or state bar number. The Agency shall not have the authority to request from a person, his or her parent or guardian, or an attorney working on behalf of the requesting person, a copy of a birth certificate or documentation of citizenship or immigration status to satisfy its written verification of identity requirement.

(c) Verification of a person's identity does not have to be done through a government-issued identification document; rather proof of identity may be presented in either of the following ways:

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- (1) Through an acknowledgement form prepared, signed, and endorsed by a notary public. This acknowledgement form shall accompany the Agency's verification of identity form, if that Agency uses a verification of identity form.
- (2) By presenting a school identification card.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

§ 773.2. An Agency's Response to an Information Request.

(a) An Agency's response to an information request pursuant to subdivision (d) of Penal Code section 186.34 shall be communicated in writing and shall include:

- (1) Verification that the request was received and the date of its receipt.
- (2) Whether the person is designated as a Gang Member or ~~a Gang~~ Associate in the shared gang database.
- (3) The criteria supporting the person's designation as a Gang Member or Associate in the shared gang database. ~~Information as to the basis for the designation, including at least the initial criteria that resulted in the designation.~~
- (4) The date(s) of the contacts or observations on which the criteria for designation were satisfied.
- (54) A description of the process to contest a designation, including the name of the Agency to contact.
- (65) A reference to Penal Code section 186.35 regarding the person's right to petition the court to review the designation.

(7) The name of the criminal street gang that the person is connected to in the database.

~~(b) An Agency responding to the request may, but is not required to, include the name of the criminal street gang that the person is connected to in the database.~~

(be) If an Agency receives an information request concerning a person who has a record in the shared gang database, the responding Agency shall contact the User Agency that created the entry to ensure that the dissemination of the requested information does not compromise an active criminal investigation or the health or safety of a juvenile that has been designated as a Gang Member or ~~a Gang~~ Associate in the shared gang database.

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(c~~e~~) Notwithstanding the foregoing, if responding to an information request from either an adult or juvenile would compromise an active criminal investigation or the health or safety of a juvenile who is designated as a Gang Member or ~~Gang~~ Associate in the shared gang database, the Agency that received the request is not required to provide a response.

(1) If an Agency does not respond to an information request pursuant to this subdivision, it shall nonetheless prepare the form of response as described in subdivision (a) of this section, and document a summary of reasons why a response was not sent and the date when this determination was made, and it shall maintain this documentation until the record pertaining to that person is purged from the shared gang database. Nothing in this subdivision restricts the release of a response under court order or for in-camera review by a court. Nothing in this section requires a local law enforcement agency to disclose any information protected under sections 1040 or 1041 of the Evidence Code or section 6254 of the Government Code.

(d) All information pertaining to the above sections shall be captured in the shared gang database.

Note: Authority cited: Section 186.36 of the Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code.

§ 773.4. An Agency's Response to a Request for Removal.

(a) An Agency shall respond to a request for removal by a person in accordance with subdivision (e) of Penal Code section 186.34. Even after deemed to be a denial upon expiration of the thirtieth day following the request for removal, an Agency may, but is not required to, deliver a notice of denial and the reason for the denial.

(b) Notwithstanding the foregoing, if responding to a request for removal from either an adult or a juvenile would compromise an active criminal investigation or the health or safety of a juvenile who is designated as a Gang Member or Associate in a shared gang database, the Agency that received the request is not required to provide a response.

(1) If an Agency does not respond to a request for removal pursuant to this subdivision, it shall nonetheless prepare the response as described in subdivision (a), and document a summary of reasons why a response was not sent and the date when this determination was

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made, and it shall maintain this documentation until the record pertaining to that person is purged from the shared gang database. This documentation shall be captured in the shared gang database. Nothing in this subdivision restricts the release of a response under court order or for an in-camera review by a court. Nothing in this section requires a local law enforcement agency to disclose any information protected under section 1040 or 1041 of the Evidence Code or section 6254 of the Government Code.

(c) An Agency shall consider any evidence presented by a person requesting removal, including, but not limited to: successful completion of parole or probation with restrictions placed on gang terms, removal or cover up of tattoos that were indicative of criminal street gang membership or association, community service hours, participation in gang intervention and/or prevention programs, and proof of employment.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code.

Article 9. Retention of Records, Purging, and Source Documents

§ 773.6. Retention Period for Adult Records.

(a) The record of a person who is 18 years of age or older. ~~A person's record~~ shall be retained in a shared gang database for up to five years, and upon termination of the retention period, the record shall be automatically purged from the database.

(b) If a minimum of two additional criteria is added to a person's record in a shared gang database pursuant to section 771.8, the five-year retention period will be reset to begin on the date of entry of the second additional criterion~~a~~.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 773.8. Retention Period for Juvenile Records.

(a) A juvenile's record shall be retained in a shared gang database for up to three years, and upon termination of the retention period, the record shall be automatically purged from the database.

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(b) If a minimum of two additional criteria is added to a person's record in a shared gang database pursuant to section 771.8, the three-year retention period will be reset to begin on the date of entry of the second additional criterion.

(c) If a juvenile reaches 18 years of age while that person's record is retained in a shared gang database pursuant to subdivision (a), and two additional criteria are added to that person's record in accordance with section 771.8 after the person reaches 18 years of age, that person's record shall be retained for five years pursuant to section 773.6.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 774.8. Retention Period for Notice of Inclusion.

A User Agency shall maintain copies of each notification to a recipient that was issued pursuant to subdivision (c) of Penal Code section 186.34 and the related documentation required under section 772.8, for the length of time a record about the person to whom the notice pertains is in the shared gang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

§ 774.2. Retention Period for Information Requests and Responses.

An Agency shall maintain copies of all information requests under subdivision (d) of Penal Code section 186.34 and responses for the length of time a record about the person to whom the information request pertains is in the shared gang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

§ 774.42. Source Documents.

(a) A User Agency that enters information into a shared gang database shall maintain the source documents supporting the entry. The source documents shall be retained for the same period as the shared gang database record they support.

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(b) Photographs are permitted to be used with source documents only if they are legally obtained.

(1) A photograph utilized as a source document to satisfy criteria shall have been captured within five years of the date on which that criterion is entered into the shared gang database.

(c) At any time source documents are found to be missing or incomplete to adequately support a criterion, the User Agency shall remove the unsupported criterion.

(1) Removal shall be conducted within 30 calendar days from the date the User Agency discovered that the source documents were ~~missing~~~~lacking~~ or ~~incomplete~~~~inappropriate~~.

(2) If a record in a shared gang database contains both adequate and inadequate source documents, the record shall remain in the database on the basis of the adequate source documents if there is enough information present to satisfy, as the case may be, the two criteria requirement pursuant to ~~subdivision (b) or (c)~~ of section 771.8.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

Article 10. Audits

§ 774.64. Audits of Records in a Shared Gang Database.

(a) At least ~~three times~~ ~~one~~ per calendar year, the System Administrator shall conduct audits on a sample of randomly selected records. Any record and/or criteria found to be out of compliance with Articles 5 and 9 shall be purged within 30 calendar days of completion of the audit.

(b) Audits of records shall ensure that:

(1) Each record has a minimum of two criteria that are adequately supported by source documents.

(2) The scheduled purge date is in compliance with the time period provided in Article 9.

(3) Each audited record that was created on or after January 1, 2020, adheres to these regulations.

(c) In addition to the annual audit required in this section, User Agencies may audit their own records and purge any record that is not in compliance with subdivision (b). The results of such

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additional audits shall be communicated in writing to the System Administrator within 30 calendar days from the date each audit is concluded.

(d) By September 1 of each year, the System Administrator shall communicate in writing to the Department the results of its annual audit for the preceding calendar year, and if conducted, the results of any additional audits performed by the System Administrator or any User Agency.

(e) If the System Administrator violates any subdivision of this section, the Department shall take any or all of the actions provided in subdivision (u) of Penal Code section 186.36.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 774.86. Audits of Criminal Street Gangs

(a) Each calendar year, System Administrators shall conduct an audit of all criminal street gangs designated in a shared gang database that contain less than three persons designated as a Gang Members or Associate.

(b) Each criminal street gang with more than three persons designated as a Gang Member or Associate~~members~~ shall be audited every five years from the date of its last audit to ensure that it complies with the criteria set forth by section 772.2.

(c) If upon auditing, a System Administrator discovers that a criminal street gang indicated in a shared gang database has less than three persons designated as a Gang Members or Associate, the System Administrator shall verify that the criminal street gang has three or more ~~documented~~ persons designated as a Gang Members or Associate across the shared gang database. If it is found that a criminal street gang contains less than three persons designated as a Gang Members or Associate in total, the criminal street gang and any records associated with persons entered in connection with that criminal street gang shall be purged from the shared database.

(d) Audits of a criminal street gang shall ensure that:

(1) Associations or organizations designated as criminal street gangs have no less than three persons designated as a Gang Members or Associate in the shared gang database.

(2) Sufficient reasonable suspicion exists for the criminal street gang to continue being designated as such in the shared gang database.

(e) By September 1 of each year, System Administrators shall communicate in writing to the Department the results of the criminal street gang audit for the preceding calendar year.

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(f) If the System Administrator violates any subdivision of this section, the Department shall take any or all of the actions provided in subdivision (u) of Penal Code section 186.36.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

§ 775.4.8. The Department's Authority to Audit User Agencies.

The Department may audit any and all records of each User Agency. Each User Agency shall provide such information and documents as the Department may request. A User Agency shall grant the Department access to the User Agency's facilities for this purpose.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

Article 11. Information Sharing and Disclosures

§ 775.2. Information Sharing and Disclosures.

(a) All records and information contained in a shared gang database are confidential and are for the use of law enforcement agencies, as defined in Penal Code section 186.34(a)(3), only.

Release of criminal intelligence information in a shared gang database is on a right to know and need to know basis only. Nothing in this subdivision limits the sharing of information in ~~the~~ shared gang database if permitted by section 773.2 or Penal Code sections 186.34 and 186.35.

(b) Records shall not be attached to or referenced in any report.

(c) Records contained in a shared gang database shall not be disclosed for:

(1) Purposes of enforcing federal immigration law, unless required by state or federal statute or regulation.

(2) For employment, housing, or military screening purposes.

(d) Users are not prohibited or restricted from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of a person or from requesting from federal immigration authorities information regarding a person's immigration status, maintaining such information, or exchanging such information with any other federal, state, or local government entity, pursuant to sections 1373 and 1644 of title 8 of the United States Code.

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(e) Information from a shared gang database shall not be utilized for anything other than criminal investigative purposes, as permitted under this chapter, and any memorandum of understanding shall include an agreement by the agency to comply with such restriction and all other requirements of these regulations.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code.

§ 775.4. Sharing Information through Printing and Other Mediums.

(a) Printing privileges may be granted at the discretion of each System Administrator. Users shall demonstrate a compelling need to print database information before print privileges are extended.

(b) System Administrators shall report all Users with printing privileges to the Department in writing upon any User being granted printing privileges.

(c) Each User Agency shall ensure that any printed copies of intelligence and investigation information are afforded security to prevent unauthorized access to or use of the data.

(d) Printed documents that are no longer needed shall be destroyed.

(e) A User is prohibited from using any other tool including, but not limited to: taking photographs, screenshots, or using computer or cellular phone applications, that would enable a User to copy database information.

(f) If this section is violated, the Department may take any or all of the actions provided in section 776.2.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code.

Article 12. System Security, Inspection, and Missing Equipment

§ 775.62. Equipment Security and Inspection.

(a) Measures shall be taken to place terminals and equipment that transmit or receive shared gang database information and any printouts of shared gang database information in an area with

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physical security that will provide protection from theft, damage, vandalism, or sabotage, and preclude access to and viewing of confidential information by unauthorized persons.

(b) The System Administrator shall inspect equipment to ensure that it is in compliance with subdivision (a).

(c) The Department may inspect equipment to ensure that it is in compliance with subdivision

(a). A User Agency shall grant the Department access to the User Agency's facilities for this purpose.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 775.84. Notifying the System Administrator of Missing Equipment.

(a) A User Agency shall notify its System Administrator in writing, within one calendar day, of any missing equipment that could potentially compromise the confidentiality and security of the shared gang database.

(b) The System Administrator shall notify the Department, within one calendar day, upon discovery of any missing equipment that could potentially compromise the confidentiality and security of the shared gang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 775.6. System Misuse.

(a) Any violations of these regulations shall be investigated by the head of the User Agency or his or her designee ~~System Administrator or the System Administrator's Designee~~ and reported to the System Administrator within five business days.

(b) The Department shall instruct the System Administrator to revoke access to the shared gang database for any User who provides unauthorized access to the shared gang database or discloses information from the shared gang database for unauthorized purposes.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

Article 13. Enforcement of these Regulations by the Department

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§ 776.25-8. Enforcement of these Regulations by the Department

If any section of these regulations is violated, or if any other form of system misuse occurs that violates state or federal law, including these regulations, the Department shall instruct the System Administrator to take any or all of the following actions:

- (1) Issue a letter of censure.
- (2) Temporarily suspend access to the shared gang database.
- (3) Revoke access to the shared gang database.

(c) The Department and/or the System Administrator may restrict or revoke access of a User Agency to a shared gang database if a User or Users of the User Agency are found to be misusing the shared gang database or data contained therein on multiple occasions. Misuse includes failing to adhere to any law governing a shared gang database, including these regulations, and/or failing to adequately document criteria in a shared gang database. The User Agency may be subject to a moratorium pending additional audits imposed by the Department.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.