

A BILL TO BE ENTITLED

AN ACT

relating to information contained in an intelligence database used to investigate and prosecute offenses committed by criminal street gangs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

(c) Criminal information collected under this chapter relating to a criminal street gang must:

(1) be relevant to the identification of an organization that is reasonably suspected of involvement in criminal activity; and

(2) consist of:

(A) a judgment under any law that includes, as a finding or as an element of a criminal offense, participation in a criminal street gang;

(B) a self-admission by the individual of criminal street gang membership that is made during a judicial proceeding; or

(C) except as provided by Subsection (d), any two of the following:

(i) a self-admission by the individual of criminal street gang membership that is not made during a judicial

1 proceeding, including the use of the Internet or other electronic  
2 format or medium to post photographs or other documentation  
3 identifying the individual as a member of a criminal street gang;

4 (ii) an identification of the individual as  
5 a criminal street gang member by a reliable informant or other  
6 individual;

7 (iii) a corroborated identification of the  
8 individual as a criminal street gang member by an informant or other  
9 individual of unknown reliability;

10 (iv) evidence that the individual frequents  
11 a documented area of a criminal street gang and associates with  
12 known criminal street gang members;

13 (v) evidence that the individual uses, in  
14 more than an incidental manner, criminal street gang dress, hand  
15 signals, tattoos, or symbols, including expressions of letters,  
16 numbers, words, or marks, regardless of how or the means by [~~the~~  
17 ~~format or medium in~~] which the symbols are displayed, that are  
18 associated with a criminal street gang that operates in an area  
19 frequented by the individual and described by Subparagraph (iv);  
20 [~~or~~]

21 (vi) evidence that the individual has been  
22 arrested or taken into custody with known criminal street gang  
23 members for an offense or conduct consistent with criminal street  
24 gang activity;

25 (vii) evidence that the individual has  
26 visited a known criminal street gang member, other than a family  
27 member of the individual, while the gang member is confined in or

1 committed to a penal institution; or  
2 (viii) evidence of the individual's use of  
3 technology, including the Internet, to recruit new criminal street  
4 gang members.

5 (d) Evidence described by Subsections (c)(2)(C)(iv) and  
6 (vii) is not sufficient to create the eligibility of a person's  
7 information to be included in an intelligence database described by  
8 this chapter unless the evidence is combined with information  
9 described by another subparagraph in Subsection (c)(2)(C).

10 (e) In this article:

11 (1) "Family member" means a person related to another  
12 person within the first degree by consanguinity or affinity, as  
13 described by Subchapter B, Chapter 573, Government Code, except  
14 that the term does not include a person who is considered to be  
15 related to another person by affinity only as described by Section  
16 573.024(b), Government Code.

17 (2) "Penal institution" means a confinement facility  
18 operated by or under a contract with any division of the Texas  
19 Department of Criminal Justice, a confinement facility operated by  
20 or under contract with the Texas Youth Commission, or a juvenile  
21 secure pre-adjudication or post-adjudication facility operated by  
22 or under a local juvenile probation department, or a county jail.

23 SECTION 2. Subsection (b), Article 61.06, Code of Criminal  
24 Procedure, is amended to read as follows:

25 (b) Subject to Subsection (c), information collected under  
26 this chapter relating to a criminal street gang must be removed from  
27 an intelligence database established under Article 61.02 and the

1 intelligence database maintained by the department under Article  
2 61.03 after five [~~three~~] years if:

3 (1) the information relates to the investigation or  
4 prosecution of criminal activity engaged in by an individual other  
5 than a child; and

6 (2) the individual who is the subject of the  
7 information has not been arrested for criminal activity reported to  
8 the department under Chapter 60.

9 SECTION 3. Subsection (c), Article 61.06, Code of Criminal  
10 Procedure, as amended by Chapters 258 (S.B. 11), 263 (S.B. 103), and  
11 1308 (S.B. 909), Acts of the 80th Legislature, Regular Session,  
12 2007, is reenacted and amended to read as follows:

13 (c) In determining whether information is required to be  
14 removed from an intelligence database under Subsection (b), the  
15 five-year [~~three-year~~] period does not include any period during  
16 which the individual who is the subject of the information is:

17 (1) confined in a correctional facility operated by or  
18 under contract with the Texas Department of Criminal Justice;

19 (2) committed to a secure correctional facility  
20 operated by or under contract with the Texas Youth Commission, as  
21 defined by Section 51.02, Family Code; or

22 (3) confined in a county jail or confined in or  
23 committed to a facility operated by a juvenile board in lieu of  
24 being confined in a correctional facility operated by or under  
25 contract with the Texas Department of Criminal Justice or being  
26 committed to a secure correctional facility operated by or under  
27 contract with the Texas Youth Commission.

1           SECTION 4. The change in law made by this Act in amending  
2 Article 61.06, Code of Criminal Procedure, applies to any  
3 applicable information maintained in an intelligence database  
4 under Chapter 61 of that code on or after the effective date of this  
5 Act.

6           SECTION 5. This Act takes effect September 1, 2009.