

By: González of El Paso

H.B. No. 1838

A BILL TO BE ENTITLED

AN ACT

1
2 relating to intelligence databases for combinations and criminal
3 street gangs.

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

5 SECTION 1. Articles 67.054(b) and (c), Code of Criminal
6 Procedure, are amended to read as follows:

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

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

12 (2) consist of:

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

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

19 (C) except as provided by Subsection (c), any two
20 of the following:

21 (i) a self-admission by the individual of
22 criminal street gang membership that is not made during a judicial
23 proceeding, including the use of the Internet or other electronic
24 format or medium to post photographs or other documentation

1 identifying the individual as a member of a criminal street gang;

2 (ii) ~~[an identification of the individual~~
3 ~~as a criminal street gang member by a reliable informant or other~~
4 ~~individual,~~

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

8 (iii) ~~[(iv)]~~ evidence that the individual
9 frequents a documented area of a criminal street gang, ~~[and]~~
10 associates with known criminal street gang members, and is not a
11 resident of the documented area;

12 (iv) ~~[(v)]~~ evidence that the individual has
13 ~~[uses, in more than an incidental manner, criminal street gang~~
14 ~~dress, hand signals,] tattoos[, or symbols, including expressions~~
15 ~~of letters, numbers, words, or marks, regardless of how or the means~~
16 ~~by 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 (iii) ~~[(iv)];~~~~

19 (v) ~~[(vi)]~~ evidence that the individual has
20 been 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 (vi) ~~[(vii)]~~ evidence that the individual
24 has visited a known criminal street gang member, other than a family
25 member of the individual, while the gang member is confined in or
26 committed to a penal institution; or

27 (vii) ~~[(viii)]~~ evidence of the individual's

1 use of technology, including the Internet, to recruit new criminal
2 street gang members.

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

9 SECTION 2. Subchapter B, Chapter 67, Code of Criminal
10 Procedure, is amended by adding Article 67.055 to read as follows:

11 Art. 67.055. NOTIFICATION OF PERSON. (a) An agency that
12 submits information relating to a person to an intelligence
13 database described by this chapter shall provide to the person by
14 certified mail to the person's last known address not later than the
15 60th day after the date the information was submitted:

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

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

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

25 (b) The department shall post on the department's Internet
26 website information regarding the processes described by
27 Subsections (a)(2) and (3).

1 SECTION 3. Article 67.101, Code of Criminal Procedure, is
2 amended by adding Subsection (d) to read as follows:

3 (d) A person's inclusion in an intelligence database
4 described by this chapter may not:

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

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

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

11 SECTION 4. Subchapter C, Chapter 67, Code of Criminal
12 Procedure, is amended by adding Article 67.104 to read as follows:

13 Art. 67.104. ANNUAL SUMMARY. (a) The department shall
14 annually summarize the information that is in the department's
15 intelligence database maintained under Article 67.052.

16 (b) In the summary, the department shall disaggregate the
17 total number of persons with information in the intelligence
18 database by race, age, gender, ethnicity, and residential zip code.
19 The department shall also specify the number of persons whose
20 information has been retained in the intelligence database for more
21 than five years and for more than 10 years.

22 (c) The department shall make the summary available on the
23 department's Internet website.

24 SECTION 5. The heading to Subchapter D, Chapter 67, Code of
25 Criminal Procedure, is amended to read as follows:

26 SUBCHAPTER D. REMOVAL OF INFORMATION AFTER EXPIRATION OF CERTAIN
27 PERIOD

1 SECTION 6. Articles 67.202(a), (b), (c), and (d), Code of
2 Criminal Procedure, are amended to read as follows:

3 (a) On receipt of a written request of a person or the parent
4 or guardian of a child that includes a showing by the person or the
5 parent or guardian that a law enforcement agency may have collected
6 criminal information under this chapter relating to the person or
7 child that is inaccurate, ~~[or]~~ does not comply with the submission
8 criteria under Article 67.054(b), or violates 28 C.F.R. Part 23,
9 the Texas Constitution, or the United States Constitution, the head
10 of the agency or the designee of the agency head shall review
11 criminal information collected by the agency under this chapter
12 relating to the person or child to determine whether ~~[if]~~:

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

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

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

20 (b) If, after conducting a review of criminal information
21 under Subsection (a), the agency head or designee determines that
22 probable cause ~~[reasonable suspicion]~~ does not exist to believe
23 that the information is accurate, ~~[or]~~ determines that the
24 information does not comply with the submission criteria, or
25 determines that inclusion of the information in the intelligence
26 database violates 28 C.F.R. Part 23, the Texas Constitution, or the
27 United States Constitution, the agency shall:

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

3 (2) not later than the 10th business day after the date
4 of the determination, notify the department and the person who
5 requested the review of the agency's determination and the
6 destruction of the records.

7 (c) If, after conducting a review of criminal information
8 under Subsection (a), the agency head or designee determines that
9 probable cause [~~reasonable suspicion~~] exists to believe that the
10 information is accurate, [~~and~~] determines that the information
11 complies with the submission criteria, and determines that
12 inclusion of the information in the intelligence database does not
13 violate 28 C.F.R. Part 23, the Texas Constitution, or the United
14 States Constitution, the agency shall notify the person who
15 requested the review:

16 (1) of the agency's determination not later than the
17 10th business day after the date of the determination; and

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

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

27 SECTION 7. Article 67.203, Code of Criminal Procedure, is

1 amended to read as follows:

2 Art. 67.203. JUDICIAL REVIEW. (a) Not later than the 60th
3 day after the date the person receives written notice under Article
4 67.202(c), a [A] person who is entitled to seek judicial review of a
5 determination made under that subsection [~~Article 67.202(c)~~] may
6 file a petition for review in district court in the county in which
7 the person resides.

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

11 (b) On the filing of a petition for review under Subsection
12 (a), the district court shall conduct a hearing in which the court
13 shall make available to the person's counsel under Article 39.14
14 all criminal information that is the subject of the determination.
15 The hearing shall be conducted [~~an in camera review of the criminal~~
16 ~~information that is the subject of the determination~~] to determine
17 whether [~~if~~]:

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

20 (2) the information complies with the submission
21 criteria under Article 67.054(b); and

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

25 (c) If, after a hearing [~~conducting an in camera review of~~
26 ~~criminal information under Subsection (b)~~], the court finds that
27 probable cause [~~reasonable suspicion~~] does not exist to believe

1 that the information is accurate, [~~or~~] finds that the information
2 does not comply with the submission criteria, or finds that
3 inclusion of the information in the intelligence database violates
4 28 C.F.R. Part 23, the Texas Constitution, or the United States
5 Constitution, not later than the 10th business day after the date
6 the court makes its finding, the court shall:

7 (1) order the law enforcement agency that collected
8 the information to promptly destroy all records containing the
9 information; and

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

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

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

19 (e) Information that is the subject of [~~an in camera~~] review
20 under this article is confidential and may not be disclosed, except
21 the information is subject to disclosure as required by Article
22 [39.14](#) or under a subpoena or other legal process.

23 SECTION 8. Subchapter [E](#), Chapter [67](#), Code of Criminal
24 Procedure, is amended by adding Article 67.204 to read as follows:

25 Art. 67.204. RIGHT TO REMOVAL OF INFORMATION AFTER
26 RENUNCIATION. (a) A person who is no longer a member of a criminal
27 street gang may renounce gang membership. The information of a

1 person who renounces gang membership must be removed from the
2 applicable intelligence database described by this chapter on the
3 second anniversary of the renunciation.

4 (b) The department shall adopt rules and forms for the
5 process by which a former member of a criminal street gang may
6 renounce membership, provide evidence that the person is no longer
7 a member of the gang, and be removed from an intelligence database.

8 SECTION 9. This Act takes effect September 1, 2021.