

30-DAY PUBLIC COMMENTS AND DEPARTMENT OF JUSTICE RESPONSES

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770.2(d), “Contact” definition	41.03	“We support the decision to add ‘lawful’ before contact...”	No change is needed in response to this comment.
Former 770.2(e), “Criminal predicate” definition	41.02	<i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i> “We support the decision to eliminate ‘criminal predicate’ from § 750.4’s Definition of Key Terms and move it to the new § 752.2 (a).”	No change is needed in response to this comment.
770.2(g), “Gang Member or Associate” definition	7.05, 8.09	This modification is troubling because coupled with the deletion of criteria, the effect is to seriously limit the gang intelligence which can be collected.	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	21.01	“We commend the DOJ for eliminating the designation of gang associate for inclusion in the gang database.... [R]emoval of this designation helps to ensure that only people reasonably suspected of illegal gang activity are entered into gang databases, and is therefore an important step towards bringing the regulations into compliance with the law.”	No change is needed in response to this comment.
	39.1	<i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i>	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.

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		<p>“We will revise the criterion for officers documenting individuals as ‘gang associates.’ However, officers will now only enter individuals into CalGang who personally admit to being gang associates and meet two of the requirements as defined in LAPD Manual section 4/269.20...”</p>	
	42.3	<p>“A gang associate is someone who has not become an official member of a gang, but assists them in furthering their intimidation of the community and/or assists them in committing crimes.”</p>	<p>No change has been made in response to this comment as the Department has combined Gang Member and Associate into one definition, Gang Member or Associate. However, the Department has added subdivision (c)(3) to section 771.6 for law enforcement to be able to utilize an optional feature in a shared gang database to indicate whether the law enforcement officer suspects that the designated person is a non-member gang associate.</p>
	44.2	<p>“We believe that the term ‘gang associate’ should be left as it is currently defined. We would like to strengthen the definition with additional justifications and documentation for why a person may be identified as a potential gang associate.”</p>	<p>No change has been made in response to this comment because the criteria to designate a person as a Gang Member or Associate in the CalGang database are the same. However, the Department has added subdivision (c)(3) to section 771.6 for law enforcement to be able to utilize an optional feature in a shared gang database to indicate whether the law enforcement officer suspects that the designated person is a non-member gang associate.</p>

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770.2(k), “Offense consistent with gang activity” definition	7.04, 7.07, 8.08, 8.11, 23.03, 37.03	This definition is too limiting.	The Department accepts this comment in part and has extended the scope of this definition to include all other felony offenses that have a nexus to gang activity. However, the Department constructed this definition based on the offenses that the Legislature determined were consistent with gang activity in subdivision (a)(1) of Penal Code section 186.34 and the Department maintains the decision not to extend this definition to include misdemeanor offenses to prevent this definition from becoming overbroad.
	7.04, 7.07, 8.08, 8.11	<p><i>This comment references the CalGang Database regulations but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>This definition does not reference Penal Code section 186.22(d) which includes public offenses punishable as a felony or a misdemeanor committed as a gang crime. This definition counters the purpose listed in section 750.2.</p>	Regarding the comment concerning a reference to subdivision (d) of Penal Code section 186.22, no change has been made in response to this comment because that subdivision references convictions which are not applicable to this definition or these regulations. Regarding the comment concerning the purpose listed in section 750.2, the Department accepts this comment in part and has extended the scope of this definition to include all other felony offenses that have a nexus to gang activity. However, the Department constructed this definition based on the offenses that the Legislature determined were consistent with gang activity in subdivision (a)(1) of Penal Code section 186.34 and the Department maintains the decision not to extend this definition to include misdemeanor offenses to prevent this definition from becoming overbroad.

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770.2(p), “Right to know” definition	25.02	We are opposed to this definition. “We are requesting that ‘need to know’ be struck from this definition and from any place it appears in the proposed regulations.... Given the nature of our work, there is always a need to know and understand who we come into contact with in the field.... [T]his definition will impede proper investigative work. Often, good investigative work does not begin with great insight or what an officer needs to know.’... If your concern is how information contained within this database will impact interactions between law enforcement and community members, we submit that this provision is not the solution to that dilemma. Let us work collectively on training officers.... Do not, however, broadly limit our ability to access criminal intelligence, and if limitations are necessary for good cause, apply limitations narrowly enough to correct undesirable behavior.”	No change has been made in response to this comment because the Department believes it is important to specify that there must both be a need to know and a right to know in order for an agency or person to have access a shared gang database. There may be a person or an agency engaged in law enforcement activity whose duties do not warrant access to a shared gang database, for example a detective conducting internal affairs investigations does not have a need to know shared gang database intelligence, and therefore, would not have a right to know.
770.2(r), “Source documents” definition	41.04, 41.20	“We recommend... adding the word ‘lawful’... which should read... ‘documentation of lawfully obtained information that supports one or more criterion...’”	The Department accepts this comment and has incorporated “lawfully obtained information” into this definition.
770.4, Access to a Shared Gang Database	21.09	Granting access to out-of-state and federal agencies exceeds the authority granted to the Department under statute and Assembly Bill (AB) 90.	No change has been made in response to this comment because under subdivision (a)(3) of Penal Code section 186.34, out-of-state and federal agencies are included in the definition of “law enforcement

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			<p>agencies;” therefore, it is the Department’s interpretation that out-of-state agencies and federal agencies may request access to a shared gang database. When the Legislature amended AB 90 during the drafting process, it specifically removed subdivision (g) from Penal Code section 186.36 which would have explicitly forbid access to any federal agency, multistate agency, or agency of another state to access a shared gang database. (Sen. Amend to Assem. Bill 90 (2017-2018 Reg. Sess.) Sept. 8, 2017.) Following the removal of this subdivision, no language was incorporated that would otherwise suggest that it was still the intent of the Legislature for the Department to forbid access to the aforementioned parties.</p>
	21.10	<p>“[T]he current draft of regulations does not contain adequate safeguards against improper usage by out-of-state and federal agencies that are not liable under the California Values Act (S.B. 54). We recommend that the DOJ require Node and System administrators conduct six audits of out-of-state and federal agencies’ use of CalGang and other shared gang databases, rather than three...”</p>	<p>The Department has incorporated a requirement in subdivisions (a) and (b) of section 770.6 that Users will need to provide their reason for conducting a query and the Department will audit those reasons to verify that a right to know and need to know exists. Additionally, subdivision (e)(5)(A) of section 770.4 restricts the ability of a User from any out-of-state or federal agency to add, delete, or edit records.</p>
	21.12	<p>“[W]e recommend that the DOJ add a provision...requiring the DOJ to publish on its website all MOUs with out-of-state and federal agencies,</p>	<p>Regarding the comment concerning publishing MOUs, no change has been made in response to this comment because MOUs are available</p>

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		<p>such that the public may know what agencies access the databases. The DOJ should report in its annual report on gang databases the number of searches by out-of-state agencies and federal agencies for the same reason.”</p>	<p>upon request by submitting a Public Records Act request under Government Code sections 6250 through 6270.5. However, the Department has agreed to publish, on the Department’s website, the names of the agencies that enter into an MOU with the Department. Regarding the comment concerning the annual report, no change has been made in response to this comment because the Department is not mandated to publish an annual report on any shared gang database other than the CalGang database.</p>
	50.2	<p>“We believe that access and sharing information from the database must be more restrictive to safeguard from misuse and for it to be only utilized for its intended purposes.... Additionally, it is critical that the Department of Justice further restricts sharing of the database to allow for individuals who have erroneously been placed on the database to contest the allegations in court which is permitted under state law.”</p>	<p>No change has been made in response to this comment because any law enforcement agency outside of California that is in a 287(g) agreement will still be subject to the limitations on the use of shared gang databases for immigration enforcement purposes. These regulations require any User from an out-of-state agency or a federal agency to undergo the same training prescribed to Users within California which covers the impact of releasing data for unauthorized purposes and consequences of system misuse. Furthermore, those Users and User Agencies will be subject to the same information sharing restrictions as Users within California. Additionally, section 776.6 covers the actions the Department takes, or instructs a System Administrator to take if a User and/or User Agency violates any</p>

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			policy or law governing the CalGang database, including these regulations.
770.4(f), Access to a Shared Gang Database	25.03	We are opposed to this subdivision and request that it be removed. The Department should avoid adding barriers to the sharing of criminal intelligence information to law enforcement agencies because criminal gang activity is multijurisdictional. If the concern is how information within the database impacts interactions between law enforcement and community members, this provision is not the solution.	No change has been made in response to this comment because the Department wants to ensure that there is a screening process for persons who may access any shared gang database and that Users undergo training prior to being granted access.
770.6(f), Shared Gang Database User Terms and Account Security	25.04	We are opposed to this subdivision and request that it be removed. “[T]he Department is sending a message that it either wants agencies to overuse the database or not use it all... Revocation is an unnecessary restriction, as the Department would accomplish this through a focus on ensuring that the information is accurate and appropriately maintained.”	No change has been made in response to this comment because account inactivity suggests that a User’s duties no longer warrant access to any shared gang database.
770.8, Proxy Query to the Information Contained in a Shared Gang Database	21.11	“[W]e recommend that the DOJ bar users in out-of-state and federal agencies from disseminating information via proxy query to non-users. Because out-of-state and federal agencies are not subject to the California Values Act (S.B. 54)... these agencies may disseminate information that is used for immigration enforcement purposes	No change has been made in response to this comment because these regulations require any User from and out-of-state agency or a federal agency to undergo the same training prescribed to Users within California which covers the impact of releasing data for unauthorized purposes and consequences of system misuse in relation to shared gang databases.

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		via proxy requests. DOJ should take extra precaution to ensure that the gang databases are not used for immigration enforcement purposes.”	Furthermore, those Users and User Agencies will be subject to the same information sharing restrictions as Users within California. Additionally, section 776.6 covers the actions the Department takes, or instructs a System Administrator to take if a User and/or User Agency violates any policy or law governing shared gang databases, including these regulations.
	21.13	<p><i>This comment references the CalGang database but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>“[T]he DOJ should set a deadline for a user to provide the DOJ with the completed Proxy Query Agreement form for ease of administration. Given the simplicity of the form, we recommend the DOJ require submission within five days of the proxy query. Although Shared Gang Databases Regulations § 770.8 requires that users provide the proxy query information upon the DOJ’s request if the information is directly input into the database, it does not require users to otherwise furnish the DOJ with proxy query information. We recommend that the same five-day deadline for providing the DOJ with the proxy query information apply to shared gang databases.”</p>	Regarding the comment concerning a deadline for a completed Proxy Query Agreement form, no change is needed in response to this comment because the User must directly input the proxy query information into the CalGang database in order to conduct the proxy query request; therefore, the Department is receiving the proxy query information as soon as the proxy query is conducted. Regarding the comment concerning the Shared Gang Databases regulations, the Department accepts this comment in part and has added language to subdivision (a)(1) of section 770.8 to require the User to provide the Department with a copy of each completed form or proxy query request within 30 calendar days of conducting a proxy query. The Department provided a 30 calendar-day timeframe for the reasons stated in the Second Addendum to Initial Statement of Reasons (SAISOR).
	21.14	We recommend that a provision be added requiring the Department “to	No change has been made in response to this comment because the

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		publish (a) the number of proxy queries per requesting agency and granting agency in its annual report on gang databases, and (b) the names of the requesting agencies submitting proxy requests, so the public may know what agencies access the databases.”	Department is not mandated to publish an annual report on any shared gang database other than the CalGang database. However, the Department has accepted this comment in the CalGang regulations package.
770.8(a)(3)(B)(1), Proxy Query to the Information Contained in a Shared Gang Database	21.15	“[W]e recommend that the language ‘unless required by state or federal statute or regulation’ in [these] regulations be strictly limited in order to fulfill the purpose of AB 90.... If left unaddressed, the language ‘unless required by state or federal statute or regulation’ could be interpreted expansively by out-of-state or federal agencies; these agencies may argue that their state or federal laws require them to use the gang database information for immigration purposes. Such a loophole would undermine the purpose of AB 90. Therefore, to be clear that AB 90 was intended to provide only a limited carve-out to account for 8 U.S.C. §§ 1373, 1644, the phrase ‘unless required by state or federal statute or regulation’ be deleted or replaced with ‘unless required to comply with sections 1373 and 1644 of title 8 of the United States Code.’”	Regarding the comment concerning out-of-state agencies, the Department accepts this comment and has added “California” before “state.” Regarding the comment concerning federal agencies, no change has been made in response to this comment because the Department’s regulations cannot unconstitutionally conflict or interfere with federal law.
770.8(a)(4)(E), Proxy Query to the Information Contained in a	25.05	We are opposed to this subdivision. “This provision is irrational in its function and effect.... This provision is reckless, as these regulations	The Department accepts this comment in part and has modified subdivision (a)(4)(E) and added subdivisions (a)(3)(E)(1) and (a)(3)(E)(2) to

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Shared Gang Database		would not penalize the offending ‘non-user’ agency, but instead, penalizes the agency who has user access, without any regard or analysis of the importance of access, or consequence associated with suspension/revocation of access.”	section 770.8; however, Users should remain responsible for ensuring that a signed copy of the Proxy Query Agreement form is received.
	25.06	If the goal of this provision is to incentivize compliance with the regulations, “we recommend a revision of this section to prohibit a user from utilizing a proxy query on behalf of the offending ‘non-user’ agency, if that ‘non-user’ agency has a history of not completing the appropriate forms as required by these regulations.”	The Department accepts this comment and has modified subdivision (a)(4)(E) and added subdivisions (a)(3)(E)(1) and (a)(3)(E)(2) to section 770.8.
771, User Training	5.5	“[W]e need to address the human side, by developing more consistent and effective training on criminal intelligence de facto standards (perhaps integrated fully into California Peace Officers Standards and Training, and starting at the Academy level).”	The Department accepts this comment in part and has added language to subdivisions (b)(3) and (b)(4) to require training on applicable federal, state, and local laws, policies and ordinances governing the gathering of criminal intelligence information by law enforcement agencies and training on data dissemination restrictions directly applicable to Users that prevent unauthorized access to a shared gang database. Furthermore, the Department has added language to subdivision (b)(11) to expand this training requirement to capture both the positive and negative impacts of collecting data on suspected gang members or associates.

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771(b)(12), User Training	7.03, 8.07	Law enforcement unanimously opposed this topic during GDTAC meetings. “A more appropriate topic... would be the impact of gang violence on a community and the role that CalGang would play in lessening its impact.”	Regarding the comment concerning this topic being voted on at GDTAC meetings, no change has been made in response to this comment as the Department has reviewed the meeting notes and this specific topic was not voted on. Regarding the comment concerning the suggested topic, no change has been made in response to this comment because the Department believes that it is necessary for the protection of civil liberties to train law enforcement on how the community will be affected by data collection and inclusion in a shared gang database rather than the usefulness of the system for law enforcement purposes. The law enforcement members who opt to participate in the use of a shared gang database most likely already value the usefulness of the system so it would not be beneficial to train them on the role that shared gang databases play in investigating and lessening the impact of gangs. However, the Department has added language to the new subdivision (b)(11) to expand this training requirement to capture both the positive and negative impacts of collecting data on suspected gang members or associates.
	41.06	We support the addition of this topic. “However... that language may be too abstract.... We recommend the following language: ‘the potentially negative impact that investigative stops and inaccurate designations might have on the individuals	The Department accepts this comment in part and has modified the language to require training on “the potential positive and negative impacts of collecting data on suspected gang members or associates, on communities impacted by criminal

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		stopped and on relationships between law enforcement and communities.”	street gangs, and on persons designated in a shared gang database.”
771.6, Criteria to be Designated as a Gang Member or Associate	1.1	“Gang Attire, Associating with Gang members and Gang area are extremely important criteria’s.... Taking these tools away from [law enforcement] will cause many gang members to do a lot less time in jail when they commit gang crimes and place the community in danger.”	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	2.1	<i>This comment references the CalGang database but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i> “The criteria currently used... [are] more than sufficient to prevent abuses of the system. Changing the criteria would result in the inability to maintain critical intelligence information on known associates or new young recruits.... I truly believe that these proposed changes to the [CalGang] system would hinder its overall use as a prime investigative tool.”	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	3.5	“The (4) remaining criteria... are clear and easier indications that someone is a gang member, but they are not easy to come by in this day in age.”	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	3.6	“[G]ang members are learning from their mistakes and a lot of newer	The Department accepts this comment in part and has added subdivisions

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		gang members aren't... getting gang tattoos, they aren't self-admitting membership, and if they wear gang clothing it is usually discrete. If we remove any of these (4) suggested gang criteria, it would become virtually impossible to document any new up-and-coming gang members.”	(a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	6.1, 6.5	It is unreasonable to reduce the available number of entry criteria by half. It would remove a number of valuable resources for identifying suspected gang members and unnecessarily hinder collective efforts.	The Department accepts this comment and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	7.08, 8.12	It appears that the intent of the changes to this section is to limit the number of gang associates designated in the database.	The Department has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	8.01	Removing criteria “would limit identification to so few criteria to make accurate and thorough identification nearly impossible. The existence of multiple criteria assist in evaluating the accuracy of the identification by providing potential valuable corroboration of other indicators.”	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	8.04	“There are well documented instances where gangs have attempted to adapt to existing identification criteria by prohibiting members from getting certain tattoos, wearing non-descript clothing of a particular color rather than that with	The Department accepts this comment and shall consider any future empirical research by the Department’s Research Center and external gang researchers to determine whether these criteria described herein, should remain in these

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		specific logos or signs and symbols, stop using public social media or control the content to prevent showing ‘associations’ through photos, tags, friends, etc.”	regulations and whether there are other, better indicators of gang membership or association that should be included in future rulemaking packages.
	10.2	“Eliminating certain criteria would completely cripple the work gang officers do every day. The intelligence gathering we do holds gangs accountable as we go through the court system and allow victims to receive some form of justice.”	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	10.3	“Not being able to identify gangs by what they wear and specifically the territory they hang out, prevents us from proving how gangs are territorial and will even kill to protect their territory.”	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8
	15.5	“The criterion I used as a gang expert to identify...” suspects in a murder case “as gang members consisted of their own Instagram posts (reliable source), their association with other gang members observed through surveillance (association with gang members), and surveillance observations of them in certain gang neighborhoods (gang areas). Without these criterion our gang enhancement would have certainly failed. These criterion are crucial to documenting gang members and should never be removed.”	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8. The Department would like to make it clear that an Instagram post alone would not be sufficient to satisfy the criteria “identified by a reliable source...” upon the effective date of these regulations.
	16.1, 17.1, 18.1, 19.1,	<i>This comment references the CalGang database but has been</i>	Regarding the comment concerning the elimination of criteria, the

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	26.1, 33.1, 38.1	<p><i>included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>“Thank you for removing provisions in the proposed regulations that would misidentify people wholly unconnected to gang activity as gang members or associates. I respectfully request that you finalize regulations that exclude the following criteria which appeared in an earlier version of the proposed regulations: (1) the person has been seen associating with persons meeting the criteria for entry or who have previously been entered as a Gang Member into the CalGang database; (2) the person has been seen at one or more gang-related addresses or locations; and (3) the person has been seen wearing a style of dress or accessory that is tied to a specific criminal street gang. These discriminatory criteria allow police to add people to a gang database simply because of where they live, with whom they socialize, and how they dress. They would unjustly target people of color for increased police surveillance.”</p>	<p>Department has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8. The criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the</p>

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			regulation are strong indicators of gang membership.
	23.03, 37.03	The modifications made to the requirements of criteria which must be met in order to be considered a “Gang Member” or “Gang Associate” are too limiting.	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	23.04, 37.04	“Under these revisions, the deletion of several criteria... would dramatically hinder law enforcement’s ability to collect gang intelligence.”	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	24.2	“We believe limiting the allowable criteria that permit entry into the database will severely restrict its utility, especially since some of these items have been found by case law to be admissible as evidence.”	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	25.09	“Consider weighting criteria instead of striking them, if there is a belief that certain criteria are not, in isolation, indicative of gang affiliation.”	The Department has considered the California Department of Corrections and Rehabilitation (15 CCR § 3378.2(b)) as a potential model for assigning inclusion criteria weights or point values. While some of the inclusion criteria are similar to the criteria in section 771.8, it is unclear whether a point-based system used for identifying gang membership among incarcerated people would be useful for identifying gang membership or association among non-incarcerated individuals without sufficient empirical support. As such, the Department will continue to study the CalGang data to (1) more thoroughly

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			examine each criteria’s predictive value, (2) generate data-driven criteria weighting schemes, and (3) test models of those weighting schemes.
	30.1	“If there are issues with the current criteria I recommend more detail be provided for the criteria.”	The Department accepts this comment and has made significant changes to the criteria section, 771.8.
	31.2	Criteria are being eliminated that have been found by case law to be admissible as evidence.	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	31.3	Elimination of criteria fails to recognize what has been learned over the years about gang culture and known indicators of gang membership.	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	31.4	“The collective experience and best practices learned by law enforcement in the decades long fight against criminal street gangs should not be ignored. The existing criteria works.”	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8. The Department has included new modified versions with additional requirements, in an effort to ensure the accuracy and reliability of these criteria and to address concerns raised by public comments opposed to the inclusion of these criteria.
	32.2	The changes water down identifiers which are objective criteria for law enforcement to draw objective conclusions.	The Department accepts this comment and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	39.8	“[W]e recommend that... the minimum amount of criteria used for	The Department accepts this comment in part and has added subdivision

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		<p>entering a subject into the system be increased to three criteria pending the completion of the empirical research mandated by AB 90. Once the empirical research is completed, reviewed, and validated, modifications can be implemented based on those findings.”</p>	<p>(c)(1) to section 771.6 to require a third unique criterion be used for entry into the database when subdivisions (a)(6) and (a)(7) of section 771.8 are used together. The Department is committed to making data-driven regulatory decisions based on empirical research conducted by the Department, scholars, experts, or other sources of reputable, sound research.</p>
	41.08	<p>“[W]e wholeheartedly support the decision to eliminate unreliable criteria. We also support the decision to: ensure that admissions of gang membership refer to current, active participation; require narrative documentation of arrests; and recognize the overlap between gang signs and clothing. We also support the prohibition of using acts more than 5 years old as criteria for entry.”</p>	<p>Regarding the comment concerning the elimination of criteria, the Department has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8. The criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly</p>

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			<p>more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	41.22	<p>"[W]e urge the Department not to add back any of the removed criteria for entry. The current criteria strike an ideal balance between the needs of law enforcement, the interests of communities, and the interests of those tracked in a shared gang database."</p>	<p>Regarding the comment concerning the elimination of criteria, the Department has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8. The criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file</p>

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			<p>indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	43.08	<p><i>This comment references the CalGang Database regulations but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>“Law Enforcement needs ALL of these criteria to help us in our evaluation of a subject as a gang member. Of all the proposed changes to the CalGang regulations, eliminating these 4 criteria would be the most detrimental. We need these criteria to help protect our communities that are vulnerable to gang violence. If these tools are stripped from us we will not be able</p>	<p>The Department accepts this comment and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.</p>

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		to serve the public as efficiently and effectively.”	
	44.1	“The elimination of criteria that is currently being utilized by law enforcement will seriously hinder the ability to prevent and solve crime.”	The Department accepts this comment and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	45.6	“If modification is required, in lieu of completely discarding these criteria there may be other viable options worth exploring such as requiring multiple criteria, requiring gang investigator concurrence, etc.”	No change has been made in response to this comment as the Department has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	46.1, 47.1, 48.1	<p><i>This comment references the CalGang Database regulations but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>“I am writing this letter to express my disappointment in the revision being implemented to the Gang Criteria of CalGang. This is clearly an attack on the safety of the public and cannot be tolerated.... To remove Reliable Source, Gang Attire, Gang Area, and Associating with Gang Member from the criteria would hinder law enforcement from assisting the cities in which we serve.”</p>	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	46.2, 47.2, 48.2	“The average citizen recognizes gang attire, gang area, gang culture often times sooner and better than law enforcement will.... If the average citizen can determine for themselves	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8. Additionally, the Department has added language to

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		and report to law enforcement what gang attire looks like, where gang members hang out and who they hang out with, why are we taking those items away? With this same reasoning we are telling the citizens who live in these areas that the gang members can do what they want, when they want and how they want with no regard for others.”	this criterion to require that “the identification shall be based solely on information that would support criteria set forth herein.”
	46.3, 47.3, 48.3	“These are valuable tools to help curb gang violence and gang activity in the most infested areas. Taking these tools away we are turning our shoulder on those counting on us to keep them safe and free of gang activity... [P]lease reconsider these new proposed regulations and allow law enforcement to protect the younger generations from falling into or being attracted to the gang lifestyle.”	The Department accepts this comment and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
771.6(a), Criteria to be Designated as a Gang Member or Associate	21.02	“We support the DOJ’s addition of a reasonable suspicion requirement ... for a person to be designated for inclusion in a gang database.”	No change is needed in response to this comment.
	21.03	“[T]he word ‘may’ in ‘...having reasonable suspicion that the person may participate in a criminal street gang...’ does not reflect the language in 28 C.F.R. § 23.20(a) and could be interpreted as a lower standard. We recommend that the DOJ omit the word ‘may.’”	The Department accepts this comment and has removed “may” before “participate.” This amendment is aligned with the language in subdivision (a) of Penal Code section 186.22 and subdivision (a) of Code of Federal Regulations, Title 28, section 23.20.

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	21.04	<p>We “recommend that the DOJ add the language ‘based on specific and articulable facts’ after ‘reasonable suspicion’ in [both regulations]. The DOJ’s Addendum to Initial Statement of Reasons states the word ‘articulable’ was removed for the purpose of consistency. Case law requires that police base reasonable suspicion on ‘specific and articulable facts,’ so the additional language does not add any additional requirement, but more specifically lays out how police must meet the standard. To ensure clarity, the DOJ can use the language ‘based on specific and articulable facts’ following ‘reasonable suspicion throughout the regulations.’”</p>	<p>No change has been made in response to this comment because the definition of “reasonable suspicion” in subdivision (m) of section 770.2 is based on subdivision (c) of Code of Federal Regulations, Title 28, section 23.20 which is specific to shared gang databases and defines reasonable suspicion expressly. Additionally, the definition of reasonable suspicion includes “that state of known information which establishes sufficient facts...” therefore, including the recommended language in the comment is both redundant and unnecessary.</p>
	21.05	<p>“The regulations should incorporate the word ‘actively’ before “participate” in the phrase ‘the person may participate in a criminal street gang.’ This addition conforms with A.B. 90’s requirement that a police agency ‘establish the person’s active gang membership...’ as well as Penal Code 186.22(a), which allows police to charge a person with a gang offense only if they ‘actively participates in any criminal street gang.’ In addition to making the language more consistent with these sections of the Penal Code, the word reminds police agencies that they should not add individuals who formerly participated in gang activity but do so no longer.”</p>	<p>The Department accepts this comment and has added “actively” before “participates.” This amendment is aligned with the language in subdivision (a) of Penal Code section 186.22 and subdivision (a) of Code of Federal Regulations, Title 28, section 23.20.</p>

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	41.07	<p>We fully support the requirement... that law enforcement officers must document the specific information that serves as the basis for the reasonable suspicion..... The use of ‘suspicion’ and ‘may’ is redundant. Also, we recommend including the word ‘active’ before the word participation to bring it in line with Penal Code § 186.22 (a) and People v. Castenada, 23 Cal.4th 743 (2000)... [W]e recommend amending the language to state, in relevant part, ‘...reasonable suspicion that the person actively participates in a criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, or willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang.’”</p>	<p>Regarding the comment concerning the specific information, no change is needed in response to this comment. Regarding the comment concerning the use of “may”, the Department accepts this comment and has removed “may.” This amendment is aligned with the language in subdivision (a) of Penal Code section 186.22 and subdivision (a) of Code of Federal Regulations, Title 28, section 23.20.</p>
771.6(b)(1), Criteria to be Designated as a Gang Member or Associate, “The person has admitted...”	7.08, 8.12	<p>“It is difficult to imagine under what circumstances a gang associate could be considered ‘currently active.’”</p>	<p>The Department previously incorporated “currently-active” into this criterion to ensure that admissions of former gang membership or association would not satisfy this criterion. However, the Department has removed “currently” before “active” for clarification. Additionally, active membership or association is aligned with the language in subdivision (a) of Penal Code section 186.22 and subdivision (a) of Code of Federal Regulations, Title 28, section 23.20, therefore only admissions of active membership or association shall be included.</p>

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	7.08, 8.12, 23.08, 37.08	The phrase “under circumstances that do not undercut truthfulness” is vague and provides no guidance to its meaning.	The Departments accepts this comment in part and has incorporated a requirement to notate whether the person was arrested during the contact for violating subdivision (f) of Penal Code section 647 or subdivision (a) of Health and Safety Code section 11550 and a requirement to document the wording of the admission. These added documentation requirements will allow for a more thorough supervisory review process and provide more information during audits. Additionally, subdivisions (a)(1)(A), (a)(1)(B), and (a)(1)(C) have been added to section 771.8 to further clarify when this criterion shall not be satisfied. However, there is no reasonable way to catalog all circumstances that may undercut the truthfulness of an admission. Alternatively, eliminating this phrase entirely would result in more admissions satisfying this criterion because admissions that should be doubted would still be included.
	7.08, 8.12	The phrase “under circumstances that do not undercut truthfulness” is unnecessary and unduly burdensome.	No change has been made in response to this comment because the Department believes that an admission can be influenced by many factors; therefore, it is necessary to evaluate the circumstances of the admission to ensure its reliability. Specific examples are provided in the Initial Statement of Reasons (ISOR).
	14.6	“It is unrealistic to expect gang members, especially those who	No change has been made in response to this comment because the

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		understand the inclusion criteria, to self-admit membership or association. Most gang members understand the enhancement and will not put themselves in a position of being documented by self-declaration.”	Department has determined that this is a valid and valuable criteria based on feedback from the law enforcement community and empirical research.
	23.08, 37.08	“The lack of clarity promulgated by these regulations will question the legitimacy of admissions made by gang members and could lead to litigation almost immediately upon implementation.”	The Departments accepts this comment in part and has incorporated a requirement to notate whether the person was arrested during the contact for violating subdivision (f) of Penal Code section 647 or subdivision (a) of Health and Safety Code section 11550 and a requirement to document the wording of the admission. These added documentation requirements will allow for a more thorough supervisory review process and provide more information during audits. Additionally, subdivisions (a)(1)(A), (a)(1)(B), and (a)(1)(C) have been added to section 771.8 to further clarify when this criterion shall not be satisfied. However, there is no reasonable way to catalog all circumstances that may undercut the truthfulness of an admission. Alternatively, eliminating this phrase entirely would result in more admissions satisfying this criterion because admissions that should be doubted would still be included.
	43.11	“Retain the original wording.... Gang members are not going to admit to being ‘currently- active.’ Using this term in the regulation removes the	No change has been made in response to this comment. The Department previously incorporated “currently-active” into this criterion to ensure

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		ability of the officer or detective to use their expertise, experience, and other factors to determine if the suspect admitted to being a gang member. ‘Currently active’ is an undefined standard with no context, statutes, or case law to draw from when determining whether a gang member is currently active for purposes of gang database documentation.”	that admissions of former gang membership or association would not satisfy this criterion. However, the Department has removed “currently” before “active” for clarification. Additionally, active membership or association is aligned with the language in subdivision (a) of Penal Code section 186.22 and subdivision (a) of Code of Federal Regulations, Title 28, section 23.20, therefore only admissions of active membership or association shall be included.
	43.12, 44.6	The proposed language is too restrictive. We recommend replacing “may” with “shall” so that officers may document all information available but would not be required to do so if the information is not available to them.	No change has been made in response to this comment because it was the Department’s intent that this documentation be required to ensure the validity of admissions and for auditing purposes.
771.6(b)(2), Criteria to be Designated as a Gang Member or Associate, “The person has been arrested...”	14.7	This criterion appears “to apply to persons already required to register as a gang member for previous crimes and does not include current crimes under 186.22 PC. This could create an unfair disparity between those tagged under the old rules and those under the new rules.”	No change has been made in response to this comment as “offense consistent with gang activity” defined in subdivision (k) of section 770.2 includes the offenses that are listed in subdivision (a) or (e) of Penal Code section 186.22.
771.6(b)(3)(A), Criteria to be Designated as a Gang Member or Associate, “The person has been arrested...”	7.06, 8.10, 23.05, 31.3, 37.05	This modification would limit the use of clothing color as a symbol of gang membership but wearing the certain colors in certain neighborhoods can still be deadly.	The Department accepts this comment in part and has added subdivisions (a)(7) and (a)(7)(A) to section 771.8.

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	25.12, 25.15	“It is implausible that these regulations disregard what is common knowledge in that or any other neighborhood.... Colors are also powerful symbols, with countless victims killed for because of the colors or jerseys they are wearing in the ‘wrong’ neighborhoods. The regulations should reflect this line of thinking should respect the realities of the streets but also temper law enforcement responses of a visceral nature.”	The Department accepts this comment in part and has added subdivisions (a)(7) and (a)(7)(A) to section 771.8.
Former 771.6(a)(3), Criteria to be Designated as a Gang Member or Associate, “The person has been identified... by a reliable source.”	3.1, 4.1, 6.3, 9.1, 11.1, 13.1, 14.3, 15.1, 20.2, 23.09, 28.2, 37.09, 42.4, 43.07, 43.08, 44.5, 45.2	It is important to keep this criterion.	The Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
	8.02, 8.03	Removal of this criterion would be contrary to evidence that has been deemed relevant and admissible to establish gang membership and association.	The Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
	21.06	This criterion “is potentially inaccurate because it allows subjective opinions to substitute for evidence that can be challenged in audits and petitions for removal.	No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to

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		Elimination of [this criterion] thus makes gang database fairer and more accurate.”	some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.
	25.07, 29.1, 30.1, 34.03, 40.03	We are opposed to the removal of this criterion.	The Department accepts this comment in part and has included a new modified version of this criterion with

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			additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
	25.08	This provision conflicts with the traditional tenets of community policing and undermines the objective of building relationships in gang-ridden areas. Community members confide in officers to improve the quality of life in their neighborhoods.	The Department accepts this comment in part and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
	25.09	As an alternative to removing this criterion, “[d]efine ‘reliable source’ to develop a statewide standard and clear understanding of what constitutes an informant whose intelligence is considered clinically credible...”	No change has been made in response to this comment as the Department has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
	27.1	<p><i>This comment references the CalGang database but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>“How about a combination / amendment of reliable source and gang attire to just ‘reliable source[?]’.... Colors and clothing are still part of gang culture and items we routinely look for on gang search warrants. Paraphernalia including photo graphs (digital or otherwise),</p>	Regarding the comment concerning reliable source and gang attire, the Department accepts this comment in part and has added subdivisions (a)(3) and (a)(7) to section 771.8. Regarding “paraphernalia,” no change has been made because the photographs and documents referred to in this comment would be recognized as source documents under subdivision (e) of section 771.8. These source documents would be used to demonstrate that a criterion was

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		books or paperwork with gang writing, gang letters, social media post in possession of an individual is also incredible evidence that we use routinely. Why wouldn't this same material be 'Reliable' as criteria for gang membership or association? We use these items as evidence of gang membership in court why would it be reliable for [CalGang] purposes."	satisfied instead of serving as the reliable source themselves.
	29.1	"Deleting the criteria of 'Reliable Source' would mean I can no longer identify a member of a gang based on another Officer's experience with that individual. I can no longer rely on school administrators, teachers, parents etc. that have personal knowledge of an individual being involved in a gang."	The Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
	30.1, 43.03	Eliminating this criterion will hinder the ability to document and track gang members.	The Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
	34.03, 40.03	"The Escondido Police Department interprets a reliable source as a reliable, tested informant or a citizen informant, who is considered inherently reliable. Consider that information provided by a reliable, tested informant or a citizen informant is considered probable cause that may be used in a search	The Department accepts this comment in part and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.

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		warrant affidavit. Why is this not sufficiently reliable for designating a person as a member of a criminal street gang, which in itself carries no criminal penalty?"	
	39.2	<p>“We are requesting to modify the reliable source criteria as follows: the elimination of a law enforcement officer and an informant as reliable sources, but allow only a gang member from the same gang to divulge whether another person in question is a gang member. Additionally, a judge, parent, teacher/guardian should also be allowed to remain as reliable sources.”</p>	<p>Regarding the comment concerning the elimination of a law enforcement officer, the Department accepts this comment in part and has added language in the new subdivision (a)(3)(B) of section 771.8 to prevent the law enforcement officer conducting the interview or completing the source document to satisfy criterion (a)(3) from using themselves as a reliable source to satisfy the criterion. However, the Department believes that people who are involved with the criminal justice system should be deemed reliable unless proven otherwise. Additionally, there are individuals with firsthand experience, such as a probation officer or gang expert, that should be permitted to consult with law enforcement officer and provide valuable intelligence to solve gang-related crimes. Regarding the comment concerning the elimination of an informant, no change has been made in response to this comment with the exception of excluding untested informants because confidential informants are often used by law enforcement as reliable sources. Regarding the comment concerning a gang member from the same gang, the Department accepts this comment and has added language</p>

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			<p>in subdivision (a)(3)(B) to section 771.8 to exclude a rival gang member from being used as a reliable source to satisfy subdivision (a)(3) of section 771.8. Regarding the comment concerning allowing a judge, parent, and teacher/guardian to be used a reliable source, the Department accepts this comment and has included a new modified version of this criterion and has added subdivision (r) to section 770.2 so that a judge, parent, teacher, guardian, or anyone else who satisfies the definition of a “reliable source” and meets the requirements set forth in subdivision (a)(3) of section 771.8, may be used as a criterion.</p>
<p>Former 771.6(a)(4), Criteria to be Designated as a Gang Member or Associate, “The person has been seen associating...”</p>	<p>1.1, 4.4, 8.01, 9.4, 13.4, 14.2, 15.2, 23.10, 24.3, 28.4, 37.10, 43.04, 43.08, 45.5</p>	<p>It is important to keep this criterion.</p>	<p>The Department accepts this comment in part and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.</p>
	<p>3.4</p>	<p>This criterion by itself should not be the sole reason for documentation as a gang member but “if someone is frequently getting contacted with other gang members on a daily basis then most likely they are going to be a gang member, especially once that is factored in with the other gang criteria.”</p>	<p>No change has been made in response to this comment because the satisfaction of this criterion would not be the sole reason for a person to be designated as a Gang Member or Associate. A person may be designated as a Gang Member or Associate after satisfaction of the requirements set forth in section 771.6.</p>

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	8.02, 8.03	Removal of this criterion would be contrary to evidence that has been deemed relevant and admissible to establish gang membership and association.	The Department accepts this comment in part and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
	11.2	Gang members tend to “hang out” with other gang members and this social norm should not be ignored. The criteria should have to be proven or explained.	The Department accepts this comment in part and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
	12.1, 35.1, 36.1, 49.1, 51.1	This criterion should be removed because no evidence ties it to gang membership and it is overbroad.	The Department has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion. However, the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang

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			<p>member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	21.06	<p>We approve of the DOJ's decision to eliminate this criterion. "Elimination of [this criterion] thus makes gang database fairer and more accurate."</p>	<p>Regarding the elimination of this criterion, the Department has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion. The criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs</p>

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			<p>and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	25.07, 30.1, 34.04, 40.04	We are opposed to the removal of this criterion.	The Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to

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			ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
	25.10	“We strongly recommend that this provision remain and that we work with the Department of Justice to further refine it, in order to prevent the unintended consequence of misclassification of an individual as a gang member\associate. Contingent on how it is defined, it may be important to consider weighting this criterion as less indicative of gang affiliation.”	The Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
	27.2	“I don’t see the issue with this at all but if their must be some give in this area I propose a happy medium. Only those who meet one of the other “Reliable criteria” or who are in association with another identified gang member during a police enforcement action resulting in arrest or citation of the identified gang member. It [is] one thing to be stopped or seen in the company of a gang member which can be explained or excused, [i]t’s another to be present when that same member is engaged in criminal activity.”	The Department accepts this comment in part and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
	29.3	“Deleting the criteria of ‘Associating with Gang Members’ would mean that even though I observe and detain a certain individual along with a self-admitted gang members several times I could never place him in as an	The Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns

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		associate in the database. I understand this criteria shouldn't stand alone, but it should be considered as an associating factor as to why this individual should be entered as an associate."	raised by public comments opposed to the inclusion of this criterion.
	30.1, 43.03	Eliminating this criterion will hinder the ability to document and track gang members.	The Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
	34.04, 40.04	Associating with gang members is a relevant criterion.	The Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
Former 771.6(a)(6), Criteria to be Designated as a Gang Member or Associate, "The person has been seen at one or more gang-related addresses or locations."	1.1, 3.3, 4.3, 7.09, 8.01, 8.13, 9.3, 11.3, 13.3, 14.5, 15.4, 20.3, 23.07, 24.3, 37.07, 42.2, 43.06, 43.08, 45.4	It is important to keep this criterion.	The Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
	7.09, 8.13	"The stated reason for the deletion of this and other criteria based upon public comments belies the notion	The Department accepts this comment and has included a new modified version of this criterion with

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		that the regulations are based upon empirical research.”	additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
	12.1, 35.1, 36.1, 49.1, 51.1	This criterion should be removed because no evidence ties it to gang membership and it is overbroad.	<p>The Department has included a new modified version and added additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.</p> <p>However, the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established</p>

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			<p>by the Department are consistent with these studies, which support law enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	21.06	<p>We approve of the DOJ’s decision to eliminate this criterion. “Elimination of [this criterion] thus makes gang database fairer and more accurate.”</p>	<p>Regarding the elimination of this criterion, the Department has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion. The criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies</p>

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			<p>included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	25.11, 30.1, 34.05, 40.05	We are opposed to the removal of this criterion.	<p>The Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion. For example, entire neighborhoods and schools may not satisfy this criterion.</p>

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	25.13	This criterion “should be further refined to reduce the errant classification of individuals as gang members/associates. The definition of ‘Gang-related addresses or locations’ could use additional defining.	The Department accepts this comment and has included a new modified version of this subdivision and has added subdivisions (a)(6)(A) and (a)(6)(B) to section 771.8.
	28.5	Officers on the streets “know certain gangs take over certain areas and make them their own. They know what territory gang members claim, where they hang out and try to recruit, where they blast their graffiti.”	The Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
	30.1, 43.03	Eliminating this criterion will hinder the ability to document and track gang members.	The Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
	34.05, 40.05	“The removal of this highly relevant criterion is a mistake. However, it would be fair to include guidance directing officers to consider whether a person is ‘hanging out’ in a gang area when they actually live in a gang neighborhood.”	The Department accepts this comment and has included a new modified version of this subdivision and has added subdivisions (a)(6)(A) and (a)(6)(B) to section 771.8.
	39.4	“It is recommended that law enforcement officers be required to articulate justification for why a specific location/area (not an entire neighborhood) meets this criterion.	The Department accepts this comment and has included a new modified version of this subdivision and has added subdivisions (a)(6)(A) and (a)(6)(B) to section 771.8.

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		<p>Example: Locations where subjects congregate, clubhouses, as well as gang crimes committed, gang intimidation, and tagging in a specific area. However, there shall be no generalization of neighborhoods as being a “gang location” (in the case of the recent murder of Police Officer Juan Diaz, the suspects claimed that location as their own based on their presence in that area and tagging).”</p>	
	44.4	<p>“We believe that this criteria should remain as currently defined. Like gang associate and gang dress we would like to keep the criteria as currently defined but add more specificity as to why this is a gang area. We would specify the location and have certain built in criteria (tagging, crime in the area, public intimidation, etc.) and the option for a free form field where law enforcement could use other justifications for the use of this criteria.”</p>	<p>The Department accepts this comment and has included a new modified version of this subdivision incorporating examples of how an address could be justified as gang-related.</p>
<p>Former 771.6(a)(7), Criteria to be Designated as a Gang Member or Associate, “The person has been seen wearing a style of dress or accessory...”</p>	<p>1.1, 3.2, 4.2, 6.2, 8.01, 9.2, 11.4, 13.2, 14.4, 15.3, 20.4, 23.06, 24.3, 28.3, 37.06, 42.1, 43.05, 43.08, 44.3, 45.3</p>	<p>It is important to keep this criterion.</p>	<p>The Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.</p>

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	8.02, 8.03	Removal of this criterion would be contrary to evidence that has been deemed relevant and admissible to establish gang membership and association.	The Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
	12.1, 35.1, 36.1, 49.1, 51.1	This criterion should be removed because no evidence ties it to gang membership and it is overbroad.	The Department has included a new modified version and added additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion. However, the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly

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			<p>more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	21.06	<p>We approve of the DOJ's decision to eliminate this criterion. "Elimination of [this criterion] thus makes gang database fairer and more accurate."</p>	<p>Regarding the elimination of this criterion, the Department has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion. The criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also</p>

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			<p>considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	25.11, 30.1, 34.06, 40.06	We are opposed to the removal of this criterion.	<p>The Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.</p>
	25.14	This criterion "could use additional refining to reduce the errant classification of individuals as gang members/associates."	<p>The Department accepts this comment and has included a new modified version of this subdivision and has</p>

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			added subdivision (a)(7)(A) to section 771.8.
	29.2	<p><i>This comment references the CalGang database but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>“Deleting the criteria of ‘Gang Attire’ would mean I cannot identify individuals as gang members even if they are wearing specific gang colors, hats, belts, shirts, sweaters, with their gang NAME on it”... “Bottom line is individuals do not wear gang apparel if they do not belong or at the very least associate with that gang. A suggestion would be for DOJ to ask the Cal-gang user to explain why the particular dress is gang related. For example, I can easily explain that a subject wearing a Florida Marlins baseball “F” hat, in “Florescia 13” gang territory is a member or an affiliate of that gang because its members commonly wear that hat.”</p>	<p>The Department accepts this comment in part and has included a new modified version of this criterion with a requirement that the law enforcement officer document “the basis for believing that the person is wearing the clothing and/or colors to express gang membership or affiliation.”</p>
	30.1, 43.03	Eliminating this criterion will hinder the ability to document and track gang members.	<p>The Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.</p>

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	34.06, 40.06	<p><i>This comment references the CalGang database but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>“While I did note that the consideration of clothing symbols and/or logos that may be adopted by gang members from time to time is largely addressed by §[752.2](3)(A), I believe this will prove to be confusing to the majority of the gang investigators throughout the state who will only see that ‘Gang Dress’ was removed from CalGang and believe it is no longer a valid criterion. For the sake of clarity, I would request that ‘Gang Dress’ not be removed.”</p>	<p>The Department accepts this comment in part and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.</p>
	39.3	<p>“An alternative to eliminating this criterion would be to require law enforcement specifically articulate and document why certain clothing is indicative of gang membership.”</p>	<p>The Department accepts this comment and has included a new modified version of this criterion with a requirement that the law enforcement officer document “the basis for believing that the person is wearing the clothing and/or colors to express gang membership or affiliation.”</p>
	44.3	<p>This criterion should remain as it is. “[W]e are willing to provide more justification and reasoning for why this criteria should remain as a valuable criteria.”</p>	<p>No change has been made in response to this comment as the Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns</p>

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			raised by public comments opposed to the inclusion of this criterion.
771.6(b)(4), Criteria to be Designated as a Gang Member or Associate, “The person has been seen displaying one or more accessories, symbols, and/or hand signs...”	42.5	“Gang tattoos are still the best indicator of a subject’s gang affiliation.”	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.
771.8(a), Minimum Age of Entry and Requirements to Enter a Person into a Shared Gang Database	4.6, 6.7, 9.5, 13.6, 14.9, 24.5, 28.7, 31.6	There should be no minimum age limit.	No change has been made in response to this comment as the minimum age to be designated in the database is based on existing empirical research of youth gang participation as described in the ISOR.
	7.10, 8.14	“Limiting the notice of inclusion to those 13 and older may already be too late.”	No change has been made in response to this comment as the minimum age to be designated in the database is based on existing empirical research of youth gang participation as described in the ISOR.
	7.10, 8.14, 21.07	The minimum age of 13 conflicts with empirical research.	No change has been made in response to this comment as the minimum age to be designated in the database is based on existing empirical research of youth gang participation as described in the ISOR.
	20.5	Juveniles involved with gang activity should have stricter laws and conditions with their arrests.	No change has been made in response to this comment, which is interpreted to be an observation rather than a

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			specific recommendation of any change to these regulations. Alternatively, this comment is outside the scope of the regulation.
	23.11, 37.11	“Juveniles make up less than 1% of the database so we feel the addition of this section is unnecessary; however, this is concerning to us given the reality that the vast majority of youth who enter gangs are between the age of 11 and 15, with the peak years of 13 to 15. This cap would severely hinder law enforcements efforts to work with parents and social workers in their efforts to prevent young adults from joining a gang.”	No change has been made in response to this comment as the minimum age to be designated in the database is based on existing empirical research of youth gang participation as described in the ISOR.
	34.07, 40.07	“While I would like to avoid documenting young children as gang members, I have to point out that the 13-year-old threshold is completely arbitrary.... I believe the people have a right to present relevant gang evidence at trial. The proposed addition would serve no purpose other than to frustrate law enforcement and prosecutorial efforts to serve justice when juveniles participate in criminal street gangs.”	No change has been made in response to this comment as the minimum age to be designated in the database is based on existing empirical research of youth gang participation as described in the ISOR.
	39.5	We agree to the minimum age of entry being 13 years old.	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.

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	42.6	“Adult gang members know that juvenile members who commit crimes will often receive a lesser sentence than an adult. Therefore, the juvenile gang members are the ones often tasked with ‘putting in work’ for the gang.”	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.
771.8(b), Minimum Age of Entry and Requirements to Enter a Person into a Shared Gang Database	24.4, 31.5	The requirement for two criteria coupled with the elimination of allowable criteria for entry will increase the likelihood that actual gang members and associates will not be included in the database. These limitations suggest that a person arrested for a gang crime or who admits gang membership may not be able to be entered unless the person also displays gang tattoos or gang symbols.	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
772, Other Rules Pertaining to the Entry of a Person in a Shared Gang Database	6.4	The added restrictions on tattoos “would be damaging to our ability to maintain current and relevant files on thousands of gang members...”	No change has been made in response to this comment as tattoo can still be documented as intelligence information and maintained in a hard copy intelligence file with the documenting agency, but cannot be entered into a shared gang database more than once unless as provided by subdivision (a)(8)(C) of section 771.8.
	7.11, 8.15	The limitation on the use of gang tattoos is inappropriate and impractical. How are the Users supposed to know that a tattoo criterion has already been used once? Valuable contact intelligence will be lost after a contact is rejected by the database.	Regarding the comment concerning the limitation on the use of gang tattoos, no change has been made in response to this comment because the Department has considered the need to balance law enforcement’s need for intelligence to solve crimes with protecting civil rights. Subdivision

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			<p>(a)(8) of section 771.8 limits the ability of law enforcement to use a single tattoo multiple times as more than one indicator of gang membership or association and prevents duplication and/or overuse of a single criterion; however, a single tattoo may still be used on subsequent occasions if it meets the elements set forth in subdivision (a)(8)(C) of section 771.8. Regarding the comment concerning Users knowing if a tattoo criterion has already been used, no change has been made in response to this comment because a User will know that a tattoo criterion has already been satisfied when they review a record or attempt to add a new tattoo into a shared gang database. Regarding the comment concerning the loss of intelligence, no change has been made in response to this comment as tattoo can still be documented as intelligence information and maintained in a hard copy intelligence file with the documenting agency, but cannot be entered into a shared gang database more than once unless as provided by subdivision (a)(8)(C) of section 771.8.</p>
	14.8	<p>“This would require retraining for deputies as well as additional time by gang detectives to look at how and where the tattoo may have been documented. Retroactively, we may not be able to know the circumstances of how the tattoo was seen. Additionally, gang members may get new tattoos which specify a</p>	<p>Regarding the comment concerning the retraining of deputies, no change has been made in response to this comment because these regulations will require training for all Users on all of the new rules governing the CalGang database. Regarding the comments concerning the circumstances surrounding tattoos</p>

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		rank or status change in the gang. The new policy may make documentation of new tattoos difficult. Those tattoos can lend valuable information to investigators when solving crimes or understanding rivalries or criminal acts.”	already in the database and the entry of new tattoos, no change has been made in response to this comment as tattoo can still be documented as intelligence information and maintained in a hard copy intelligence file with the documenting agency, but cannot be entered into a shared gang database more than once unless as provided by subdivision (a)(8)(C) of section 771.8.
	25.15	We are requesting that this section be struck from the proposed regulations. “[I]t is uncommon for active gang members to add or modify their existing tattoos, marks, scars, or brandings that denote gang affiliation. Yet this section of the regulations treats gang identification markings with an expiration date, disregarding the fact that gang affiliations do not expire simply because there is an absence of modifications to those markings. These provisions are not grounded in any realities pertaining to the ways in which criminal street gangs operate.... Markings are one criterion among others that should be analyzed, without constraint, to understand an individual’s affiliation with a criminal street gang.”	No change has been made in response to this comment because the Department believes it may not always be feasible for a person to remove all tattoos, marks, scars, or brandings; additionally, the Department does not believe that it would be appropriate to require a person to do so. Subdivision (a)(8) of section 771.8 limits the ability of law enforcement to use a single tattoo multiple times as more than one indicator of gang membership or affiliation and prevents duplication and/or overuse of a single criterion; however, a single tattoo may still be used on subsequent occasions if it meets the elements set forth in subdivision (a)(8)(C) of section 771.8.
	39.6	“We believe the criterion of the ‘public setting’ requirement should be amended to public and private setting for the following reason: a lot of information is collected during a	No change has been made in response to this comment. Although the Department understands that a tattoo, mark, scar, or branding may be displayed in a private setting, the

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		<p>contact that is not in a public area. Many interviews of subjects are within houses, apartments, or on other private property.”</p>	<p>Department believes a higher threshold for the subsequent entry of a tattoo, mark, scar, or branding is appropriate. When displayed in a private setting, a tattoo, mark, scar, or branding that indicates criminal street gang membership may still satisfy subdivision (a)(8) of section 771.8 if it is the first time that tattoo, mark, scar, or branding is being entered into a shared gang database.</p>
<p>772(c), Other Rules Pertaining to the Entry of a Person in a Shared Gang Database</p>	<p>25.15</p>	<p>“We are vehemently opposed to this provision because it does not recognize that identification as a gang member itself is a form of intimidation and any visibility necessarily implies intimidation and affiliation.”</p>	<p>No change has been made in response to this comment because the Department believes it may not always be feasible for a person to remove all tattoos, marks, scars, or brandings; additionally, the Department does not believe that it would be appropriate to require a person to do so. Subdivision (a)(8) of section 771.8 limits the ability of law enforcement to use a single tattoo multiple times as more than one indicator of gang membership or association and prevents duplication and/or overuse of a single criterion; however, a single tattoo may still be used on subsequent occasions if it meets the elements set forth in subdivision (a)(8)(C) of section 771.8.</p>
<p>Former 772(a), Other Rules Pertaining to the Entry of a Person in a Shared Gang Database</p>	<p>4.5, 13.5</p>	<p>“[I]f an individual is a well-known and documented gang member where two criteria were previously noted, requiring one criteria when coming across that individual again will help keep the database up-to-date</p>	<p>No change has been made in response to this comment as the Department believes that requiring the same number of criteria to reset a retention period as that for designation as a Gang Member or Associate will only serve to increase the accuracy of</p>

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		especially if that individual is moving up and slowly staying off the radar.”	shared gang databases and reduce or prevent the likelihood of overinclusion.
	6.6	“[R]equiring two criteria for new reports related to subjects already documented as gang members adds an unreasonable burden to law enforcement and gang officers in particular... Requiring two criteria for every contact entry would seriously limit the effectiveness and worthwhile purpose of the shared gang database.”	No change has been made in response to this comment as the Department believes that requiring the same number of criteria to reset a retention period as that for designation as a Gang Member or Associate will only serve to increase the accuracy of shared gang databases and reduce or prevent the likelihood of overinclusion.
	28.6	“[W]e will lose a lot of gang documentation if we have to always have two criteria after they are already in the system.”	No change has been made in response to this comment as intelligence information can be documented and maintained in a hard copy intelligence file with the documenting agency, but cannot be entered into a shared gang database unless it meets the requirements set forth in these regulations.
	34.08, 40.08	“Currently, one criterion is enough to maintain a record in the database. Again, this will only serve to frustrate law enforcement efforts as we attempt to mitigate gang violence.”	No change has been made in response to this comment as the Department believes that requiring the same number of criteria to reset a retention period as that for designation as a Gang Member or Associate will only serve to increase the accuracy of shared gang databases and reduce or prevent the likelihood of overinclusion.
772.8(c)(1), Notifying a Person of Inclusion in a	41.11	We object to this modification. “First, Penal Code § 186.34 (c)(2), § 186.34 (d)(1)(B), and § 186.35 (c) all	The Department accepts this comment and has incorporated “the basis for the

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Shared Gang Database		refer to the “basis” for the designation. The language of the regulations should track the language of the statute to avoid confusion. Second, the evidentiary limit imposed by the Legislature in Penal Code § 186.35 (c) limits the evidence that a law enforcement agency may present in a petition for removal to the Superior Court to only the evidence presented to the alleged gang member in this notice. By requiring the criteria but not the basis for the designation, this amendment seems to ignore the evidentiary limit in Penal Code § 186.35 and would create confusion as to what documents agencies should provide.”	designation” back into this subdivision.
772.8(c)(5), Notifying a Person of Inclusion in a Shared Gang Database	41.10	“We support the modification... that makes it mandatory that agencies must provide the name of the gang when providing notice.”	No change is needed in response to this comment.
772.8(d), Notifying a Person of Inclusion in a Shared Gang Database	41.12	<p><i>This comment references the CalGang Database regulations but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>“[B]ecause the currently proposed § 752.2 requires documentation of the basis for the reasonable suspicion and documentation supporting each criterion for entry, we recommend adding a subparagraph (2) to paragraph (d) that expressly states that the documentation described in §</p>	The Department accepts this comment and has added subdivision (d) to section 773.

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		752.2 may be included with notice. This would provide law enforcement agencies with better guidance as to how to consider the evidentiary limit in Penal Code § 186.35.	
772.8(h)(1), Notifying a Person of Inclusion in a Shared Gang Database And 773.4(b)(1), An Agency’s Response to a Request for Removal	21.16	“To the extent these provisions appear to sanction the presentation of additional evidence to the Superior Court in camera that was not previously disclosed to the petitioner, they conflict with the clear language of Penal Code Sec. 186.35(c) and California Rules of Court.”	No change has been made in response to this comment because it is outside the scope of these regulations. These regulations do not govern the procedures of the court petition process created by Penal Code section 186.35 nor do these regulations govern what a court may or may not review. Such procedures are prepared by the judicial branch and described in California Rules of Court section 3.2300. Additionally, Penal Code section 186.34 entitles an individual to written notice of his or her entry into CalGang and a written notice of the basis of designation. The statute does not create an exception to the general rule of confidentiality for police investigative and intelligence records, or the privileges held under Evidence Code sections 1040 and 1041.
	21.17	“If DOJ keeps these provisions, we recommend striking the language in both provisions stating that ‘[n]othing in this subdivision restricts the release of [information]... under court order or for an in camera review by a court.’ The Court of Appeals is currently considering whether a court’s consideration of evidence presented in camera	No change has been made in response to this comment because it is outside the scope of these regulations. These regulations do not govern the procedures of the court petition process created by Penal Code section 186.35 nor do these regulations govern what a court may or may not review. Such procedures are prepared by the judicial branch and described

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		violates A.B. 90 and due process in <i>Simmons v. City of San Diego</i> , Case No. 37-2018-0000190-CL-PT-CTL. The DOJ regulations ought not take a position on the legality of such a non-disclosure, especially as the issue is being litigated.”	in California Rules of Court section 3.2300. The decision in the case currently being litigated would have no effect on these regulations as the court would be deciding for themselves what evidence may be reviewed. Additionally, Penal Code section 186.34 entitles an individual to written notice of his or her entry into CalGang and a written notice of the basis of designation. The statute does not create an exception to the general rule of confidentiality for police investigative and intelligence records, or the privileges held under Evidence Code sections 1040 and 1041.
773.2(a)(3), An Agency’s Response to an Information Request	41.14	“[T]he new language... is inconsistent with statute and seems to ignore the evidentiary limit in Penal Code § 186.35. We recommend paragraph (b) should include a subparagraph (2) that states that the documentation described in § 752.2 may be included with notice.”	The Department accepts this comment in part and has added subdivision (c) to section 773.4.
773.2(a)(4), An Agency’s Response to an Information Request	41.13	We support this addition.	No change is needed in response to this comment.
773.4, An Agency’s Response to a Request for Removal	41.15	We believe the amendments made to this section are the best solution to logistical problems.	No change is needed in response to this comment.
773.4(b)(1), An Agency’s Response	41.16	<i>This comment references the CalGang Database regulations but</i>	No change has been made in response to this comment because it is outside

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to a Request for Removal		<p><i>has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i></p> <p>“The lawfulness of in-camera review is not settled and is currently under appeal in Tyrone Simmons v. City of San Diego, et al., Superior Court of San Diego County, 2018, No. 37-2018-00001190-CL-PT-CTL, (D074845, app. pending). We recommend that the Department strikes the reference to in-camera review in order to avoid needlessly wading into the ongoing controversy of when an in-camera review is allowed versus when a protective order is sufficient. Also, this language appears in § 753.4 (i)(1) and § 753.8 (d)(1) and should be struck there as well.”</p>	<p>the scope of these regulations. These regulations do not govern the procedures of the court petition process created by Penal Code section 186.35 nor do these regulations govern what a court may or may not review. Such procedures are prepared by the judicial branch and described in California Rules of Court section 3.2300. The decision in the case currently being litigated would have no effect on these regulations as the court would be deciding for themselves what evidence may be reviewed.</p>
773.4(c), An Agency’s Response to a Request for Removal	41.17	We support this addition.	No change is needed in response to this comment.
773.6, Retention Period for Adult Records And 773.8, Retention Period for Juvenile Records	12.2, 21.07, 35.2, 36.2, 49.2, 51.2	The five-year retention period should be limited to one year for juveniles and two years for adults.	The Department accepts this comment in part and has shortened the retention period for juveniles based on existing empirical research as described in the Addendum to Initial Statement of Reasons (AISOR). Regarding the comment concerning the retention period for adults, the Department is maintaining the five-year period for the reasons stated in the ISOR, which is consistent with subdivision (h) of

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			Title 28, section 23.20 of the Code of Federal Regulations, and will continue to conduct research on adult retention periods.
	12.2, 35.2, 36.2, 49.2, 51.2	Two criteria should be required to reset the retention period and not one.	The Department accepts this comment and has updated subdivision (b) of section 773.8 and 774.
	21.08	“We approve of the DOJ’s decision to require a minimum of two additional criteria to reset the retention period, as it prevents over breadth due to the retention of individuals’ information beyond the period of gang membership.”	No change is needed in response to this comment.
	41.18	“Though we continue to believe that a five-year retention period is unsupportable, even for adults, we do support the requirement that the retention period restart only upon the entry of two criteria. Also, we support the creation of a separate retention period for juveniles.”	The Department accepts this comment in part and has shortened the retention period for juveniles based on existing empirical research as described in the AISOR. Regarding the comment concerning the retention period for adults, the Department is maintaining the five-year period for the reasons stated in the ISOR, which is consistent with subdivision (h) of Title 28, section 23.20 of the Code of Federal Regulations, and will continue to conduct research on adult retention periods.
773.6(b), Retention Period for Adult Records	43.09	“Retain the current 1 criteria to continue an adult subject in CalGang instead of the proposed 2 Criteria...”	No change has been made in response to this comment as the Department believes that requiring the same number of criteria to reset a retention period as that for designation as a Gang Member or Associate will only serve to increase the accuracy of

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			shared gang databases and reduce or prevent the likelihood of overinclusion.
773.8, Retention Period for Juvenile Records	4.7, 13.7, 28.8	The original five year purge date should be kept for all gang members.	No change has been made in response to this comment as the Department has shortened the retention period for juveniles based on existing empirical research as described in the AISOR. The Department is maintaining the five-year period for adults for the reasons stated in the ISOR, which is consistent with subdivision (h) of Title 28, section 23.20 of the Code of Federal Regulations, and will continue to conduct research on adult retention periods.
	14.9	“The three year automated purging for juveniles could create lapses in documentation. This could allow for gang crime enhancements to go unused. Additionally, to continue their documentation, you would need to add two additional criteria to carry them over past the age of 18.”	No change has been made in response to this comment because the Department has shortened the retention period for juveniles based on existing empirical research as described in the AISOR. Additionally, there would be no lapse in documentation if additional criteria were satisfied to reset the retention period.
	21.07	We “recommend that the DOJ amend the language... to clarify that the three-year retention period applies to those who are 13 to 17 years old at the time of entry into a gang database and to clarify that the five-year retention period applies to those who are 18 years old or older at the time of entry into a gang database. Hypothetically, a 16-year-old	No change has been made in response to this comment because the Department previously added subdivision (c) to section 774 for clarification in such circumstances.

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		individual’s information could be stored in a gang database at the time they turn 18 years old. At that point, the five-year retention period should not apply, because the individual was a juvenile at the time of inclusion. Addition of the language ‘at the time of entry’ would preclude confusion regarding the retention period that applies.”	
	24.5, 31.6	We are concerned that requiring a three-year data purge timeline will deprive law enforcement of potentially useful and vital information about juvenile gang members.	No change has been made in response to this comment because the Department has shortened the retention period for juveniles based on existing empirical research as described in the AISOR.
	34.09, 40.09	“There is every reason to believe a juvenile will continue to be active in their gang beyond the three years that have been proposed, which again, seems completely arbitrary.”	No change has been made in response to this comment because the Department has shortened the retention period for juveniles based on existing empirical research as described in the ISOR. Additionally, the retention period of a juvenile’s record may be reset pursuant to subdivision (b) and (c) of section 774.
	39.7	We agree to the 3 year retention period for juvenile records.	No change is needed in response to this comment.
	41.19	“[T]he language... would seem to apply only to individuals who are age 13 or 14 when added. Anyone between the ages of 15 and 18 will become adults before the three-year juvenile retention period would end and would then be subject to the adult five-year retention period. We	The Department accepts this comment and has removed “after the person reaches 18 years of age” from subdivision (c) to section 774 to help clarify that a juvenile who becomes an adult and who satisfies the designation requirements again pursuant to section 771.6 will have a five year retention

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		<p>recommend revising the language to clarify that the retention period is based on when a person is added, not their age at the expiration of the retention period.”</p>	<p>period for their record pursuant to section 773.8.</p>
	43.10	<p>“Retain the current 5 year retention for juveniles instead of the proposed 3 years...”</p>	<p>No change has been made in response to this comment because the Department has shortened the retention period for juveniles based on existing empirical research as described in the AISOR.</p>
774.4(c)(1), Source Documents	41.20	<p><i>This comment references the CalGang Database regulations but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>“We object to the removal of the word ‘inappropriate’... without clarifying that source documents that include unlawfully obtained information should also be removed. We recommend further modifying § 755 (c) to read ‘At any time source documents are found to be missing or incomplete to adequately support a criterion, or found to have been obtained unlawfully, the Node or User Agency shall remove the unsupported criterion.’ Also, as discussed above, the definition of ‘Source documents’ in § 750.4 (w) should be modified to include the word “lawful” as well.”</p>	<p>Regarding the comment concerning the addition of “lawful” in the “source documents” definition, the Department accepts this comment and has incorporated “lawfully obtained information” into this definition. Regarding the comment concerning the removal of unlawfully obtained source documents, no change has been made in response to this comment as the Department accepted the comment concerning the addition of “lawful” in the “source documents” definition. With the incorporation of “lawful” into the “source documents” definition, there is no longer a need to remove source documents that are found to have been obtained unlawfully because if a source document is not obtained lawfully, then it does not fit the definition of a source document and cannot be used as such. Additionally, the Department has added subdivision (b) to section 772.2 requiring a determination by a supervisor that intelligence data</p>

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			supporting a criterion was lawfully obtained.
775.6, Equipment Security and Inspection	5.4	“[W]e need to tackle the technical security side, to make sure the protection of the data itself is robust.”	The Department accepts this comment and continues to work with the vendor to ensure that the data is secure however, given the breadth of technology and speed with which it changes, no specifics will be provided within these regulations as it is outside the scope of these regulations.
General Recommendations	21.18	“To the extent that the California Gang Node Advisory Committee (CGNAC) serves any purpose in the operation of CalGang, its meetings must be transparent.... We recommend the DOJ add a provision allowing members of the GDTAC to participate in CGNAC.”	No comment has been made in response to this comment as the role of the GDTAC is to assist the Department in promulgating regulations and developing and implementing standardized periodic training. Furthermore, several of the members who participated in GDTAC do not have a need to know and right to know in order to access the information contained in the CalGang database like those of the CGNAC members who are CalGang Database Users and/or Node Administrators. How CGNAC meetings are conducted are outside the scope of these regulations.
	21.19, 41.09	Records that are no longer supported by the new criteria in these regulations should be removed once these regulations become effective.	No change has been made in response to this comment because under subdivision (s)(2) of Penal Code section 186.32, “[t]he [D]epartment shall not use regulations developed pursuant to this section to invalidate data entries entered prior to the adoption of those regulations.”

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	39.9	<p>“It is my belief that the above modifications to CalGang are part of a larger overall policy examination that will assist law enforcement in our efforts to identify those involved in gang violence and to protect communities from the terrible impact criminal gangs have in our cities. It is recommended that these modifications be revisited in the next year or two to determine their effectiveness and impact.”</p>	<p>No change has been made in response to this comment; however the Department is committed to balancing the needs of law enforcement with protecting civil rights. The Department’s oversight and administration of the CalGang database is still in its infancy and as such, we are committed to conducting empirical research as mandated by Assembly Bill (AB) 90 (Stats. 2017, Ch. 695) and continuing to submit regulations packages as needed.</p>
	50.1	<p>“[W]e must ensure that the regulations that govern the CalGang Database and any other shared gang database in California will provide accuracy and leave no room for error given the current state of affairs and lack of due process in immigration proceedings.”</p>	<p>No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.</p>
General Opposition	5.1	<p><i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i></p> <p>“I am genuinely concerned about the ongoing proposed changes to the CalGang system.”</p>	<p>No change has been made in response to this comment, which is interpreted to be an observation rather than a recommendation of any change to these regulations.</p>
	5.2	<p><i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i></p>	<p>The Department is moving forward with these regulations for the reasons stated in the ISOR, AISOR, and SAISOR.</p>

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		<p>“It is with great sincerity and urgency that I plead with both the public and the California Department of Justice to tread carefully with respect to any further watering-down of the CalGang system.”</p>	
	5.3	<p><i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i></p> <p>“I... would like to see CalGang maintain its existing structure and scope.”</p>	<p>The Department is moving forward with these regulations for the reasons stated in the ISOR, AISOR, and SAISOR.</p>
	7.01, 8.05	<p><i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i></p> <p>“I am dismayed at the overall scope of the proposed modifications to the detriment of the law enforcement’s efforts to gather intelligence concerning criminal gang activity and investigate and combat gang violence.... These proposed modifications both limit and hinder the collection of the type and quality of the gang intelligence necessary to accomplish the stated objective of the CalGang database.”</p>	<p>The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.</p>
	7.02, 8.06	<p>The proposed modifications did not address the concerns that I had expressed earlier and most of the modifications stem from comments</p>	<p>No change has been made in response to this comment as the Department considered all timely and relevant comments and evaluated concerns</p>

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		made by those outside the law enforcement community.	from both advocacy groups and the law enforcement community when drafting these regulations.
	7.12, 8.16	<p><i>This comment references the CalGang Database regulations but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i></p> <p>“[T]he proposed modifications to the CalGang regulations post the public comments period have failed to allay law enforcement’s fears that these regulations will eviscerate the use and utility of the CalGang database to be an effective gang investigatory tool. These proposed modifications totally undercut the stated objective of the CalGang database ‘to provide law enforcement agencies with an accurate, timely, and electronically-generated database of statewide gang-related intelligence information.’”</p>	No change has been made in response to this comment as the Department considered all timely and relevant comments and evaluated concerns from both advocacy groups and the law enforcement community when drafting these regulations.
	10.1	<p><i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i></p> <p>“[R]econsider the attempts to eliminate the majority of the [CalGang] intel that officers gather during investigations.”</p>	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.

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	10.4	“Please consider keeping our database the way it is and allow us to keep our communities safe.”	No change has been made in response to this comment as the Department is required by Penal Code section 186.36 to promulgate regulations which implement changes in response to problems found during the 2016 audit conducted by the California State Auditor’s Office.
	14.1	“The implementation of the proposed changes would make the gang documentation process so difficult it will likely be abandoned or severely limited and ineffective in all but the rarest of cases.”	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	20.1	“When it was brought to my attention the CA DOJ has proposed revisions to the current [CalGang] System, I was appalled. Police work in generally has become increasingly difficult and we as Officers rely on various systems for data and analytics to help assist in our investigations. It is hard to understand from an Officers point of view, why changes would be necessary to system that is working as efficiently and effectively as [CalGang’s].”	The Department has been required by Penal Code section 186.36 to promulgate regulations which implement changes in response to problems found during the 2016 audit conducted by the California State Auditor’s Office.
	20.6	“In conclusion, making these proposed changes would be detrimental to Officers investigations, making it increasing difficult in solving crimes and providing the public service necessary to make our communities safer.”	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations. If this comment is directed at changes to the criteria, the Department accepts this comment has added subdivisions

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			(a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	20.7	“By making these changes, would the political leaders (the powers to be) be willing to face their constituents, as well as law enforcement professionals and answer the difficult questions as to why a gang member was not documented in the CalGang system due to revisions to current regulations, but as a result, allowed to continue sex trafficking minors with impunity? I would be interested in hearing that answer.”	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations. If this comment is directed at changes to the criteria, the Department accepts this comment has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	22.1	“California is pretty much a total loss. This final chip at CalGang will seal it. You know this program is not abused and used to keep society safe. Why don’t you actually make a stand and do something to protect your citizens, not criminals. Pretty much a no braine[r].”	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations. If this comment is directed at changes to the criteria, the Department accepts this comment has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	23.01	“The California Police Chiefs Association regrets to inform you of its opposition to the revisions made to the proposed regulations regarding the CalGang database. As leaders of the law enforcement community who are directly responsible for the safety of each city we serve, we have	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.

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		several major concerns with the changes made to the proposed regulations. Should they be implemented as currently drafted, we are confident they will negatively impact law enforcement efforts to mitigate the dangers associated with and created by gang activity.”	
	23.02, 37.02	“[An]... example of why these regulations threaten the safety and well-being of the communities we serve is the recent killing of off-duty LAPD officer Juan Diaz. Officer Diaz was murdered by three gang members who were quickly identified because of the robust gang intelligence database we currently have. The changes made to these regulations would prevent our officers from having access to crucial pieces of information that could ultimately save their lives....”	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8. Furthermore, these regulations do not limit the collection of intelligence, but in an effort to balance law enforcement’s need for intelligence to solve crimes with protecting civil rights these regulations establish minimum criteria and reasonable suspicion requirements prior to a person being designated as a Gang Member or Associate in the CalGang database or a shared gang database.
	23.08, 37.08	“The revisions are at times vague and provide no real guidance in their meaning.”	The Department accepts this comment in part and has made many modifications to these regulations in response to the comments received during the 45-day comment period and 30-day comment period in an effort to resolve these concerns.
	23.12, 37.12	“[T]hese regulations, as currently drafted, will have a negative impact on law enforcement’s efforts to curb gang-related activity. These regulations prevent us from being proactive in preventing violence,	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations. If this comment is directed at changes to the

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		<p>theft, and drug or firearms trafficking that stem from known gangs. We hope you will reconsider the revisions made and will instead adopt regulations that will assist California’s law enforcement community...”</p>	<p>criteria, the Department accepts this comment has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.</p>
	24.1	<p>There is no evidence that empirical research required by Penal Code section 186.36(l) “serves as the basis for these proposed regulations or has been provided by proponents of the changes. However, we posit that gang members prey predominately on members of their own communities, most often minority communities. These changes will reduce law enforcement’s ability to protect these at-risk communities from gang violence.”</p>	<p>If this comment is directed at changes to the criteria, the Department has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8. The criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with</p>

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			<p>these studies, which support law enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	25.01	<p><i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i></p> <p>“The proposed regulations treat access to the CalGang database as if it is a privilege, notwithstanding the fact that a lack of criminal intelligence has recently contributed to the deaths of officers across the state by persons known to have complicated criminal pasts. These regulations are, at times, improperly dismissive of criteria that are utilized to identify gang members\associates. These regulations send a clear message to law enforcement that the Department of Justice does not appreciate the nature and nuances of gang violence, intimidation, and suppression.”</p>	<p>Regarding the comment concerning access to the CalGang database, no change has been made because the Department wants to ensure that there is a screening process for persons who may access any shared gang database and that Users undergo training prior to being granted access. Regarding the comment concerning the elimination of criteria, the Department has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.</p>

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	28.1	“[I]t is imperative that some of these changes are NOT approved, nor implemented as it would drastically hinder our ability to document and track gang members.”	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations. If this comment is directed at changes to the criteria, the Department accepts this comment has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	31.1, 34.01, 40.01	I am concerned that these regulations will negatively impact public safety and make it gang enforcement efforts more difficult.	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.
	32.1	“The proposed regulatory changes will leave law enforcement at a disadvantage in its mission to address criminal activity. These proposed regulatory changes will clearly add further regulations that are designed to prohibit and remove the basic tools used by law enforcement to protect citizens from criminal gangs.”	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations. If this comment is directed at changes to the criteria, the Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	32.3	“The proposed regulatory change will compromise undercover methods and techniques, informants and procedures.”	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.
	32.4	<i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i>	No change has been made in response to this comment because the Department believes these regulations will result in more reliable data and fewer errant entries in a shared gang

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		The proposed regulatory changes will have a financial impact on local communities and law enforcement agencies due to a lack of data. The denuding of CalGang will skew statistics regarding criminal gang activity and impact the solicitation of grants to address gang issues.	database, which can then be used for planning purposes.
	34.01, 40.01	General Opposition	The Department is moving forward with these regulations for the reasons stated in the ISOR, AISOR, and SAISOR.
	34.02, 40.02	“I believe the proposed revisions may actually prove to be harmful to criminal defendants from a due process perspective.... [L]ess documentation criteria amounts to less guidance in the documentation process...”	The Department accepts this comment in part and has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	34.10, 40.10	<i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i> “It is my sincere hope that the Department of Justice will leave the CalGang database as it is.”	No change has been made in response to this comment as the Department has been required by Penal Code section 186.36 to promulgate regulations which implement changes in response to problems found during the 2016 audit conducted by the California State Auditor’s Office.
	37.01	<i>This comment references the CalGang Database regulations but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i>	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations. If this comment is directed at changes to the

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		<p>“The California Narcotic Officers Association regrets to inform you of its opposition to the revisions made to the proposed regulations regarding the CalGang database... Should the current proposed regulations be implemented as currently drafted, we believe they will negatively impact law enforcement efforts to mitigate the dangers associated with and created by gang activity.”</p>	<p>criteria, the Department accepts this comment has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.</p>
	42.7	<p>“If the new recommended changes proposed by the Attorney General's Office are implemented, it would greatly diminish and hinder the effectiveness of CalGang as an investigative tool. It will also negatively impact the safety of the communities we serve.”</p>	<p>No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations. If this comment is directed at changes to the criteria, the Department accepts this comment has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.</p>
	43.01	<p><i>This comment references the CalGang Database regulations but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i></p> <p>“I want to express my concerns regarding the proposed changes to the Cal Gang regulations. These changes will limit law enforcement's ability to efficiently and effectively identify gang members and inhibit investigations into violent gang crime</p>	<p>No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations. If this comment is directed at changes to the criteria, the Department accepts this comment has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.</p>

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		that negatively affects our communities.”	
	43.02	“If these changes occur it will make the communities that are already vulnerable and susceptible to gang violence, more vulnerable by taking away the ability of Law Enforcement to protect them from gangs.”	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations. If this comment is directed at changes to the criteria, the Department accepts this comment has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	44.1	<p><i>This comment references the CalGang Database regulations but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i></p> <p>“This letter is in reference to the proposed regulations for the Cal Gang database. The regulations as currently drafted would have an extremely detrimental effect on how law enforcement is able to protect the public when it comes to gang violence.”</p>	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations. If this comment is directed at changes to the criteria, the Department accepts this comment has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8.
	45.1	<p><i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i></p> <p>“I believe the criteria for entry as well as the rules and regulations surrounding CalGang as it stands</p>	If this comment is directed at changes to the criteria, the Department has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria section, 771.8. The criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs

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		<p>now, are more than sufficient for protecting individuals from being erroneously entered as well as meeting the intent of having a gang intelligence data base.”</p>	<p>and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
General Support	41.01	<p>“We write to commend the Department of Justice (“Department”) and show our support for the modifications made to</p>	<p>If this comment is directed at changes to the criteria, the Department has added subdivisions (a)(3), (a)(4), (a)(6), and (a)(7) to the criteria</p>

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		<p>the most recent proposed shared gang database regulations. We particularly support the changes to the criteria and to the decision to combine gang member and associate into one category, both of which were recommended in our previous comment. We believe the Department’s modifications embodied in the current proposed regulations strike an appropriate balance between (1) ensuring criteria are reliable and (2) law enforcement officers’ need to have criteria that are workable in practice. UPI asks that your agency remain resolute in keeping that balance as proposed.”</p>	<p>section, 771.8. The criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>

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	41.05	<p><i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i></p> <p>“[T]he regulations should ensure that the CGNAC does not take the place of the statutorily created Gang Database Technical Advisory Committee (‘GDTAC’). Our recommendation is that, if the CGNAC is going to continue to play an official role in CalGang oversight, then the GDTAC should meet publicly at least semi-annually and that the CGNAC representative to the GDTAC should report publicly on the work of the CGNAC at each of those meetings.”</p>	<p>No change has been made in response to this comment because pursuant to subdivision (b) of Penal Code section 186.36, the Department shall administer and oversee the CalGang database. The role of the GDTAC is to assist the Department in promulgating regulations and developing and implementing standardized periodic training. The statute, does not, however, require the GDTAC to continue to meet publicly after the aforementioned duties are complete.</p>
	41.21	General Support	No change is needed in response to this comment.