

By: González of El Paso, Schaefer, et al.

H.B. No. 1838

A BILL TO BE ENTITLED

AN ACT

relating to intelligence databases for combinations and criminal street gangs.

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

SECTION 1. Subchapter B, Chapter 67, Code of Criminal Procedure, is amended by adding Article 67.055 to read as follows:

Art. 67.055. NOTIFICATION REGARDING INCLUSION OF INFORMATION IN DEPARTMENT'S INTELLIGENCE DATABASE. (a) Not later than the 60th day after the date the department includes information relating to a person in the department's intelligence database maintained under Article 67.052, the department shall provide to the person by certified mail to the person's last known address:

(1) notification regarding the inclusion of the person's information in the department's intelligence database;

(2) a description of the process for disputing the inclusion of information in the database, including associated costs or fees, processes and timelines, and any potential evidence necessary for purposes of a dispute; and

(3) a description of the process for removing information from the database following renunciation of criminal street gang membership.

(b) The department shall post on the department's Internet website information regarding the processes described by

1 Subsections (a)(2) and (3).

2 SECTION 2. Subchapter C, Chapter 67, Code of Criminal
3 Procedure, is amended by adding Article 67.1015 to read as follows:

4 Art. 67.1015. PROHIBITED RELEASE AND USE OF INFORMATION IN
5 DEPARTMENT'S INTELLIGENCE DATABASE. A person's inclusion in the
6 intelligence database maintained by the department under Article
7 67.052 may not:

8 (1) be made available for or used in a determination of
9 the person's employment eligibility;

10 (2) limit any rights given to the person by the United
11 States Constitution or Texas Constitution; or

12 (3) limit the person's ability to obtain any federal or
13 state license, permit, or benefit.

14 SECTION 3. The heading to Subchapter D, Chapter 67, Code of
15 Criminal Procedure, is amended to read as follows:

16 SUBCHAPTER D. REMOVAL OF INFORMATION AFTER EXPIRATION OF CERTAIN
17 PERIOD

18 SECTION 4. Subchapter D, Chapter 67, Code of Criminal
19 Procedure, is amended by adding Article 67.153 to read as follows:

20 Art. 67.153. AUDIT; SUMMARY; REMOVAL. (a) The state
21 auditor annually shall conduct an audit of information that is held
22 in the department's intelligence database maintained under Article
23 67.052.

24 (b) If the state auditor finds that information has remained
25 in the intelligence database for more than 10 years, the state
26 auditor shall request that the department reestablish sufficient
27 evidence for inclusion of the information in the database. If the

1 department is unable to establish sufficient evidence, the
2 department promptly shall remove the information.

3 (c) The state auditor shall create a summary of the audit
4 performed under this article, disaggregating the total number of
5 persons with information in the intelligence database by race, age,
6 gender, ethnicity, and residential zip code. The summary must
7 specify the number of persons whose information has been retained
8 in the intelligence database for more than five years and for more
9 than 10 years.

10 (d) The department shall make the summary available on the
11 department's Internet website.

12 SECTION 5. Articles 67.202(a), (b), (c), and (d), Code of
13 Criminal Procedure, are amended to read as follows:

14 (a) On receipt of a written request of a person or the parent
15 or guardian of a child that includes a showing by the person or the
16 parent or guardian that a law enforcement agency may have collected
17 criminal information under this chapter relating to the person or
18 child that is inaccurate, ~~[or]~~ does not comply with the submission
19 criteria under Article 67.054(b), or violates 28 C.F.R. Part 23,
20 the Texas Constitution, or the United States Constitution, the head
21 of the agency or the designee of the agency head shall review
22 criminal information collected by the agency under this chapter
23 relating to the person or child to determine whether ~~[if]~~:

24 (1) probable cause ~~[reasonable suspicion]~~ exists to
25 believe that the information is accurate; ~~[and]~~

26 (2) the information complies with the submission
27 criteria established under Article 67.054(b); and

1 (3) inclusion of the information in the applicable
2 intelligence database violates 28 C.F.R. Part 23, the Texas
3 Constitution, or the United States Constitution.

4 (b) If, after conducting a review of criminal information
5 under Subsection (a), the agency head or designee determines that
6 probable cause [~~reasonable suspicion~~] does not exist to believe
7 that the information is accurate, [~~or~~] determines that the
8 information does not comply with the submission criteria, or
9 determines that inclusion of the information in the intelligence
10 database violates 28 C.F.R. Part 23, the Texas Constitution, or the
11 United States Constitution, the agency shall:

12 (1) promptly destroy all records containing the
13 information; and

14 (2) not later than the 10th business day after the date
15 of the determination, notify the department and the person who
16 requested the review of the agency's determination and the
17 destruction of the records.

18 (c) If, after conducting a review of criminal information
19 under Subsection (a), the agency head or designee determines that
20 probable cause [~~reasonable suspicion~~] exists to believe that the
21 information is accurate, [~~and~~] determines that the information
22 complies with the submission criteria, and determines that
23 inclusion of the information in the intelligence database does not
24 violate 28 C.F.R. Part 23, the Texas Constitution, or the United
25 States Constitution, the agency shall notify the person who
26 requested the review:

27 (1) of the agency's determination not later than the

1 10th business day after the date of the determination; and

2 (2) that the person is entitled to seek judicial
3 review of the agency's determination under Article 67.203 not later
4 than the 60th day after the date the person receives the written
5 notification by the agency head or designee.

6 (d) Not later than the 10th business day after the date of
7 ~~[On]~~ receipt of notice under Subsection (b)(2), the department
8 ~~[immediately]~~ shall destroy all records containing the information
9 that is the subject of the notice in the intelligence database
10 maintained by the department under Article 67.052.

11 SECTION 6. Article 67.203, Code of Criminal Procedure, is
12 amended to read as follows:

13 Art. 67.203. JUDICIAL REVIEW. (a) Not later than the 60th
14 day after the date the person receives written notice under Article
15 67.202(c), a [A] person who is entitled to seek judicial review of a
16 determination made under that subsection [Article 67.202(c)] may
17 file a petition for review in district court in the county in which
18 the person resides.

19 (a-1) A court may grant judicial review of a petition filed
20 after the date prescribed by Subsection (a) if the petitioner shows
21 good cause for filing after that date.

22 (b) On the filing of a petition for review under Subsection
23 (a), the district court shall conduct a hearing in which the court
24 shall make available to the person's counsel under Article 39.14
25 all criminal information that is the subject of the determination.
26 The hearing shall be conducted [an in camera review of the criminal
27 information that is the subject of the determination] to determine

1 whether [~~if~~]:

2 (1) probable cause [~~reasonable suspicion~~] exists to
3 believe that the information is accurate; [~~and~~]

4 (2) the information complies with the submission
5 criteria under Article [67.054\(b\)](#); and

6 (3) the inclusion of the information in the applicable
7 intelligence database violates 28 C.F.R. Part 23, the Texas
8 Constitution, or the United States Constitution.

9 (c) If, after a hearing [~~conducting an in camera review of~~
10 ~~criminal information under Subsection (b)~~], the court finds that
11 probable cause [~~reasonable suspicion~~] does not exist to believe
12 that the information is accurate, [~~or~~] finds that the information
13 does not comply with the submission criteria, or finds that
14 inclusion of the information in the intelligence database violates
15 28 C.F.R. Part 23, the Texas Constitution, or the United States
16 Constitution, not later than the 10th business day after the date
17 the court makes its finding, the court shall:

18 (1) order the law enforcement agency that collected
19 the information to promptly destroy all records containing the
20 information; and

21 (2) notify the department of the court's finding
22 [~~determination~~] and the destruction of the records.

23 (c-1) Not later than the 10th business day after the date of
24 receipt of notice under Subsection (c)(2), the department shall
25 destroy all records containing the information that is the subject
26 of the notice in the intelligence database maintained by the
27 department under Article [67.052](#).

1 (d) A petitioner may appeal a final judgment of a district
2 court [~~conducting an in camera review~~] under this article.

3 (e) Information that is the subject of [~~an in camera~~] review
4 under this article is confidential and may not be disclosed, except
5 the information is subject to disclosure as required by Article
6 39.14 or under a subpoena or other legal process.

7 SECTION 7. Subchapter E, Chapter 67, Code of Criminal
8 Procedure, is amended by adding Article 67.204 to read as follows:

9 Art. 67.204. RIGHT TO REMOVAL OF INFORMATION FROM
10 DEPARTMENT'S INTELLIGENCE DATABASE AFTER RENUNCIATION. (a) A
11 person who is no longer a member of a criminal street gang may
12 renounce gang membership. On the second anniversary of the
13 person's renunciation, the information of a person who renounces
14 gang membership must be removed from the department's intelligence
15 database maintained under Article 67.052.

16 (b) The department shall adopt rules and forms for the
17 process by which a former member of a criminal street gang may
18 renounce membership, provide evidence that the person is no longer
19 a member of the gang, and be removed from the department's
20 intelligence database.

21 SECTION 8. This Act takes effect September 1, 2021.