

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

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 information  
6 included in the intelligence database maintained by the department  
7 under Article 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 from the database.

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

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

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

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