

BILL ANALYSIS

H.B. 230
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Homeland Security & Public Safety
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Department of Public Safety's Texas Gang Intelligence Index (TxGANG) is a database created for law enforcement use that contains information about people known or suspected to be gang members. Unfortunately, TxGANG lacks transparency and due process protections, includes people whose information is outdated and should have already been removed, and also includes people who should never have been entered in the first place. A person placed in TxGANG incorrectly is likely to be unaware until faced with a negative consequence, such as being denied entry to a military facility or having their right to carry a firearm questioned. H.B. 230 seeks to revise processes and procedures applicable to entries into TxGANG to increase evidentiary standards, improve communication, and provide greater transparency and due process for those whose information would be included in TxGANG.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Public Safety in SECTION 7 of this bill.

ANALYSIS

H.B. 230 amends the Code of Criminal Procedure to require the Department of Public Safety (DPS) to provide the following to a person not later than the 60th day after the date DPS includes information relating to the person in the DPS intelligence database regarding combinations and criminal street gangs known as TxGANG:

- notification regarding the inclusion of the person's information in TxGANG;
- a description of the process for disputing the inclusion of information in TxGANG, including related costs, fees, timelines, and necessary evidence; and
- a description of the process for removing information from TxGANG following renunciation of criminal street gang membership.

The bill requires DPS to post information regarding both processes on the DPS website.

H.B. 230 prohibits a person's information included in TxGANG from being made available for or used in a determination of the person's employment eligibility or from being used to do either of the following:

- limit any rights given to the person by state or federal law; or
- limit the person's ability to obtain any federal or state license, permit, or benefit.

H.B. 230 requires the state auditor to annually conduct an audit of the information held in TxGANG and requires the removal of information that the auditor finds has remained in

TxGANG for more than 10 years, unless DPS is able to reestablish sufficient evidence for the inclusion of the information. The bill requires the state auditor to create a summary of the audit, disaggregating by race, age, gender, ethnicity, and residential zip code the total number of persons whose information is included in TxGANG and requires DPS to make the summary available on its website. Additionally, the summary must specify the number of persons whose information has been retained in TxGANG for more than five years and for more than 10 years.

H.B. 230 authorizes a person who is no longer a member of a criminal street gang to renounce gang membership and requires the removal of that person's information from TxGANG on the second anniversary of the renunciation. The bill requires DPS to adopt rules and forms for the process by which a former member of a criminal street gang may renounce membership and provide evidence that they are no longer a gang member and by which DPS subsequently removes the former member's information from TxGANG.

H.B. 230 revises provisions establishing a person's right to request review of criminal information regarding themselves or their child included in an intelligence database on criminal street gang activity maintained by a law enforcement agency and submitted to DPS for inclusion in TxGANG as follows:

- includes collecting the information in violation of federal criminal intelligence systems operating policies, the Texas Constitution, or the U.S. Constitution as grounds for destruction of the records containing the information;
- changes the requisite evidentiary standard regarding accuracy of the information to justify the continued inclusion of the information following review from reasonable suspicion to probable cause;
- specifies that the destruction of all records containing information found to not meet that evidentiary standard must be prompt;
- establishes a 10-business-day deadline following a determination that one of the grounds for destroying the information has been satisfied for the agency to notify DPS and the person requesting the review of the agency's determination on the request and the destruction of the records; and
- establishes a 10-business-day deadline following receipt of that notice for DPS to destroy all records containing the applicable information that is in TxGANG.

H.B. 230 revises provisions establishing the process for judicial review of the determination made by a law enforcement agency regarding inclusion of information in a gang-related intelligence database in a manner that is substantially the same as the bill's revision of provisions establishing a person's right to request review of that inclusion. The bill further revises provisions relating to the judicial review as follows:

- establishes a 60-day deadline following receipt of the written notice of the agency's determination for a person to file a petition for judicial review, but authorizes a court to grant judicial review of a petition filed after that date if the petitioner shows good cause for filing after that date;
- changes the nature of the review from an in-camera review of the criminal information that is the subject of the determination to a hearing in which the court must make available to the person's counsel under procedures for discovery all such criminal information; and
- makes the information that is the subject of the review subject to disclosure as required by procedures for discovery or under a subpoena or other legal process.

EFFECTIVE DATE

September 1, 2023.