

1-1 By: Carona S.B. No. 369  
1-2 (In the Senate - Filed December 15, 2008; February 17, 2009,  
1-3 read first time and referred to Committee on Transportation and  
1-4 Homeland Security; April 8, 2009, reported adversely, with  
1-5 favorable Committee Substitute by the following vote: Yeas 8, Nays 0;  
1-6 April 8, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 369 By: Carona

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to information contained in an intelligence database used  
1-11 to investigate and prosecute offenses committed by criminal street  
1-12 gangs.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Article 61.02, Code of Criminal Procedure, is  
1-15 amended by amending Subsection (c) and adding Subsections (d) and  
1-16 (e) to read as follows:

1-17 (c) Criminal information collected under this chapter  
1-18 relating to a criminal street gang must:

1-19 (1) be relevant to the identification of an  
1-20 organization that is reasonably suspected of involvement in  
1-21 criminal activity; and

1-22 (2) consist of:

1-23 (A) a judgment under any law that includes, as a  
1-24 finding or as an element of a criminal offense, participation in a  
1-25 criminal street gang;

1-26 (B) a self-admission by the individual of  
1-27 criminal street gang membership that is made during a judicial  
1-28 proceeding; or

1-29 (C) except as provided by Subsection (d), any two  
1-30 of the following:

1-31 (i) a self-admission by the individual of  
1-32 criminal street gang membership that is not made during a judicial  
1-33 proceeding, including the use of the Internet or other electronic  
1-34 format or medium to post photographs or other documentation  
1-35 identifying the individual as a member of a criminal street gang;

1-36 (ii) an identification of the individual as  
1-37 a criminal street gang member by a reliable informant or other  
1-38 individual;

1-39 (iii) a corroborated identification of the  
1-40 individual as a criminal street gang member by an informant or other  
1-41 individual of unknown reliability;

1-42 (iv) evidence that the individual frequents  
1-43 a documented area of a criminal street gang and associates with  
1-44 known criminal street gang members;

1-45 (v) evidence that the individual uses, in  
1-46 more than an incidental manner, criminal street gang dress, hand  
1-47 signals, tattoos, or symbols, including expressions of letters,  
1-48 numbers, words, or marks, regardless of how or the means by ~~[the~~  
1-49 ~~format or medium in]~~ which the symbols are displayed, that are  
1-50 associated with a criminal street gang that operates in an area  
1-51 frequented by the individual and described by Subparagraph (iv);  
1-52 ~~[or]~~

1-53 (vi) evidence that the individual has been  
1-54 arrested or taken into custody with known criminal street gang  
1-55 members for an offense or conduct consistent with criminal street  
1-56 gang activity;

1-57 (vii) evidence that the individual has  
1-58 visited a known criminal street gang member, other than a family  
1-59 member of the individual, while the gang member is confined in or  
1-60 committed to a penal institution; or

1-61 (viii) evidence of the individual's use of  
1-62 technology, including the Internet, to recruit new criminal street  
1-63 gang members.

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

(e) In this article:

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

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

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

(b) Subject to Subsection (c), information collected under this chapter relating to a criminal street gang must be removed from an intelligence database established under Article 61.02 and the intelligence database maintained by the department under Article 61.03 after five ~~[three]~~ years if:

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

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

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

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

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

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

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

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

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

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