

By: Carona

S.B. No. 369

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 Subsection (d) 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) any two of the following:

(i) a self-admission by the individual of criminal street gang membership that is not made during a judicial proceeding, including the use of the Internet to post photographs

1 or other documentation identifying the individual as a member of a  
2 criminal street gang;

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

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

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

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

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

23 (vii) evidence that the individual  
24 possesses one or more documents of a criminal street gang,  
25 including documents maintained in an electronic format;

26 (viii) evidence that the individual has  
27 visited a known criminal street gang member, other than a family

1 member of the individual, while the gang member is confined in or  
2 committed to a penal institution; or

3 (ix) evidence of the individual's use of  
4 technology, including the Internet, to:

5 (a) recruit new criminal street gang  
6 members; or

7 (b) provide a forum for  
8 communications between known criminal street gang members.

9 (d) In this article:

10 (1) "Electronic format" means a medium or format of  
11 digital data that enables storage of the data on a cell phone,  
12 pager, computer or data processor, or other electronic device.

13 (2) "Family member" means a person related to another  
14 person within the first degree by consanguinity or affinity, as  
15 described by Subchapter B, Chapter 573, Government Code, except  
16 that the term does not include a person who is considered to be  
17 related to another person by affinity only as described by Section  
18 573.024(b), Government Code.

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

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

27 (b) Subject to Subsection (c), information collected under

1 this chapter relating to a criminal street gang must be removed from  
2 an intelligence database established under Article 61.02 and the  
3 intelligence database maintained by the department under Article  
4 61.03 after five [~~three~~] years if:

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

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

11 SECTION 3. Article 61.06(c), Code of Criminal Procedure, as  
12 amended by Chapters 258 (S.B. 111), 263 (S.B. 103), and 1308 (S.B.  
13 1909), Acts of the 80th Legislature, Regular Session, 2007, is  
14 reenacted and amended to read as follows:

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

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

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

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

1 committed to a secure correctional facility operated by or under  
2 contract with the Texas Youth Commission.

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

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