

THIRD 15-DAY PUBLIC COMMENTS AND DEPARTMENT OF JUSTICE RESPONSES

| Section/Topic | Comment Number(s) | Summarized Comment | Department of Justice Response |
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| 771.6, Minimum Age of Entry and Requirements to Enter a Person into a Shared Gang Database | 1.5 | <p><i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i></p> <p>“[T]he 2020 LAPD Audit observed significant disparities in the ways that these criteria are applied—most glaringly when law enforcement inappropriately adds people to the database based on insufficient criteria. It reported a ‘substantial geographic disparity regarding ineligible entries[;] . . . [the] West Bureau had 22 [field interview cards] that were not eligible for entry into the Database [and] [n]one of these were entered. Central Bureau however had 33 [field interview cards] that were not eligible. Eleven (33 percent) were entered. While the 2020 LAPD Audit did not attempt to explain the reason why a third of individuals in Central Bureau who did not satisfy the criteria for CalGang inclusion were nonetheless designated as gang members while all individuals stopped in West Bureau were spared that fate, it is worth noting that most of the neighborhoods that fall within the West Bureau are predominately white, while those in the Central Bureau are predominately Latino. This observed disparity may reflect differential treatment of people of different racial identities or a greater willingness to disregard the rules</p> | <p>No change has been made in response to this comment because no substantive changes were made to this section in the fourth modified regulations. Furthermore, these regulations require supervisory reviews, audits, and attestations which the Department believes will reduce and/or prevent any instances of data inaccuracy. The Department is dedicated to monitoring CalGang database entries and submitting future regulation packages to address overinclusion in the CalGang database. The Department will then carry any findings from the research on the CalGang database, to these regulations governing shared gang databases, as applicable.</p> |

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| | | <p>when policing communities of color. But regardless of officers’ underlying motive for designating people as gang members even when they could not satisfy the incredibly broad and subjective CalGang criteria, this is yet another illustration of how individuals are not treated equally when it comes to allegations of gang membership.”</p> | |
| <p>771.8, Criteria to be Designated as a Gang Member or Associate</p> | <p>1.3</p> | <p><i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i></p> <p>“The 2020 LAPD Audit specifically highlighted three major concerns that have been repeatedly raised by the public and in our prior letters that have not properly been addressed by the Department’s proposed regulations. First, the criteria are vague, ambiguous, and insufficiently connected to actual gang participation. The 2020 LAPD Audit explicitly noted that the ‘Database criteria seems to be written in a purposefully vague manner allowing for inconsistent interpretation.’ The ‘self-admission’ criterion was particularly used in an inconsistent and often fraudulent way, with 45 percent of those who were designated as gang members for ‘admitting’ gang membership only admitting to membership at some point in the past—most often in response to the</p> | <p>No change has been made in response to this comment because no substantive changes were made to this section in the fourth modified regulations. Regarding the comment concerning the criteria being vague, ambiguous, and insufficiently connected to actual gang participation and the comment concerning the relevance of the gang-related address criterion, the criteria are consistent with the Department’s empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies</p> |

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| | | <p>officer specifically asking ‘Where did you used to come from?’ Similarly, the audit reflected that the outfits officers denoted as ‘gang dress’ could not be meaningfully distinguished from those ‘one sees on the street every day,’ and included things like a black shirt and blue jeans or a gray shirt and black shorts and shoes. The audit also reported a lack of support for officers’ conclusions that tattoos were, in fact, gang related, or that a particular place was a ‘gang area’ given that the LAPD’s own ‘Gang Area Territory Map’ covered large swaths of the city. The auditors even concluded that the ubiquity of ‘gang areas’ in Los Angeles ‘says more about the amount of the City covered by gang territory than the individual encountered by [officers],’ and concluded that this criterion was ‘both irrelevant and unimportant.’</p> | <p>included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department is consistent with these studies, which support law enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership. Regarding the comment concerning the 2020 LAPD Audit, the 2020 LAPD Audit reviewed criteria and entry requirements that were in place within LAPD prior to these regulations taking effect and therefore are not an accurate reflection of the criteria and entry requirements included in these regulations. The Department believes the new documentation requirements will help to ensure the accuracy and reliability of each criterion. Additionally, these documentation requirements are necessary for supervisory reviews and audits and the Department believes they will only serve to increase the accuracy of</p> |

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| | | | <p>shared gang databases and reduce or prevent the likelihood of overinclusion. Furthermore, subdivision (b)(2) of section 771 requires User training to include “a comprehensive description of each criterion, the limitations and restrictions applicable to each criterion, and the documentation required to use each criterion.”</p> <p>Regarding the comment concerning the self-admission criterion, subdivision (a)(1) of section 771.8 requires that the person admits “to being an active member or associate of an active criminal street gang.” Active membership or association is aligned with the language in subdivision (a) of Penal Code section 186.22 and subdivision (a) of Code of Federal Regulations, Title 28, section 23.20, therefore only admissions of active membership or association shall be included. Regarding the comment concerning “gang dress”, tattoos, and “gang areas”, the related criteria require documentation by the law enforcement officer to justify the relation to gangs as specified in subdivisions (a)(6), (a)(7) and (a)(8) of section 771.8.</p> |
| | 2.3 | <p>“[T]he Department has so far proposed regulations for the use of the CalGang system and other shared gang databases that largely ignore advocates’ claims and that enshrine the status quo. The regulations continue to use substantially the same</p> | <p>No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more</p> |

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| | | <p>criteria that officers have used for decades to provide posthoc rationalizations for what are essentially guesses as to who might or might not be a gang member. This despite the Legislature’s clear disapproval of these criteria.</p> | <p>of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department is consistent with these studies, which support law enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p> |
| | 2.4 | <p>“Criteria for entry allow for inconsistent application – The criteria for entry are so vague and overbroad that they allow for habitual misuse.</p> | <p>No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking</p> |

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| | | <p>Consistent with the claims of database critics that the criteria were designed to be convenient posthoc rationalizations for officers’ guesses about gang membership, the report states that ‘the Database criteria seem to be written in a purposefully vague manner.’ While the audits found that the obviously vague criteria such as ‘gang dress’ were routinely satisfied by statements such as ‘The Subject was wearing a black shirt and blue jeans,’ even the ostensibly more reliable criteria of self admission was habitually misused, as officers seemed to intentionally conflate admissions of past or tangential gang involvement with admissions of current gang membership. Regarding self-admission, Director Rhodes concluded that ‘self-admitted is so undefined as to be meaningless.’ Director Rhodes went on to also suggest that the following criteria were outdated and only questionably effective: gang dress, tattoos, gang location. All three of these disapproved criteria are currently included in the Department’s proposed regulations, as is self-admission, despite community advocates’ repeated criticism.”</p> | <p>file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department is consistent with these studies, which support law enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership. Regarding the comment concerning the report findings, the 2020 LAPD Audit</p> |

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| | | | <p>reviewed criteria and entry requirements that were in place within LAPD prior to these regulations taking effect and therefore are not an accurate reflection of the criteria and entry requirements included in these regulations. The Department believes the new documentation requirements will help to ensure the accuracy and reliability of each criterion. Additionally, these documentation requirements are necessary for supervisory reviews and audits and the Department believes they will only serve to increase the accuracy of shared gang databases and reduce or prevent the likelihood of overinclusion. Furthermore, subdivision (b)(2) of section 771 requires User training to include “a comprehensive description of each criterion, the limitations and restrictions applicable to each criterion, and the documentation required to use each criterion.” Regarding the comment concerning the self-admission criterion, subdivision (a)(1) of section 771.8 requires that the person admits “to being an active member or associate of an active criminal street gang.” Active membership or association is aligned with the language in subdivision (a) of Penal Code section 186.22 and subdivision (a) of Code of Federal Regulations, Title 28, section 23.20, therefore only admissions of active membership or association shall be included.</p> |

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| | 2.6, 2.7 | <p>“The best way to ensure that fraudulent and inaccurate data is not entered into shared gang databases is to allow records only for individuals convicted of gang participation in criminal court.... proof in court or admission in a criminal proceeding are the most reliable means of testing the accuracy of a gang allegation. If a supervisor must certify that he or she has reviewed court documentation of a conviction for a gang crime, that certification would evince a reasonable certainty that the person whose name and information is documented in a gang database is, in fact, an active gang member. [T]his change will also address the primary concern... that collecting information about possible gang members during field interviews is unnecessarily confrontational and negatively impacts public safety.... [A] database of people convicted of gang crimes would be more reliable, and therefore, potentially useful.”</p> | <p>No change has been made in response to this comment because no substantive changes were made to this section in the fourth modified regulations. Furthermore, Title 28 of the Code of Federal Regulations does not limit the content of shared gang databases to convictions. An arrest which satisfies the definition of an “offense consistent with gang activity” must be based on reasonable suspicion that the individual is involved in criminal activity. The Department believes that such arrests are relevant criminal intelligence and should be included.</p> |
| <p>771.8, Criteria to be Designated as a Gang Member or Associate</p> <p>And</p> <p>Article 9, Retention Periods</p> | 2.2 | <p>“[T]he criteria and retention period are inconsistent with Penal Code section 186.36 (l); and the inclusion in a criminal database of a person not suspected of any specific criminal activity is inconsistent with Penal Code section 186.36 (m) and with the Fourth Amendment to the U.S. Constitution. Under Government Code section 11349.1, the OAL should reject any regulations</p> | <p>Regarding the comment concerning the criteria, no change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or</p> |

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| | | <p>inconsistent with statutory and constitutional law.”</p> | <p>contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department is consistent with these studies, which support law enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership. Regarding the comment concerning the retention periods, no change has been made in response to this comment because while there was sufficient empirical evidence to inform juvenile retention periods, the empirical research on adults’ gang involvement duration is limited and inconsistent. For example, in one study, adults reported leaving</p> |

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| | | | <p>gangs after an average of over 11 years of membership, while another study conducted by the same author indicated that only 17% of youth and adults remain involved in gang activities for more than three years, illustrating the wide variability in reported gang membership duration among adults—dependent upon the adults sampled.^{1,2,3} It is also important to note that gang activity in the CalGang database is not recorded or paused while a person is incarcerated. In contrast to the other regulatory issues, there is considerable scholarly research on gang involvement while incarcerated. Incarceration has been shown to be a strong predictor for continued gang membership with nearly 75% of those incarcerated continuing gang membership behind bars and after release.⁴ A study conducted by the Urban Institute indicated that the average prison time served for non-violent crimes in California was 3.3 years, increasing to 8.2 years for violent offenders.⁵ Taken together with the scholarly literature on persistent gang membership in prison, it is likely that gang unit specialists and law enforcement agencies are losing data on gang</p> |

¹ Decker and Pyrooz, “Leaving the Gang: Logging Off and Moving On,” *Council on Foreign Relations*, (2011)

² Densley, James A., and David C. Pyrooz, "A signaling perspective on disengagement from gangs," *Justice Quarterly* 36, no. 1 (2019): 31-58.

³ Pyrooz, David C. "'From your first cigarette to your last dyin' day': The patterning of gang membership in the life-course." *Journal of Quantitative Criminology* 30, no. 2 (2014): 349-372.

⁴ Pyrooz, David C., Nancy Gartner, and Molly Smith. "Consequences of incarceration for gang membership: A longitudinal study of serious offenders in Philadelphia and Phoenix." *Criminology* 55, no. 2 (2017): 273-306.

⁵ “A matter of time: The hidden story of rising time served,” Urban Institute, 2017, <https://apps.urban.org/features/long-prison-terms/trends.html>.

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| | | | <p>members, especially violent offenders, while the gang members are incarcerated, due to the current five-year limitation on data retention. The Department acknowledges and considered the extant empirical research on gang involvement duration. Based, in part, on review of this research, the Department reduced the retention period for juveniles, as there was sufficient empirical evidence indicating that the vast majority of juveniles that admit to gang membership, admit involvement for three years or less.^{6,7,8,9} Regarding the comment concerning the inclusion in a criminal database of a person not suspected of any specific criminal activity, no change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations. If this comment is referencing the criteria to be designated as a Gang Member or Associate, no change has been made in response to this comment because no substantive changes were made to this section in the fourth modified regulations. Furthermore, Title 28 of the Code of Federal Regulations does</p> |

⁶ Hill, Karl G., Christina Lui, and J. David Hawkins. *Early precursors of gang membership: A study of Seattle youth*. Washington, DC: US Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2001.

⁷ Thornberry, Terence P., David Huizinga, and Rolf Loeber. "The causes and correlates studies: Findings and policy implications." *Juv. Just.* 9 (2004): 3.

⁸ Leverso, John, and Ross L. Matsueda. "Gang Organization and Gang Identity: An Investigation of Enduring Gang Membership." *Journal of Quantitative Criminology* (2019): 1-33.

⁹ Melde, Chris, and Finn-Aage Esbensen. "The relative impact of gang status transitions: Identifying the mechanisms of change in delinquency." *Journal of Research in Crime and Delinquency* 51, no. 3 (2014): 349-376.

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| | | | <p>not limit the content of shared gang databases to convictions. An arrest which satisfies the definition of an “offense consistent with gang activity” must be based on reasonable suspicion that the individual is involved in criminal activity. The Department believes that such arrests are relevant criminal intelligence and should be included. Moreover, the revised regulations require that, in addition to meeting two (and in some instances, three) criteria for designation, law enforcement officers must provide justification for their reasonable suspicion that the person is in fact a current gang member above and beyond the criteria designated and that such reasonable suspicion must be confirmed by a supervisor and the agency via written attestations.</p> |
| <p>Article 5, Designating a Person in a Shared Gang Database and Adding Information to the Person’s Record And Article 10, Audits</p> | <p>1.6</p> | <p><i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i></p> <p>“These audit findings are even more striking when juxtaposed with an earlier audit by the same agency conducted less than a year earlier purporting near-perfect compliance with CalGang’s existing procedures. The LAPD’s August 2019 CalGang Audit (“2019 LAPD Audit”) reviewed compliance with CalGang and LAPD procedures using ‘generally accepted government</p> | <p>These regulations implement Assembly Bill (AB) 90 (Stats. 2017, Ch. 695) and the recommendations of the Bureau of State Audits. One of the audit recommendations was to reinforce the requirement that local law enforcement agencies conduct supervisory reviews of CalGang entries. When reviewing an entry, a supervisor must meaningfully review all related intelligence data supporting the entry to determine, among other requirements, that reasonable suspicion of criminal activity was met. Intelligence data could include body-worn camera videos, but to date, the Legislature has not required all</p> |

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| | | <p>auditing standards,’ but did not compare the officers’ written entries with the records from body-worn cameras. The 2019 LAPD Audit—which included records from the same period as the 2020 LAPD Audit¹⁵—found that the source data properly supported the CalGang criteria in 100 percent of entries reviewed; the 2020 LAPD Audit based on a review of body-worn camera footage found that all listed criteria could only be corroborated in 42 percent of the entries reviewed, and as discussed above was affirmatively disproven in numerous instances. Crucially, while the DOJ’s most significant change presented in this most recent amendment is the new requirement that each entry must be accompanied by a supervisor’s ‘attestation’ that they have reviewed it, this was essentially already a requirement for the LAPD at the time of both the 2019 and 2020 audits—and was found to have been complied with 93% of the time. Yet the numerous falsifications and irregularities found in the 2020 LAPD Audit persisted. This underscores the 2020 LAPD Audit’s conclusion that there were ‘no teeth’ to the Cal DOJ requirement that an individual satisfy at least two criteria prior to being entered into the database. In the absence of body-worn camera evidence and a department’s willingness to use those videos in the process of reviewing</p> | <p>law enforcement agencies to use body-worn cameras. As a result, the inconsistent use of body-worn cameras by law enforcement, and the various local policies governing the use of such cameras, prevent the Department from drafting regulations that are specific to that type of source documentation. The Department revised the regulations to require that for each entry, a supervisor attest in writing that the entry complies with these regulations. The purpose of this revision is to underscore the significance of supervisory reviews in ensuring that the entry is accurate. As with any guideline governing intelligence gathering, the regulations are not a foolproof safeguard against an unscrupulous officer or supervisor who is willing to falsify police records in the line of duty to harass an innocent person by entering the person in the database in violation of the regulations. As intended, the regulations are best practices that, if followed, will ensure accurate entries. If the regulations are not followed, individuals in the database now have the ability to challenge the designation, and the Department now has the ability to audit, censure and revoke access to the database, tools that were not available before AB 90.</p> |

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| | | <p>CalGang entries, an agency’s purported compliance with CalGang regulations is not indicative of the accuracy of an officer’s representations—to say nothing of the accuracy of the gang designation itself. The Department has not addressed any of the glaring issues made apparent from the 2020 LAPD Audit, but instead has chosen to exacerbate them through numerous provisions in the proposed regulations, as more fully discussed in our prior letters.”</p> | |
| <p>772.2, Supervisory Review Process of Intelligence Data</p> <p>And</p> <p>772.8, Supervisory Review Process of Criminal Street Gang Intelligence Data</p> | <p>2.5</p> | <p>“In light of the LAPD audit, the change the Department proposes in the Fourth Modification is plainly insufficient to achieve the Legislature’s goal of preventing the entry of fraudulent and inaccurate data into shared gang databases. While it is entirely reasonable to require that a supervisor or lieutenant certify they have reviewed every entry, the proposed supervisory review, even with this change, would not have prevented entry of the untrue data that was entered by the LAPD. So long as supervisory review does not require the review of recordings that would prove or disprove the accuracy of a source document, whether a supervisor attests that he or she conducted the requisite supervisory review matters little, if it matters at all.”</p> | <p>These regulations implement Assembly Bill (AB) 90 (Stats. 2017, Ch. 695) and the recommendations of the Bureau of State Audits. One of the audit recommendations was to reinforce the requirement that local law enforcement agencies conduct supervisory reviews of CalGang entries. When reviewing an entry, a supervisor must meaningfully review all related intelligence data supporting the entry to determine, among other requirements, that reasonable suspicion of criminal activity was met. Intelligence data could include body-worn camera videos, but to date, the Legislature has not required all law enforcement agencies to use body-worn cameras. As a result, the inconsistent use of body-worn cameras by law enforcement, and the various local policies governing the use of such cameras, prevent the Department from drafting regulations</p> |

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| | | | <p>that are specific to that type of source documentation. The Department revised the regulations to require that for each entry, a supervisor attest in writing that the entry complies with these regulations. The purpose of this revision is to underscore the significance of supervisory reviews in ensuring that the entry is accurate. As with any guideline governing intelligence gathering, the regulations are not a foolproof safeguard against an unscrupulous officer or supervisor who is willing to falsify police records in the line of duty to harass an innocent person by entering the person in the database in violation of the regulations. As intended, the regulations are best practices that, if followed, will ensure accurate entries. If the regulations are not followed, individuals in the database now have the ability to challenge the designation, and the Department now has the ability to audit, censure and revoke access to the database, tools that were not available before AB 90.</p> |
| General Objections | 1.1 | <p>“The DOJ’s most recent amendments do not move the Department any closer to satisfying the requirements set forth by the Legislature to ensure that the regulations governing shared gang databases are not overinclusive and inaccurate. Despite recent developments illustrating the inherent flaws in both the CalGang database and the way it is used by agencies, the DOJ has not made any</p> | <p>No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.</p> |

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| | | <p>meaningful amendments to its proposed regulations and instead remains insistent on codifying the existing, overbroad, and inaccurate criteria that law enforcement has lobbied for, and has even curtailed the Legislatively-created protections for the public.”</p> | |
| | 1.2 | <p><i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i></p> <p>“The Department issued these most recent regulations a few weeks after the Los Angeles Police Department (‘LAPD’)—the single largest contributor to the CalGang system—reported in a scathing audit that its usage of the system was plagued by falsifications and inconsistencies, and only days after the DOJ itself mandated that all agencies throughout the state refrain from using any data entered by the LAPD because of ‘significant misuse of the gang-tracking database by LAPD personnel, including entry of false information.’ The 2020 LAPD Audit is an admission by a law enforcement agency—one that was responsible for nearly 25 percent of all records within the database and whose members lobbied for the current regulations that largely ignore the public’s concerns—that the current system allows, if not</p> | <p>No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.</p> |

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| | | <p>facilitates, significant misuse and, thereby, harm to the public. The Department’s decision to move forward without making substantial changes in response is incomprehensible.”</p> | |
| | 1.4 | <p><i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i></p> <p>“[F]alse and inaccurate entries are common. The 2020 LAPD Audit compared the officer’s documentation with body-worn camera footage and found numerous instances in which CalGang entries were contradicted by the video. For instance, as noted above, 45 percent of purported ‘self-admissions’ were based on statements that an individual used to be a member of a gang— which is most properly understood as a denial of current gang membership. And in six percent of field interview cards, the officer claimed an individual self-admitted to gang membership when the person was actually never asked about gang membership or affirmatively denied membership. Of the 14 times officers claimed that an individual was wearing ‘gang dress,’ this was corroborated only once. The 2020 LAPD Audit reviewed fewer than 200 CalGang entries—a small fraction of LAPD’s 78,096 records</p> | <p>These regulations implement Assembly Bill (AB) 90 (Stats. 2017, Ch. 695) and the recommendations of the Bureau of State Audits. One of the audit recommendations was to reinforce the requirement that local law enforcement agencies conduct supervisory reviews of CalGang entries. When reviewing an entry, a supervisor must meaningfully review all related intelligence data supporting the entry to determine, among other requirements, that reasonable suspicion of criminal activity was met. Intelligence data could include body-worn camera videos, but to date, the Legislature has not required all law enforcement agencies to use body-worn cameras. As a result, the inconsistent use of body-worn cameras by law enforcement, and the various local policies governing the use of such cameras, prevent the Department from drafting regulations that are specific to that type of source documentation. The Department revised the regulations to require that for each entry, a supervisor attest in writing that the entry complies with these regulations. The purpose of this revision is to underscore the significance of supervisory reviews in</p> |

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| | | <p>currently in the CalGang database—but the audit nonetheless uncovered multiple records that had been falsified completely, ultimately leading to the criminal charges being filed against three officers.”</p> | <p>ensuring that the entry is accurate. As with any guideline governing intelligence gathering, the regulations are not a foolproof safeguard against an unscrupulous officer or supervisor who is willing to falsify police records in the line of duty to harass an innocent person by entering the person in the database in violation of the regulations. As intended, the regulations are best practices that, if followed, will ensure accurate entries. If the regulations are not followed, individuals in the database now have the ability to challenge the designation, and the Department now has the ability to audit, censure and revoke access to the database, tools that were not available before AB 90. Regarding the comment concerning the self-admission criterion, subdivision (a)(1) of section 771.8 requires that the person admits “to being an active member or associate of an active criminal street gang.” Active membership or association is aligned with the language in subdivision (a) of Penal Code section 186.22 and subdivision (a) of Code of Federal Regulations, Title 28, section 23.20, therefore only admissions of active membership or association shall be included.</p> |
| | 2.1, 2.7 | <p>“[B]ecause notice of this rulemaking action was published in May, 2019, more than a year ago, this action cannot satisfy Government Code section 11346.4 (b). For that reason,</p> | <p>No change has been made to the regulations in response to this comment, after five public meetings of the Gang Database Technical Advisory Committee, two public</p> |

THIRD 15-DAY PUBLIC COMMENTS AND DEPARTMENT OF JUSTICE RESPONSES

| Section/Topic | Comment Number(s) | Summarized Comment | Department of Justice Response |
|---------------|-------------------|--|---|
| | | <p>the Office of Administrative Law ('OAL') should reject the packages upon submission and the Department will have to begin again. I am aware that the packages in this action were submitted to the OAL on February 25, 2020, but those packages were withdrawn on April 3, 2020, and so they do not satisfy the one-year rule.”</p> | <p>hearings, and five public comment periods, the Department is working diligently to promulgate these regulations as soon as possible while considering hundreds of public comments from legislators, law enforcement, and civil rights organization. Under the Administrative Procedure Act (APA), the Department has one-year to submit the final rulemaking for OAL approval. The one-year time period was extended by an executive order and the Department intends to meet this APA deadline, as extended. Regarding the comment concerning the rejection of packages, under the APA, an agency is allowed to withdraw and resubmit a package to OAL so long as it is within the one-year time period which was extended by an executive order.</p> |