

BILL ANALYSIS

C.S.H.B. 1658
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law defines when an individual can be added to and removed from the criminal street gang intelligence database (the "gang database"). C.S.H.B. 1658 facilitates the classification of individuals as gang members and their inclusion into the gang database by law enforcement agents. Furthermore, the bill removes an inconsistency in current law that requires premature removal of some gang members from the gang database.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1658 amends Article 61.02(c), Code of Criminal Procedure, by restructuring the criteria by which an individual may be added to the gang database. One of the criteria that must be met in order for entry into the gang database is that the information collected must be relevant to the identification of an organization that is reasonably suspected of involvement in criminal activity, which is currently in statute. In addition to meeting this first criteria, the information collected must consist of a judgment under any law that includes, as a finding or as an element of a criminal offense, participation in a criminal street gang ("gang"); a self-admission by the individual of gang membership that is made during a judicial proceeding; or any two of the following: (i) a self-admission by the individual of gang membership that is not made during a judicial proceeding; (ii) an identification of the individual as a gang member by a reliable informant or other individual; (iii) a corroborated identification of the individual as a gang member by an informant or other individual of unknown reliability; (iv) evidence that an individual frequents a documented area of a gang and associated with known members; (v) evidence that the individual uses, in more than an incidental manner, criminal street gang dress, hand signals, tattoos, or symbols, including expressions of letters, numbers, words, or marks, regardless of the format or medium in which the symbols are displayed, that are associated with a criminal street gang that operates in an area frequented by the individual; or (vi) evidence that the individual has been arrested or taken into custody with known gang members for an offense or conduct consistent with gang activity.

The bill amends Article 61.06(c), Code of Criminal Procedure, to read that in determining whether information is required to be removed from an intelligence database, the three-year period does not include any period during which the individual who is the subject of the information is confined in a Texas Department of Criminal Justice (TDCJ) operated or contracted correctional facility, committed to a Texas Youth Commission (TYC) operated or contracted secure correctional facility as defined by Section 51.02, Family Code, or confined in a county jail or facility operated by a juvenile board in lieu of being confined or committed in a TDCJ or TYC operated or contracted facility, respectively.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute amends the caption in the original bill to read "relating to information contained in a criminal street gang intelligence database." The original's caption read "relating to the criminal combination and criminal street gang intelligence database."

The substitute also removes the words "criminal combination" in Section 1 of the original bill. The substitute also states in Article 61.02(c)(2)(C)(i), Code of Criminal Procedure, that one of the criteria that could be met is a self-admission by the individual of criminal street gang membership that is not made during a judicial proceeding. The original stated it could be a self-admission by the individual of criminal street gang membership that does not occur during a judicial proceeding.

The substitute provides that in determining whether information is required to be removed from an intelligence database, the three-year period does not include any period during which the individual who is the subject of the information is confined in a Texas Department of Criminal Justice (TDCJ) operated or contracted correctional facility, committed to a Texas Youth Commission (TYC) operated or contracted secure correctional facility as defined by Section 51.02, Family Code, or confined in a county jail or facility operated by a juvenile board in lieu of being confined or committed in a TDCJ or TYC operated or contracted facility, respectively. The original bill provided that in determining whether information is required to be removed from an intelligence database, the three-year period does not include any period during which the individual who is the subject of the information is confined in the institutional division or the state jail division of the Texas Department of Criminal Justice, a confinement facility of the Texas Youth Commission, or a county jail in which the individual serves in lieu of serving that time in the institutional division or the state jail division of the Texas Department of Criminal Justice or a confinement facility of the Texas Youth Commission.

The substitute is a Texas Legislative Council draft and makes conforming changes in the language of the bill.