88R435 JSC-D

By:  González of El Paso, Schaefer, Canales H.B. No. 230

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

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

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

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

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

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

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

SUBCHAPTER D. REMOVAL OF INFORMATION AFTER EXPIRATION OF CERTAIN PERIOD

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

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

(b)  If the state auditor finds that information has remained in the intelligence database for more than 10 years, the state auditor shall request that the department reestablish sufficient evidence for inclusion of the information in the database. If the department is unable to establish sufficient evidence, the department promptly shall remove the information from the database.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b)  The department shall adopt rules and forms for the process by which:

(1)  a former member of a criminal street gang may renounce gang membership and provide evidence that the person is no longer a member of the gang; and

(2)  the department subsequently removes the former member's information from the department's intelligence database.

SECTION 8.  This Act takes effect September 1, 2023.