OAL Register 2019-0430-06
Revisions to Proposed Regulations

The original proposal is in <u>single underline</u>.

Changes made following the initial 45-day comment period are illustrated by <u>double underline</u> for proposed additions and ~~double strikethrough~~ for proposed deletions.

The most recent changes made following the 30-day comment period are illustrated by **<mark>highlighted bold underline</mark>** for proposed additions and **<mark>~~highlighted bold strikethrough~~</mark>** for proposed deletions.

California Code of Regulations

Title 11, Division 1

Chapter 7.5: Department of Justice Regulations for the Fair and Accurate Governance of the CalGang Database.

Article 1. General

§ 750. Title and Scope.

This Chapter shall be known as the "Department of Justice Regulations for the Fair and Accurate Governance of the CalGang Database," and may be cited as such and referred to herein as "these regulations." Commencing on **<mark>~~January~~July</mark>** 1, 2020, the provisions of these regulations shall govern the policies and procedures of the CalGang database. These regulations shall not apply to any future shared gang databases in the State of California; those shall be regulated by Chapter 7.6 of the California Code of Regulations, title 11, sections 770 to 77~~5.6.~~**<mark>6</mark>**~~2~~.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code, and Section 70615, Government Code.

Article 2. Purpose of the CalGang Database and Definitions

§ 750.2. Purpose of the CalGang Database.

(a)   The objective of the CalGang database is to provide law enforcement agencies with an accurate, timely, and electronically-generated database of statewide gang-related intelligence

information. ~~The CalGang database is not designed to provide Users with information upon which official actions may be taken. Rather, t~~

(b)   All records and information contained in the CalGang database are confidential and are for the use of law enforcement agencies, as defined in Penal Code section 186.34(a)(3), only.

(c)   ==**CalGang shall not be used as the sole basis when making street-level determinations on who to stop and detain**==.

(d)   ==**CalGang records shall not be referred to in official reports. Information from the CalGang database shall not be used for anything other than criminal investigative purposes, as permitted under this chapter, and any memorandum of understanding shall include an agreement by the agency to comply with such restriction and all other requirements of these regulations.**==

(~~c~~**e**)   The CalGang database shall ~~only~~ be used as a means of identifying the Node ==**Agencies**== or User Agencies ==**who**== ==**that**== supplied the information in the CalGang database. ==**Information from the CalGang database shall not be accessed or used for any reason other than criminal investigative purposes, as permitted under this chapter, and shall not be used for the purposes of documenting immigration status or any other unlawful purpose. Any memorandum of understanding adopted pursuant to section 750.6 and/or 750.8 of this chapter shall include an agreement by the agency to comply with such restrictions and all other requirements of these regulations.**== ~~Inclusion in the CalGang database cannot be the basis of an official action, rather, the underlying source documents must be used. All records and information contained in the CalGang database are confidential and are for the use of law enforcement agencies only.~~

(d)   ==**The mere fact of a person's designation in the CalGang database, by itself, shall not be used to (1) justify searching, detaining, or arresting any person, or (2) support issuance of, or application for, a subpoena, warrant, or similar instrument in a criminal proceeding.**==

(e)   ==**Nothing in these regulations contemplates using the mere fact of a person's designation in the CalGang database, by itself, as evidence of crime or probative of any other matter in a criminal proceeding including, but not limited to, sentencing.**==

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code.

§ 750.4. Definition of Key Terms.

(a)   "Access" means the ability to do one or more of the following: view, query, add, delete, or retrieve records in the CalGang database depending on the User's level of access to the database.

(b)   "Agency" means any law enforcement agency**, as defined in Penal Code section 186.34(a)(3), only**.

(c)   "Audit" means the process of objective examination of the CalGang database pertaining to the maintenance of records **or designated criminal street gangs**, ~~as well as~~**or** the **objective** examination of a sample of randomly-selected records **or designated criminal street gangs** to determine whether the CalGang database is in compliance with these regulations.

(d)   "CGNAC" means the California Gang Node Advisory Committee.

(e)   "Contact" between a law enforcement officer and a potential Gang Member or ~~Gang~~ Associate means any <u>lawful</u> observation of a person by a law enforcement officer or any lawful interaction between a person and a law enforcement officer.

~~(f)   "Criminal predicate" means that there exists a reasonable suspicion based on the analysis of legally obtained information that the subject of the information is, or may be involved in, definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct.~~

(f~~g~~)   "Department" means the California Department of Justice.

(g~~h~~)   "Dissemination" means the sharing of criminal intelligence among law enforcement authorities in any Agency or Agencies on a need to know and a right to know basis.

(h~~i~~)   "Gang Member or Associate" means a person who satisfies the requirements <u>to be designated in the CalGang database</u> set forth in subdivision (**c**b~~e~~) of section 752.**24**~~6~~.

~~(j)   "Gang Member" means a person who satisfies the requirements set forth in subdivision (b) of section 752.6.~~

(i~~k~~)   "Juvenile" means a minor or a person between the ages of 13 through 17.

(j~~l~~)   "Need to know" means a state of facts that supports the legitimacy of access to specific intelligence by a person or an Agency with a right to know. The "need to know" shall be pertinent to and necessary to the performance of a specific law enforcement activity.

(k~~m~~)   "Node" means a geographically located cluster of participating law enforcement agencies with access to the CalGang database that may exist from time to time.

(*l*n)   "Node Administrator" means a person who is appointed by the Node Agency to act as the leader of that Node. The Node Administrator is responsible for organizing, training, providing technical support, and coordinating the information collection activities of User Agencies in the Node.

(mo)   "Node Administrator's Designee" means a person selected by the Node Administrator to act as the Node Administrator when the Node Administrator is not available.

(np)   "Node Agency" means the law enforcement agency where a Node Administrator is located.

(oq)   "Non-User" means a person or an Agency that does not have access to the CalGang database.

(pr)   "Offense consistent with gang activity" means ~~either~~ those offenses that are listed in subdivision (a) or (e) of Penal Code section 186.22~~;~~**,** Penal Code section 186.26**,** ~~or~~ **Penal Code section** 186.28~~;~~**,** or **other offense that is a felony, and where there is reasonable suspicion to believe that the offense was committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members**~~those offenses committed in a manner described in subdivision (b)(1) of Penal Code section 186.22~~.

(q)   "Organization" means an organization, association, or group of people.

(r)   "Outreach worker" means a person who would reasonably be able to demonstrate they are employed by, or have a paid or unpaid internship with, an agency or non-profit organization that provides one or more gang prevention, intervention, and/or community outreach programs.

(sq~~s~~)   "Peer Audit" means an audit of a Node's CalGang database records that is conducted by two Node Administrators, or the Node Administrators' Designees, neither of whom represent the Node **Agency** or User Agency being audited.

(t)   "Publish" means to upload, share, post, or repost on the internet including, but not limited to, through a social media account.

(ur~~t~~)   "Purge" means the elimination of any record **or designated criminal street gang** from the CalGang database and/or any printed form of the record **or designated criminal street gang** when it is no longer in compliance with these regulations.

(**vs**u)   "Reasonable suspicion" means that state of known information which establishes sufficient facts to give a trained law enforcement or criminal investigative agency officer, investigator, or employee a basis to believe that there is a reasonable possibility that a person or an organization is involved in a definable criminal activity or enterprise.

(**wt**v)   "Record" means information contained in the CalGang database that pertains to a ~~particular person~~**Gang Member or Associate within a designated criminal street gang and Node**.

~~(w)   "Reliable source" means someone who provides information that the officer reasonably believes is sufficiently reliable based on the totality of circumstances that may include, but is not limited to, the following factors: (1) basis of knowledge; (2) veracity; and (3) reliability.~~

(x)   "Reliable source" means someone who provides information that the officer reasonably believes is sufficiently reliable based on the totality of circumstances that may include, but is not limited to, the following factors: (1) basis of knowledge; (2) past or present indications of veracity; and (3) past or present indications of reliability.

(**yu**x)   "Revoked," as it applies to a User's account, means the account is invalid and the User is permanently prohibited from accessing the account.

(**zv**y)   "Right to know" means the status of being an Agency or a person engaged in a law enforcement activity that, because of official capacity and/or statutory authority, may have access to the CalGang database if there is **also** a need to know.

(**aaw**z)   "Source documents" means documentation **of lawfully obtained information** that supports one or more criteri**a**~~on~~ entered into a person's record in the CalGang database. Such documents may include, but are not limited to, arrest reports, field interview cards, photographs, and jail records.

(**bbx**aa)   "Suspended," as it applies to a User account, means that the User's access to the account is prohibited for a defined period or until satisfaction of conditions under these regulations.

(cc)   "Symbol" as it applies to a criminal street gang, means a criminal street gang's name, initials, numerical representation, slogan, picture, character, or any other adaptation or representation used by that criminal street gang.

(**ddy**bb)   "System misuse" **or "account misuse"** means unauthorized access or **mis**use of information in the CalGang database **in violation of these regulations**.

(eezee)   "Unauthorized access" means access by a person to the CalGang database who does not have a need to know and a right to know or who is not authorized by these regulations to access the database.

(ffaadd)   "User" means authorized employees listed within paragraph (6) of subdivision (k) of Penal Code section 186.36 whose employment duties warrantrequire access to the CalGang database.

(ggbbee)   "User Agency" means an law enforcement aAgency that has access to the CalGang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.22, 186.26, 186.28, 186.34, 186.35, and 186.36, Penal Code.

Article 3. Access to the CalGang Database, Admission, and Dissemination of Intelligence
§ 750.6. Access to the CalGang Database.

(a)   Access to the CalGang database is not automatically granted to all employees of a **Node Agency or** User Agency; rather access shall be limited to employees meeting the definition of User in subdivision (aadd) of section 750.4.

>   (1)   Only the Department may grant access to the CalGang database to a User from an out-of-state agency or a federal agency.

(b)   Prior to being granted access to the CalGang database, all Users shall undergo the training prescribed in subdivision (b) of section 751.68.

(c)   User Agencies shall enter into a written memorandum of understanding or user agency agreement, consistent with these regulations, with the Department or their respective Node Agency before a person employed by the User Agency may receive access to the CalGang database. Node Administrators shall provide a copy of any such agreement to the Department upon request.

(d)   Before completing the training referenced in subdivision (b) of section 751.68, all Users shall complete a CalGang User Agreement form **CJIS 9006**(revised February **July**orig. **November** 2019), incorporated by reference herein. A physical copy of each **User's CalGang User Agreement** form shall be kept on file by the Node Administrator. The Node Administrator **or Node Administrator's Designee** shall forward a **signed** copy of each completed **User's**

CalGang User Agreement form to the Department **no later than 10 working days after the User receives training**. **The Department shall ensure that a signed CalGang User Agreement form has been provided for each new User. If a signed copy of the CalGang User Agreement form is not sent to the Department for a User pursuant to this section, the Department may suspend and/or revoke the access of the User, the Node Administrator, and/or the Node Administrator's Designee.**

(e)   An Agency that is interested in accessing the CalGang database shall submit a written request to the Department or the local Node Administrator on the Agency's letterhead. The written request shall provide the following:

(1)   A reason for its need to access the CalGang database.

(A)   The Agency shall demonstrate a need to know and a right to know to satisfy this subparagraph.

(2)   The number of Users who will be accessing the CalGang database at that Agency and the level of access that is requested for each User.

(3)   The Agency's assigned originating agency identifier (ORI) number, if applicable.

(4)   The addresses of the facilities within the Agency where Users will access the CalGang database.

(5)   The name and contact information for the person(s) designated by the Agency as the~~A~~ point of contact and ~~a~~ training coordinator~~, who meets the definition of User in subdivision (dd) of section 750.4~~. If the Agency's point of contact and training coordinator are two different persons, the Agency shall identify both.

~~(A)   The point of contact shall meet the definition of User in subdivision (aa) of section 750.4.~~

(6)   If data entry access is requested, the Agency shall identify the classification**(s)**, rank**(s)**, and related expertise of the person(s) who will be responsible for performing the supervisory review required by section**s 752.8 and 753.4**~~753~~**.; and describe the organizational structure and process through which the supervisory review process required by sections 752.8 and 753.4 will occur.**

(A)   No User from an out-of-state agency or a federal agency shall have the ability to add**, edit,** or delete any records **or designated criminal street gangs** in the CalGang database.

(f)   The Department or Node Administrators shall determine whether written requests submitted pursuant to subdivision (e) by Agencies within their Node shall be approved.

(1)   **For requests submitted by an out-of-state agency or a federal agency, only the Department has the authority to approve those requests and**~~The Department shall review a request received from an out-of-state agency or a federal agency~~ to determine if the Department will enter into a memorandum of understanding with that agency consistent with these regulations~~, **and it**~~**Such memorandum** shall be kept on file by the Department.

(g)   A Non-User may request information contained within the CalGang database **from a User** ~~**without requesting access**~~ via a proxy query~~,~~ conducted pursuant to section 751.4.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

~~**§ 750.8. Limitations to the Access Provided to an Out-of-State or Federal Agency.**~~

~~If the Department is contacted by an out-of-state or a federal agency with a request to access records in the CalGang database, the Department shall review the request and determine if the Department will enter into a memorandum of understanding with that agency consistent with these regulations. An out-of-state or a federal agency shall not utilize information from the CalGang database, other than for criminal investigative purposes, as permitted under this chapter, and any such memorandum of understanding shall include an agreement by the out-of-state or federal agency to comply with such restriction and all other requirements of these regulations.~~

~~Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.~~

§ 750.8~~1~~. The Node Administrator's Role and Admission as a Node Agency.

(a)   A Node Agency is responsible for maintaining operational control and system supervision over its Node. A Node Agency shall **protect the system and data integrity by** ensur~~ing~~**e** that all User Agencies and Users in its Node adhere to these regulations and any applicable federal, state, or local laws, policies**,** or ordinances related to the CalGang database~~**, which shall protect the system and data integrity**~~.

(b)   A written request that is submitted by an Agency that is interested in becoming a Node Agency shall be reviewed by the Department. When the Department makes a determination in response to such a request, the Department shall consider the following factors:

(1)   The ability of **the**an Agency to serve in a leadership role in organizing and coordinating information collection activities of the agencies within a region to be served by a new Node.

(2)   The geographic area to be covered.

(3)   The ability of the requesting Agency to provide technical support to maintain the Node Agency.

(4)   The ability of the requesting Agency to pay the costs associated with becoming a Node Agency, including recruitment, training of Users, sufficient staff to manage the Node, and travel expenses for participation in CGNAC meetings.

(5)   Whether the appointed Node Administrator of the Node Agency, or the Node Administrator's Designee, **are able to**shall participate in the CGNAC, which includes attending all meetings and participating in audits.

(A)   Access **to the Node** shall be suspended and/or revoked if a Node Administrator or Node Administrator's Designee does not attend at least one CGNAC meeting per calendar year.

(B)   Node Administrators from out-of-state agencies or federal agencies may opt out of participating in CGNAC audits.

(c)   Once the Department determines that an Agency is capable of becoming a Node Agency, it shall enter into a memorandum of understanding with the Node Agency. The memorandum of understanding shall~~will~~ be consistent with these regulations and it shall be kept on file by the Department.

(d)   The Department shall be responsible for creating administrative accounts for each Node Administrator. Requests to create an administrative account shall be made in writing directly to the Department. The Department shall notify the requesting party in writing whether authorization is granted. Such written requests and authorizations shall be made either electronically or by mail.

(e)   Node Administrators are responsible for creating User accounts within their Node. Node Administrators are prohibited from creating User accounts that have the same level

of access as the Node Administrator without express written authorization from the Department. Users who are not Node Administrators may not use Node Administrator accounts.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 751.~~2.~~ CalGang Database User Terms and Account Security.

(a) **A User may search for information contained in the CalGang database by conducting a query. The User shall document the reason for their query in the CalGang database before a query may be conducted.**

(b) Node Agencies or User Agencies that enter information into the CalGang database are responsible for ensuring compliance with these regulations. All queries and entries in the CalGang database create a detailed activity log which the Department may audit at any time. If upon reviewing this log, the Department determines that any queries were conducted or entries were made in violation of these regulations, the Department shall take action pursuant to section 757.4.

(c) Each User Agency shall identify at least one person as the point of contact and report the point of contact to its Node Administrator and the Department.

> (1) The point of contact shall help facilitate training requests, retrieval of source documents, and any updates or changes to the CalGang database.

> (2) Any time a User Agency~~'s~~ changes its point of contact, it shall notify its Node Administrator. The Node Administrator shall notify the Department within 30 calendar days from the date it received notice from the User Agency to report the new contact information.

> (3) Node Administrators shall not delegate account creation to a point of contact.

~~**(b) Node or User Agencies that enter information into the CalGang database are responsible for its legality, relevance, accuracy, timeliness, and completeness.**~~

(~~d~~**e**) A Node Administrator is responsible for the prompt deactivation of accounts within its Node. **An account shall be suspended and/or revoked if account privileges are no longer applicable to a User's employment duties, the User's level of access has been changed, and/or the User is separating or has separated from employment with the User's**

~~**Agency**~~ ~~**The accounts of Users separated from employment with their Node or User Agency shall be suspended, and/or revoked when the Node Administrator is notified of the separation**~~.

    (1)   A User Agency shall inform its Node Administrator, or the Department if the Node Administrator is unavailable, of a **change in a User's employment duties, level of access, and/or** separation within 30 calendar days ~~**of**~~**from** the date of the **change in a User's employment duties, level of access, or** separation.

    (2)   A Node Administrator**, Node Administrator's Designee,** or the Department shall suspend and/or revoke the account within **seven**~~10~~ calendar days after receiving the notice of **the change in a User's employment duties, level of access, and/or** separation.

~~**(d)   An account shall be suspended and/or revoked if account privileges are no longer applicable to a User's employment duties or if the User's level of access has been changed.**~~

~~**(e)   An account shall be suspended and/or revoked, if it is determined that the account has been misused. Such an account, if suspended, may only be reinstated at the direction of the Department, the Node Administrator, or the Node Administrator's Designee.**~~

~~**(1)   Users who share their passwords with others shall be barred from using the CalGang database and their accounts shall be suspended and/or revoked.**~~

~~**(2)   Upon discovery, a User Agency shall report any account misuse to its Node Administrator. The Node Administrator shall report such account misuse to the Department within five calendar days from the date the User Agency informed the Node Administrator of the account misuse.**~~

(~~e~~**f**)   Any User account that has been inactive for 90 calendar days shall be suspended. Up to 180 calendar days following a suspension under this subdivision, a User may submit a written request to the Node Administrator to reactivate the User's account. **Upon reinstatement, the User shall take a recertification exam. If the User's account has been inactive for one year or more, the User shall be retrained before their account can be reinstated**~~If reinstatement is not timely requested, access to the User account shall be revoked~~.

    (1)   Exceptions shall be made to this subdivision for Users who take an authorized leave of absence. The User or User Agency shall notify the Node Administrator in writing within 30 calendar days from the date the leave of absence commences.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 751.24. Specific Policies and Procedures Set by Node Agencies and User Agencies.

(a)   Node **Agencies** and User Agencies may establish more restrictive policies and procedures than those set forth by these regulations as long as they relate to ~~either~~ User access, use of the CalGang database, or the entry of information into the CalGang database.

(1)   A Node Agency shall not impose more restrictive policies and procedures on a User Agency without the consent of the User Agency.

(2~~1~~)   A Node Agency that imposes more restrictive policies and procedures on a User Agency with its consent shall notify the Department in writing before those policies and procedures are implemented to obtain the Department's approval.

(3~~2~~)   If a User Agency imposes more restrictive policies and procedures on itself, it shall provide a written notice to its Node Administrator and the Department describing the restrictions.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 751.46. Proxy Query to the Information Contained in the CalGang Database.

(a)   A User shall not permit any **other** person access to **his or her**~~their~~ CalGang account. However, a User may disseminate information from the CalGang database **via** ~~by utilizing the~~ proxy query **feature within the CalGang database** to **conduct a search for** a Non-User who~~that~~ demonstrates a right to know and a need to know.

(1)   The Non-User requesting a proxy query shall complete the **CalGang** Proxy Query Agreement form **CJIS 9007**(~~revised~~ ~~March~~ **July**~~orig. November~~ 2019), incorporated by reference herein, prior to receiving any data **or information** from the CalGang database. Once the Non-User completes the **CalGang** Proxy Query Agreement form, the Non-User~~it~~ shall send it to the User. A **physical** copy of each **CalGang Proxy Query Agreement** form shall be kept on file by the User. The User shall provide the Department with a copy of each completed **CalGang** Proxy Query Agreement form **within 30 calendar days of conducting a proxy query**.

~~(2)   If a User disseminates information from the CalGang database to a Non-User, the User shall utilize the proxy query feature within the CalGang database to conduct a search for the requesting Non-User.~~

(~~2~~3)   When conducting ~~performing~~ a proxy query, the User shall enter into the CalGang database the information the Non-User provided in the **CalGang** Proxy Query Agreement form as the reason for conducting the proxy query.

~~(3)   If a User disseminates information from the CalGang database to a Non-User, the User shall utilize the proxy query feature within the CalGang database to conduct a search for the requesting Non-User.~~

(~~3~~4)   If a Non-User has an urgent need to request a proxy query while in the field and is unable to complete the **CalGang** Proxy Query Agreement form, a proxy query may be conducted by a User utilizing the proxy query feature within the CalGang database if the following requirements are met:

(A)   The User receiving the urgent proxy query request from the Non-User shall request the same information from the Non-User that is contained in the **CalGang** Proxy Query Agreement form and retain that information until a completed **CalGang** Proxy Query Agreement form is received from the Non-User.

(B)   The User shall read the following statement to the Non-User:

(1)   All information from the CalGang database is protected criminal intelligence data. Under no circumstances shall information from the CalGang database be released to the public or the media. Information in the CalGang database is confidential and shall not be referred to in official reports. **Information from T**~~t~~he CalGang database shall **not be accessed or used for any reason other than investigative purposes and shall not be used for the purposes of documenting immigration status or any other unlawful purpose**~~only be used for criminal investigations or for the lawful prevention of criminal gang activity~~. ~~In addition,~~ **T**~~t~~he database shall not be used for the purposes of enforcing federal immigration law, unless required by **California** state or federal statute or regulation; for military or employment screening purposes; or for non-criminal internal affairs investigations. **Notwithstanding, T**~~t~~his restriction does not **prohibit the exchange of**~~pertain~~

~~to~~ any information ~~that is~~ regarding a person's immigration or citizenship status pursuant to sections 1373 and 1644 of title 8 of the United States Code. Misuse of the CalGang database, or any information within it, may result in penalties, pursuant to Penal Code section 186.36.

(C)   The User shall notify the Non-User of the requirement to sign and send a **CalGang** Proxy Query Agreement form within 10 working days of the query.

(D)   The requesting Non-User shall agree to sign the **CalGang** Proxy Query Agreement form ~~pursuant to subdivision (C)~~, and shall send the signed form within 10 working days of the query.

(E)   The User is responsible for following up with the Non-User to ensure a signed **CalGang** Proxy Query Agreement form is provided. If a User ~~is found to have~~ conducted a proxy query and a signed **CalGang Proxy Query Agreement** form has not been ~~sent~~**received** by the ~~Non-~~User within 1~~5~~**0** working days of the query~~:~~**.**

> **(1)   T**~~t~~he **User shall contact the Non-User to retrieve a signed CalGang Proxy Query Agreement form. The Department shall suspend and/or revoke the** User's access **unless the User can demonstrate that they attempted to contact the Non-User on the 15th working day after the proxy query was conducted**~~shall be suspended and/or revoked~~.
>
> **(2)   A notation shall be made in the CalGang database for the non-compliant Non-User and the Non-User's agency, and future proxy query requests made by the Non-User and/or the Non-User's agency shall be denied until a signed CalGang Proxy Query Agreement form is received by the original User for the non-compliant Non-User.**

(b)   A User shall not disseminate information to a Non-User through the proxy query feature on a regular basis. If the same Non-User requests information through a proxy query more than 12 times per year, the User shall refer the Non-User to its Node Administrator or the Department to inquire about gaining access to the CalGang database pursuant to Article 3.

> (1)   The Department shall audit proxy query usage annually and track the number of proxy query requests made by each Non-User. **The Department shall suspend and/or revoke the access of a User, User Agency, and/or a Node Agency that allows more than 12 queries to be conducted by the same Non-User in a year.**

(c)   Nothing in subdivision (a) limits the sharing of information in the CalGang database if permitted under Article 8~~section 754~~ or Penal Code sections 186.34 and 186.35.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code.

Article 4. Training, Exam, and Requirements to be an Instructor

§ 751.6~~8~~. User Training.

(a)   Training shall only be conducted by an instructor approved by the Department, a Node Administrator, or a Node Administrator's Designee. Requirements to become an approved instructor are set forth in section 752.~~2~~.

(b)   At a minimum, instruction from an approved instructor shall address the following:

   (1)   Definitions **of**~~for~~ a "criminal street gang~~," "criminal predicate,"~~ and "reasonable suspicion."

   (2)   The criteria to enter a person as a Gang Member ~~and/~~or ~~a Gang~~ Associate into the CalGang database.

   (3)   Any federal, state and local laws, policies and ordinances regarding criminal intelligence information.

   (4)   Physical and technical database security and data dissemination.

   (5)   Practical, hands-on system usage.

   (6)   How to upload photographs to the CalGang database.

   (7)   Best practices for gathering criminal intelligence.

   (8)   Best practices for mitigating the entry and dissemination of false or incorrect information into or from the CalGang database.

   (9)   Notices, responses to inquiries, and removal guidelines in accordance with Articles 7, 8, and 9.

   (10)   Any policies, procedures, and guidelines pertinent to the CalGang database.

   (11)   Consequences of system misuse in relation to the CalGang database.

   (12)   The impact of releasing data for unauthorized purposes, including, but not limited to, how the unauthorized release of data may affect immigration proceedings and employment, housing, or military screening.

(13)   The impact of data collection **and inclusion in the CalGang database** on community members.

(14~~3~~)   Implicit bias, taking into account an agency's existing training on that topic.

(15~~4~~)   The entry of proxy query requests.

(c)   Upon completion of the instruction listed in subdivision (b), the approved instructor shall complete the "CalGang Administrator Use Only" section of the CalGang User Agreement form for each User who completed the training course. The approved instructor or their designee shall forward the signed copy of each User's CalGang User Agreement form to the Node Administrator no later than five working days after the User receives training.

(~~d~~**e**)   Additional required training may be added by the training instructor or the Node Administrator.

(e)   The Department may conduct on-site visits, including classroom observation and review of training records, to ensure compliance with this training mandate.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code, and Section 70615, Government Code.

§ 751.8~~2~~. Initial Exam Information and Recertification Exam.

(a)   Once instruction is completed, upon logging into the CalGang database, all Users shall ~~electronically complete a CalGang User Agreement form, incorporated by reference herein, and~~ take an initial certification exam on the curriculum described in subdivision (b) of section 751.**6**~~8~~.

(b)   Every **12**~~24~~ months after the date of initial certification or recertification, all Users shall take a recertification exam ~~and electronically complete a new CalGang User Agreement form~~. The CalGang database will prompt a User to take the recertification exam upon login once the User's certification has expired.

(c)   Upon completing an initial certification or recertification exam, the User will be notified immediately as to whether the User passed or failed the exam. The exam, results, and forms shall be stored within the CalGang database and shall be viewable only to the Node Administrators, IT contractors, and the Department.

(d)   The Node Administrator shall allow a User no more than three opportunities to retake the exam. If the User fails to pass the exam after three opportunities, the User's access shall be suspended. Once the User's access is suspended, the User shall contact the Node Administrator to complete refresher training, the content of which shall be determined by the Node Administrator. The Node Administrator shall restore access once the User completes the refresher training and passes the recertification exam.

==(e)   A failure to log in for 180 days will require the User to take the recertification exam upon reinstatement of the User's account. A failure to log in for one year or longer will result in the User having to be retrained by any Node Administrator or a Node Administrator's Designee.==

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 752.~~2~~. Requirements to Become an Approved Instructor.

(a)   Instructors shall be approved by the Department, a Node Administrator, or a Node Administrator's Designee and shall be graduates of the training outlined in subdivision (b) of section 751.**68**, have User experience with the CalGang database verified by the Node Administrator or the Department, and be tested in system proficiency. Instructors shall take a Department-approved course of instruction that shall provide an in-depth familiarization with all system applications, intelligence file guideline requirements, proper use, and any additional administrative requirements.

(b)   The name of any instructor approved by a Node Administrator or a Node Administrator's Designee shall be disclosed to the Department prior to the instructor providing training to any User.

(c~~b~~)   Instructors ==**shall**~~may~~== be subject to annual recertification training ==**at the discretion of the Department and/or Node Administrator**==. The Department, a Node Administrator, or a Node Administrator's Designee shall conduct the recertification training of previously approved instructors. Recertification training shall include, but not be limited to, system changes or updates, new mandates, and regulations.

(d)   The Department may revoke instructor training privileges for failure to comply with these regulations.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

Article 5. ~~Criteria for Designation in the CalGang Database.~~Designating a Person in the CalGang Database and Adding Information to a Person's Record

§ 752.2. Minimum Age of Entry and Requirements to Enter a Person into the CalGang Database.

(a)   No persons under the age of 13 shall be entered into the CalGang database.

(b)   A person shall not be designated as a Gang Member or Associate without the law enforcement agency having 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 the person willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang. The law enforcement officer shall document the specific information that serves as the basis for the reasonable suspicion based on the criteria in section 752.4. Satisfaction of criteria required by section 752.4 shall not, in and of itself, satisfy the reasonable suspicion requirement. Reasonable suspicion shall be based on the totality of circumstances, but considering only the information documented by the law enforcement officer(s) to demonstrate the satisfaction of each criterion and any other legally obtained information that supports or undermines the existence of each criterion.

(c)   Subject to subdivisions (a), (b), and (d), a person may be only entered into the CalGang database and designated as a Gang Member or Associate when at least two unique criteria listed in subdivision (a) of section 752.4 are found to exist through investigation by a trained law enforcement officer, provided that the criminal street gang's existence has been, or is concurrently, documented in the database.

(1) When subdivisions (a)(6) and (a)(7) of section 752.4 are used together, then at least one additional unique criterion from section 752.4 shall be satisfied for the person to be entered into the CalGang database and designated as a Gang Member or Associate.

(2)   For purposes of this subdivision, the satisfaction of the required number of criteria shall occur within a one year period.

(3) **A User may utilize an optional feature in the CalGang database to indicate whether the law enforcement officer suspects that the designated person is a non-member gang associate. Nothing in this clause modifies the conditions of designation in Article 5, the required contents of any notice under Article 7, or the required contents of any Agency response under Article 8.**

(d) **A person may only be entered into the CalGang database after the supervisory review process set forth in section 752.8 is conducted.**

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 752.~~42~~4. Criteria to be Designated as a Gang Member or ~~a Gang~~ Associate.

(a) **A person shall not be designated as a Gang Member or Associate without the law enforcement officer having reasonable suspicion that the person may participate in a criminal street gang with knowledge that its members engage in, or have engaged in, a pattern of criminal gang activity, or the person may willfully promote, further, or assist in any felonious criminal conduct by members of that gang. The law enforcement officer shall document the specific information that serves as the basis for the reasonable suspicion.**

(~~a~~**b**)   ~~In addition to satisfying the requirement of subdivision (a), t~~**T**he criteria to designate a person as a Gang Member or ~~a Gang~~ Associate in the CalGang database are:

(1)   The person has admitted to being a**n** ~~currently~~ active **Gang Member**~~member~~ or **associate of an active criminal street gang** ~~a Gang Associate~~ under circumstances that do not undercut truthfulness. The law enforcement officer shall document the relevant circumstances of the admission including, but not limited to: **the wording of the admission;** the location of the contact; the person(s) present during the conversation; **and 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** ~~the admitting person's demeanor; and whether the admitting person appeared to be under the influence of drugs or alcohol~~.

(A)   This criterion shall not be satisfied unless the law enforcement officer reasonably believes that the person was able to provide a voluntary and competent admission.

(B)   This criterion shall not be satisfied if the person admits to only being from a neighborhood rather than a specific criminal street gang.

(C)   This criterion shall not be satisfied solely by posts on social media unless there is strong indicia of reliability.

(2)   The person has been arrested for an offense consistent with gang activity**, as defined in these regulations**. **The law enforcement officer shall document how the facts and circumstances of the offense are consistent with gang activity.**

(A)   This criterion shall only be entered into the database when the arrest is documented on **a notify warrant; warrant of arrest; or** an arrest**, juvenile detention,** or crime report. A field interview card or report may be used as a source document if it is used in conjunction with an arrest or crime report.

~~(3)   The person has been identified as a Gang Member or a Gang Associate by a reliable source.~~

(3)   The person has been identified as an active member or associate of an active criminal street gang by a reliable source. The identification shall be based solely on information that would support criteria set forth herein. The law enforcement officer shall document the specific information that serves as the basis for the opinion of the reliable source, why the information provided by the source is consistent with the criteria set forth herein, and the reason(s) that the reliable source has been deemed reliable.

(A)   The satisfaction of this criterion shall not be based on an individual's jail classification.

(B)   For purposes of this subdivision, a reliable source shall not be a person who is under 18 years of age, a rival gang member, an untested informant, or the law enforcement officer conducting the interview or completing the source document to satisfy this criterion.

~~(4)   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.~~

(4)   The law enforcement officer has observed the person associating with person(s) who are already entered, or are in the process of being entered, into the CalGang database and the circumstances of the observed association indicates gang affiliation. The law enforcement officer shall document the circumstances of the association; the person(s) present who are already entered, or are in the process of being entered, into the CalGang database; and the reason for believing that the association indicates gang affiliation.

> **(A)   No person, including, but not limited to, family members and outreach workers, shall be considered for designation under this criterion unless there is reasonable suspicion that they contribute to, or are participating in, the criminal street gang's illegal activities.**

> **(B)   Incidental community interactions that are not criminal in nature shall not be used to satisfy this criterion.**

(**53~~5~~**)   The **law enforcement officer has observed the** person ~~has been seen~~ displaying one or more **accessories,** symbols**,** and/or hand signs tied to a specific **active** criminal street gang. The law enforcement officer shall document the specific **~~accessories,~~** symbol(s**),** and/or hand sign(s**) and the basis for believing** that **they** are tied to ~~the~~ **an active** criminal street gang.

> **(A)   Clothing itself shall not be considered a symbol; rather there shall be a specific symbol on the clothing which is tied to a specific criminal street gang.**

~~(6)   The person has been seen at one or more gang-related addresses or locations. The law enforcement officer shall document the specific address and/or location(s) and to which criminal street gang such address and/or location(s) is related.~~

(6)   The law enforcement officer has observed the person at one or more gang-related addresses. The law enforcement officer shall document the specific address(es) and to which active criminal street gang such address(es) are related. The law enforcement officer shall articulate justification for how the address(es) are gang-related including, but not limited to, graffiti by the related criminal street gang and crime originating by that criminal street gang at the address(es).

(A)   This criterion shall not be satisfied solely by the fact that the address is the residential address of a person who is already entered into the CalGang database.

(B)   Entire neighborhoods and schools shall not be used to satisfy this criterion.

(7)   The person has been seen wearing a style of dress or accessory that is tied to a specific criminal street gang. The law enforcement officer shall document the specific items and to which criminal street gang the style of dress or accessory is related.

(7)   The law enforcement officer has observed the person wearing one or more items of clothing and/or colors that the law enforcement officer believes is tied to a specific and active criminal street gang. The law enforcement officer shall document the specific clothing and/or colors, and the basis for believing that the person is wearing the clothing and/or colors to express gang membership or association.

(A)   This criterion shall not be satisfied solely by the wearing of clothing and/or colors that are of general interest to the neighborhood or locality including but not limited to, wearing a local sports team hat, clothing, or colors.

(84̶8̶)   The **law enforcement officer has observed the** person **has**having one or more tattoos, marks, scars, or branding**s** indicating criminal street gang membership or association. The law enforcement officer shall document a description of the tattoos, marks, scars, or branding**s, and** the location of each on the person's body**, and the basis for believing that they are tied to an active criminal street gang**.

(A)   A tattoo, mark, scar, or branding that remains unmodified and on the same place on a person's body that was used previously to satisfy this criterion shall not be used thereafter to satisfy that same criterion again unless it meets the elements set forth in subparagraph (C) or the record of that person has since been purged from the CalGang database.

(B)   If a person has multiple tattoos, marks, scars, or brandings that are the same or similar, and each one of those tattoos, marks, scars, or brandings is on a different location on the person's body, then each tattoo, mark, scar, or branding may be used to satisfy this criterion. However, each one of those tattoos, marks, scars, or brandings shall only be documented to meet that criterion once, and cannot be re-entered into the CalGang database as a

criterion on subsequent occasions, unless it meets the elements set forth in subparagraph (C) or the record of that person has since been purged from the CalGang database.

(C)   A law enforcement officer may document a tattoo, mark, scar, or branding as described in subparagraphs (A) and (B) to satisfy this criterion on subsequent occasions only if the person is in a public setting and is openly displaying, presenting, or flashing the tattoo, mark, scar, or branding as a means of intimidation. If the law enforcement officer documents the tattoo, mark, scar, or branding pursuant to this subparagraph, the law enforcement officer shall document the relevant circumstances of the contact including, but not limited to, the type of public setting in which the contact occurred and a description of how the tattoo, mark, scar, or branding was openly displayed, presented, or flashed.

(b)   For each criterion listed in this section, the law enforcement officer shall document the means by which their observation was made including, but not limited to: in person, in writing, on a video or audio recording, or over the internet.

(c~~b~~)   ~~The existence of criteria may be determined as a result of information learned or observed by law enforcement on separate occasions.~~

(c~~d~~)   When designating a person as a Gang Member or Associate, aA criterion listed in subdivision (**a**~~b~~) shall not be **~~satisfied if~~based on contact(s), incident(s), and/or supporting source documents that are more than one year old**~~it occurred more than five years prior to entry in the CalGang database~~.

(**d**~~e~~e)   The existence of all criteria shall be supported by source documents.

(e)   Photographs and videos are permitted to be used as source documents only if they are legally obtained.

(1)   The law enforcement officer shall indicate whether a recording of their contact with a person is available and if it was recorded by law enforcement including, but not limited to, body camera footage or an audio recording.

(2)   The law enforcement officer shall document the date the photograph or video was observed by the law enforcement officer, the date published and by whom, and the date created, if available.

(3) The use of social media to satisfy any of the criteria set forth in this section shall be carefully evaluated by the law enforcement officer and the law enforcement officer shall consider at a minimum: the context of the posting(s), the frequency of posting, whether there are other corroborating indicators, and whether one can ascertain the true identity of the person posting or pictured.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 752.4~~6~~. Minimum Age of Entry and Requirements~~s~~ to Enter a Person into the CalGang Database.

(a) ~~No persons under the age of 13 shall be entered into the CalGang database.~~

(b) A person may be ~~initially~~ entered into the CalGang database and designated as a Gang Member or Associate when at least two criteria listed in subdivision (b~~a~~) of section 752.2~~4~~ are found to exist through investigation by a trained law enforcement officer, ~~based on a trained law enforcement officer's reasonable suspicion,~~ provided that the criminal street gang's existence has been, or is concurrently, documented in the database.

~~(c) A person may be initially entered into the CalGang database and designated as a Gang Associate when the criterion in subdivision (a)(4) of section 752.4 and at least one other criterion listed in subdivision (a) of section 752.4 are found to exist through investigation, based on a trained law enforcement officer's reasonable suspicion, provided that the criminal street gang's existence has been, or is concurrently, documented in the database.~~

~~(1) A Gang Associate shall not be entered into the CalGang database unless that person's record in the CalGang database is linked to the record of a Gang Member.~~

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 752.6~~8~~. Other Rules Pertaining to the Entry of a Person in the CalGang Database.

~~(a) Following the initial designation of a person in the CalGang database, a User may enter subsequent information into the CalGang database that pertains to that person if the person meets a minimum of one criterion during a contact with a trained law enforcement officer. If a person's initial entry has been purged, the person may only be entered into the CalGang database~~

~~again if the person meets the requirements set out in either subdivision (b) or (c) of section 752.6.~~

~~(a~~~~b~~~~)   A tattoo, mark, scar, or branding that remains unmodified and on the same place on a person's body that was used previously to satisfy the criterion set forth subdivision (b~~a~~)(4~~8~~) of section 752.2~~4~~ shall not be used thereafter to satisfy that same criterion again unless it meets the elements set forth in subdivision (c~~d~~) or the record of that person has since been purged from the CalGang database.~~

~~(b~~e~~)   If a person has multiple tattoos, marks, scars, or brandings that are the same or similar, and each one of those tattoos, marks, scars, or brandings is on a different location on the person's body, each tattoo, mark, scar, or branding may be used to satisfy the criterion set forth in subdivision (b~~a~~)(4~~8~~) of section 752.2~~4~~. However, each one of those tattoos, marks, scars, or brandings shall only be documented to meet that criterion once each, and cannot be re-entered into the CalGang database as a criterion on subsequent occasions, unless it meets the elements set forth in subdivision (c~~d~~) or the record of that person has since been purged from the CalGang database.~~

~~(c~~d~~)   A law enforcement officer may document a tattoo, mark, scar, or branding as described in subdivisions (a~~b~~) and (b~~e~~) to meet the criterion in subdivision (b~~a~~)(4~~8~~) of section 752.2~~4~~ on subsequent occasions only if the person is in a public setting and is openly displaying, presenting, or flashing the tattoo, mark, scar, or branding as a means of intimidation. If the law enforcement officer documents the tattoo, mark, scar, or branding pursuant to this subparagraph, the law enforcement officer shall document the relevant circumstances of the contact including, but not limited to~~,~~: the type of public setting in which the contact occurred and a description of how the tattoo, mark, scar, or branding was openly displayed, presented, or flashed.~~

~~Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.~~

§ 752.6. Adding Information to a Person's Record.

(a)   After a person has been designated as a Gang Member or Associate in the CalGang database, a User may add legally obtained information to that record, including, but not

limited to, information regarding the satisfaction of a criterion that occurred prior to, or after, entry in the CalGang database.

(b)   Additional information may only be entered into the CalGang database after it undergoes the supervisory review process set forth in section 752.8.

(c)   Additional information shall not affect the retention period of records unless required by sections 754.4 or 754.6.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 752.8. Supervisory Review Process of Intelligence Data.

(a)   No entry shall be made in the CalGang database, unless all related intelligence data is first meaningfully reviewed and approved by the appropriate supervisory classification pertinent to the organizational structure of the Node Agency or User Agency. In addition to the first-level supervisor, the Department encourages entries to be reviewed and approved by the gang unit lieutenant, or equivalent, whenever possible.

(b)   The supervisory review shall determine whether the proposed entry and underlying documentation complies with these regulations, including but not limited to whether the reasonable suspicion requirement was satisfied, and whether any intelligence data was obtained in violation of any applicable federal, state, or local law, policy, or ordinance. Any intelligence data obtained in violation of any applicable federal, state, or local law, policy, or ordinance shall not be entered into the CalGang database.

   (1)   When intelligence data is being reviewed for a person to be designated as a Gang Member or Associate, the supervisory review shall also determine whether the minimum age and entry requirements set forth in section 752.2 have been satisfied.

   (2)   The supervisory review may review additional legally obtained information and/or supporting documentation to add to the person's record in the CalGang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

Article 6. Designating an Organization as a Criminal Street Gang in the CalGang Database and Adding Information to a Designated Criminal Street Gang

§ 75~~32.8~~3. ~~Criteria for an Organization to be Designated~~Requirements to Designate an Organization as a "Criminal Street Gang."

(a)   An organization may be designated as a criminal street gang and entered into the CalGang database as such only if it meets all of the following:

(1)   The Node **Agency** or User Agency has ~~articulable~~ reasonable suspicion for making the designation. The Node **Agency** or User Agency shall document the basis of the reasonable suspicion.

(2)   The **association or** organization comprises three or more persons who meet the **requirements**~~criteria~~ to be designated as a Gang Member~~s~~ or Associate pursuant to **subdivision (c) of section 752.2**~~Article 5~~. The User Agency shall notify the Node Administrator of the **association or** organization and request that the **association or** organization be **classified**~~designated~~ as a criminal street gang ~~and be entered as such~~ in**to** the CalGang database. **Once**~~If~~ the Node Administrator approves the request, the User Agency shall create records in the CalGang database for each~~the~~ Gang Member~~s~~ or Associate that belongs to the criminal street gang.

(3)   The **association or** organization has a common sign, symbol, and/or name. The Node **Agency** or User Agency shall document the specific sign, symbol, and/or name that is tied to the **association or** organization and explain why it is interpreted as belonging to the proposed criminal street gang.

(4)   The **association or** organization**,** or its members **have** collectively or individually **engage in or have** engaged in a pattern of definable criminal activity. ~~The Node or User Agency shall document the reasonable suspicion stemming from this definable criminal activity.~~ **The Node Agency or User Agency shall identify the type(s) of crime(s) that the Node Agency or User Agency believes were committed and i**~~I~~f the **association, organization, or its** members **of the organization** have collectively or individually been arrested for an**y** offense**(s)** consistent with gang activity**,** ~~the Node or User Agency shall identify the type of crime that the Node or User Agency reasonably believes was committed~~ and include that as a part of the documentation.

(5)   One of the primary activities of the organization is the commission of crimes enumerated in paragraphs (1) to (25), inclusive, and paragraphs (31) to (33), inclusive, of subdivision (e) of Penal Code section 186.22. The Node Agency or User Agency shall identify which of the aforementioned crimes the Node Agency or User Agency believes were committed and if members of the organization have collectively or individually been arrested for one or more of the aforementioned crimes and include that as a part of the documentation.

(b)   A new criminal street gang ~~shall~~**may** only be added into the CalGang database by the Department or a Node Administrator **after the supervisory review process set forth in section 753.4 is conducted**. If a Node **Agency** or User Agency determines that a new criminal street gang should be added to the CalGang database, it shall submit in writing the information provided in subdivision (a) to either the Department or its Node Administrator.

(c)   ~~The record for a~~**A** criminal street gang shall remain in the CalGang database ~~as long as the organization meets the criteria set forth in this section or~~ until an audit conducted pursuant to section 755.4 **or 755.8** determines that the ~~record~~**designated criminal street gang** shall be purged from the CalGang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

§ 753.2. Adding Information to a Designated Criminal Street Gang.
(a)   After an organization has been designated as a criminal street gang in the CalGang database, a User may add legally obtained information to that designated criminal street gang, including, but not limited to: known gang addresses; associated cliques; history of the gang; common signs, symbols, and/or names; and criminal predicate crimes.
(b)   Additional information may only be entered into the CalGang database after it undergoes the supervisory review process set forth in section 753.4 is conducted.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

Article 6. Supervisory Review and Deleting Unsupported Records.

§ 753.42. Supervisory Review Process of Criminal Street Gang Intelligence Data.

(a)   No entry shall be made in Prior to any entry into the CalGang database, **unless** all **related** criminal street gang intelligence data shall be**is first meaningfully** reviewed **and approved** by the appropriate supervisory classification pertinent to the organizational structure of the Node **Agency** or User Agency. **In addition to the first-level supervisor, the Department encourages entries to be reviewed and approved by the gang unit lieutenant, or equivalent, whenever possible.**

(b)   The **supervisory** review shall determine whether the **proposed entry and underlying documentation complies with these regulations, including but not limited to whether the reasonable suspicion requirement was satisfied, and whether any** criminal street gang intelligence data was obtained in violation of any applicable federal, state, or local law,: policy,; or ordinance. Any intelligence data obtained in violation of any applicable federal, state, or local law, policy, or ordinance shall not be entered into the CalGang database.

> **(1)   When criminal street gang intelligence data is being reviewed for an organization to be designated as a criminal street gang, the supervisory review shall also determine whether the requirements set forth in section 753 have been satisfied.**
> **(2)   The supervisory review may review additional legally obtained information and/or supporting documentation to add to the designated criminal street gang in the CalGang database.**

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 753.24. A Node or User Agency's Discretion to Delete Unsupported Records.

(a)   At its discretion, a Node or User Agency that created a record or entered subsequent criteria for a person in the CalGang database may delete the entry or entries it created if:

> **(1)   During self-auditing the Node or User Agency finds that the supporting documents are missing or incomplete.**
> **(2)   The Node or User Agency finds that the record is not in compliance with Article 9.**
> **(3)   Intelligence was obtained in violation of applicable federal, state, or local law, policy, or ordinance.**

(4)   For any other reason as long as it is substantiated.

(b)   Ten calendar days prior to deleting a record or an entry created by the deleting Node or User Agency, the deleting Node or User Agency shall communicate in writing with other Node or User Agencies that have entered additional information to support that record or entry in the CalGang database. The written communication shall identify the record or entry the deleting Node or User Agency seeks to delete, the reason for its deletion, and the date it anticipates deleting the record or entry.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

Article 7. Notice of Inclusion in the CalGang Database

§ 753.64~~6~~. Notifying a Person of Inclusion in the CalGang Database.

(a)   Pursuant to subdivision (c) of Penal Code section 186.34, a person, and at least one parent or guardian of the person if the person is a juvenile, shall be notified of the person's inclusion in the CalGang database in writing prior to the person being entered into the CalGang database.

(b)   Any such notice shall~~may~~, at the discretion of the Node **Agency** or User Agency delivering the notice, be delivered only: (1) in person at the time of contact or to the physical address provided by the person at the time of contact, or (2) by mail to the physical address provided by the person at the time of contact or a physical address that the ~~User or~~ Node Agency **or User Agency** discovered by utilizing other means that are accessible to the Node **Agency** or User Agency, provided that such access is permitted by law. **An Agency shall not require a person to appear in-person at the Agency to retrieve their notice of inclusion.** A law enforcement officer will presume that a juvenile resides with at least one parent or guardian, and that the physical address provided by the juvenile at the time of contact is the correct physical address for at least one parent or guardian.

(1)   Each time a law enforcement officer makes contact with a juvenile and suspects that the juvenile will be designated as a Gang Member or ~~a Gang~~ Associate in the CalGang database, at the time of contact, the law enforcement officer shall confirm whether the juvenile lives with a parent or a guardian at the physical address provided by the juvenile. If the juvenile does not live with a parent or guardian, the law enforcement officer shall

request the physical address of such parent or guardian for the purposes of satisfying the

notice requirements set forth by subdivision (c) of Penal Code section 186.34.

(c)   In addition to the requirements set forth under subdivision (c) of Penal Code section 186.34,

a written notice required thereunder shall clearly indicate:

(1)   Whether the person is to be designated as a Gang Member or Gang Associate.

(1~~2~~)   The criteria supporting the person's designation as a Gang Member or Associate **and
the basis for the designation**~~The basis for the designation~~.

(2)   **To the extent possible, T**~~t~~he date(s)**, time(s), and location(s)** of the contacts or

observations on which the criteria for designation were satisfied.

(3)   A description of the process to contest designation, including the name of the Node

Agency or User Agency to contact.

(4)   A reference to Penal Code section 186.35 regarding the person's right to petition the

court to review the designation.

(5)   The name of the criminal street gang that the person is connected to in the database.

**(6)   A Node Agency or User Agency that operates a gang intervention or outreach
service shall include the contact information for that service whenever a notice of
inclusion pertains to the designation of a juvenile.**

(7)   The following statement:

> **(A)   The CalGang database, and your designation in the database, is for law
> enforcement intelligence purposes only. The laws governing the CalGang
> database do not compel you to report your designation in the database to any
> government official or entity for any purpose.**

**(8)   A link to the CalGang page on the Attorney General's website that shall provide
an explanation of how the information entered into the CalGang database will be used
and the length of time that the person's information shall remain within the CalGang
database.**

(d)   A Node **Agency** or User Agency that issues the notice may include the following additional

information within the notice:

(1)   The name of the criminal street gang that the person is connected to in the database.

**(1~~2~~)   A link to the CalGang page on the Attorney General's website that shall
provide an explanation of how the information entered into the CalGang database**

~~will be used and the length of time that the person's information shall remain within the CalGang database.~~

(1)   The documentation supporting the criteria that were satisfied for designation.

(e)   A Node **Agency** or User Agency shall document the attempted delivery of each notice. ~~Each record~~**The documentation** shall contain:

(1)   The name of the recipient of the notice and, if different, the person to which the notice pertains.

(2)   The date the notice was mailed or attempted to be delivered in person to the recipient and the method of delivery.

(3)   If the notice was undeliverable, the Node **Agency** or User Agency shall, for mailed notices, document the date it received the "returned to sender" notification and retain a copy of the notification in its files, and, for attempts to deliver notices in person, document by notation or otherwise that the notice was undeliverable.

(f)   The notice requirement shall be satisfied upon the first attempt if the notice is: (1) delivered in person to the person to whom it pertains, or in the case of a juvenile, to the person and at least one parent or guardian of the person to whom the notice pertains, or (2) mailed to the person to whom it pertains or, in the case of a juvenile, the person and at least one parent or guardian of the person to whom the notice pertains, and the notice is not returned to sender as undeliverable. If a juvenile to whom the notice pertains resides at the same physical address as a parent or guardian, the Node **Agency** or User Agency shall send two notices to that physical address; one shall be addressed to the juvenile to whom the notice pertains, and the other shall be addressed to the juvenile's parent or guardian. If the first attempt to deliver the notice does not satisfy the foregoing requirements, the notice requirement will nonetheless be satisfied if both of the following are met:

(1)   The Node **Agency** or User Agency has no reasonable alternative method to deliver to that person, or in the case of a juvenile, to the person and at least one parent or guardian of the person to whom the notice pertains.

(2)   The Node **Agency** or User Agency complied with the documentation requirements set out in subdivision (e) of this section.

(g)   The notice requirement will not be satisfied on the first attempt if the notice fails to be delivered and the Node **Agency** or User Agency possesses more than one method of contacting

the person. In such a situation, the Node **Agency** or User Agency shall make a second attempt to deliver the notice to the recipient and it shall use a different method of delivery than the one that was used for the first attempt. The Node **Agency** or User Agency shall document both attempts as set out in subdivision (e) of this section.

(h)   A Node **Agency** or User Agency shall not knowingly send notice letters to places of employment, schools, or places of higher education unless such a place is also the residence facility of the recipient, such as a school dormitory.

(i)   If sending a notice of inclusion to either an adult or a juvenile would compromise an active criminal investigation or the health or safety of a juvenile that is designated in the CalGang database as a Gang Member or ~~a Gang~~ Associate, the Node **Agency** or User Agency is not required to attempt to deliver a notice under this section or subdivision (c) of Penal Code section 186.34.

   (1)   If a Node **Agency** or User Agency does not provide notice pursuant to this subdivision, the Node **Agency** or User Agency shall nonetheless prepare the form of notice as described in this section and it shall indicate in the CalGang database that no notice was sent, provide the date the Node **Agency** or User Agency determined to not send the notice, and provide a summary of the reason(s) for that determination. This documentation shall remain in the CalGang database until the record pertaining to that person is purged from the CalGang database.   Nothing in this subdivision restricts the release of a notice under court order or for an in-camera review by a court. Nothing in this section requires a Node **Agency** or User Agency to disclose any information protected under sections 1040 or 1041 of the Evidence Code or section 6254 of the Government Code.

(j)   All information pertaining to the above sections shall be captured in the CalGang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

Article 8. Information Requests, an Agency's Response to Information Requests, and an Agency's Response to a Request for Removal
§ 753.86~~8~~. Information Requests and Verifying the Identity of the Requesting Party.

(a)   Each Agency may develop a verification of identity form that the Agency may use to determine whether the information request pursuant to subdivision (d) of Penal Code section 186.34 is made by an authorized person.

    (1)   An attorney may send an information request to an Agency on behalf of a client that the attorney is representing. The Agency shall verify that the attorney is representing the **person**~~individual~~ for whom information is being requested and that the attorney is licensed to practice by verifying the attorney's state bar number.

(b)   If an Agency chooses to develop a verification of identity form, the form may seek information verifying the requesting person's name, address, date of birth, driver license number, state identification number, or state bar number. The Agency shall not have the authority to request from a person, ~~his or her~~**their** parent or guardian, or an attorney working on behalf of the requesting person, a copy of a birth certificate**, a social security number,** or documentation of citizenship or immigration status to satisfy its written verification of identity requirement.

(c)   Verification of a person's identity does not have to be done through a government issued identification document; rather proof of identity may be presented in either of the following ways:

    (1)   T~~t~~hrough an acknowledgement form prepared, signed, and endorsed by a notary public. This acknowledgement form shall accompany the Agency's verification of identity form, if that Agency uses a verification of identity form.

    (2)   By presenting a school identification card.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

§ 75~~43.8~~4. An Agency's Response to an Information Request.
(a)   If an Agency receives an information request concerning a person who has a record in the CalGang database, the responding Agency shall contact each Node Agency or User Agency that has created an entry to ensure that the dissemination of the requested information does not compromise an active criminal investigation or the health or safety of a juvenile that has been designated as a Gang Member or Associate in the CalGang database.

(**ba**)   An Agency's response to an information request pursuant to subdivision (d) of Penal Code section 186.34 shall be communicated in writing and shall include:

(1)   Verification that the request was received and the date of its receipt.

(2)   Whether the person is designated as a Gang Member or ~~a Gang~~ Associate in the CalGang database.

(3)   The criteria supporting the person's designation as a Gang Member or Associate in the CalGang database **and the basis for the designation** ~~Information as to the basis for the designation, including at least the initial criteria that resulted in the designation~~.

(4)   **To the extent possible, T**~~t~~he date(s)**, time(s), and location(s)** of the contacts or observations on which the criteria for designation were satisfied.

(5~~4~~)   A description of the process to contest a designation, including the name of the Agency to contact.

(6~~5~~)   A reference to Penal Code section 186.35 regarding the person's right to petition the court to review the designation.

(7)   The name of the criminal street gang that the person is connected to in the database.

(8)   A Node Agency or User Agency that operates a gang intervention or outreach service shall include the contact information for that service whenever a response to an information request pertains to the designation of a juvenile.

(9)   The following statement:

     (A)   The CalGang database, and your designation in the database, is for law enforcement intelligence purposes only. The laws governing the CalGang database do not compel you to report your designation in the database to any government official or entity for any purpose.

(10)   A link to the CalGang page on the Attorney General's website that shall provide an explanation of how information entered into the CalGang database is used and the length of time that a person's information shall remain within the CalGang database.

(**cb**)   An Agency responding to the request may, but is not required to, include the following additional information within the response:

(1)   ~~The name of the criminal street gang that the person is connected to in the database.~~

~~**(12)   A link to the CalGang page on the Attorney General's website that shall provide an explanation of how information entered into the CalGang database is used and the length of time that a person's information shall remain within the CalGang database.**~~

~~**(1)   The documentation supporting the criteria that were satisfied for designation.**~~

~~**(e)   If an Agency receives an information request concerning a person who has a record in the CalGang database, the responding Agency shall contact the Node or User Agency that created the entry to ensure that the dissemination of the requested information does not compromise an active criminal investigation or the health or safety of a juvenile that has been designated as a Gang Member or ~~Gang~~ Associate in the CalGang database.**~~

(d)   Notwithstanding the foregoing, if responding to an information request from either an adult or a juvenile would compromise an active criminal investigation or the health or safety of a juvenile who is designated as a Gang Member or ~~a Gang~~ Associate in the CalGang database, the Agency that received the request is not required to provide a response.

    (1)   If an Agency does not respond to an information request pursuant to this subdivision, it shall nonetheless prepare the form of response as described in subdivision (**b**~~a~~) of this section, and document a summary of reasons why a response was not sent and the date when this determination was made, and it shall maintain this documentation until the record pertaining to that person is purged from the CalGang database. Nothing in this subdivision restricts the release of a response under court order or for an in-camera review by a court. Nothing in this section requires a local law enforcement agency to disclose any information protected under sections 1040 or 1041 of the Evidence Code or section 6254 of the Government Code.

(e)   All information pertaining to the above sections shall be captured in the CalGang database.

Note: Authority cited: Section 186.36 of the Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code.

§ 754.<mark>2.</mark>~~2.~~ An Agency's Response to a Request for Removal.

(a)   An Agency shall respond to a request for removal by a person in accordance with subdivision (e) of Penal Code section 186.34. Even after **a request for removal has been**

deemed **denied**~~to be a denial~~ upon expiration of the thirtieth day following the request ~~for removal~~, an Agency may, but is not required to, deliver a notice of denial and the reason for the denial.

(b)   Notwithstanding the foregoing, if responding to a request for removal from either an adult or a juvenile would compromise an active criminal investigation or the health or safety of a juvenile who is designated as a Gang Member or Associate in the CalGang database, the Agency that received the request is not required to provide a response.

(1)   If an Agency does not respond to a request for removal pursuant to this subdivision, it shall nonetheless prepare the response as described in subdivision (a), and document a summary of reasons why a response was not sent and the date when this determination was made, and it shall maintain this documentation until the record pertaining to that person is purged from the CalGang database. This documentation shall be captured in the CalGang database. Nothing in this subdivision restricts the release of a response under court order or for an in-camera review by a court. Nothing in this section requires a local law enforcement agency to disclose any information protected under section 1040 or 1041 of the Evidence Code or section 6254 of the Government Code.

(c)   An Agency shall consider any evidence presented by a person requesting removal, including, but not limited to: successful completion of parole or probation with restrictions placed on gang terms, removal or cover up of tattoos that were indicative of criminal street gang membership or association, community service hours, participation in gang intervention and/or prevention programs, and proof of employment.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code.

Article 9. Retention Periods~~of Records, Purging, and Source Documents.~~
§ 754.42~~4~~**. Retention Period for Adult Records.**

(a)   The record of a person who is 18 years of age or older~~A person's record~~ shall be retained in the CalGang database for up to five years, and upon termination of the retention period, the record shall be automatically purged from the database.

(b)   If a minimum of two additional criteria is added to a person's record in the CalGang database pursuant to section 752.**42 and the reasonable suspicion requirement set forth in subdivision (b) of section 752.2 remains satisfied**, the five-year retention period will be reset to begin on the date **of entry of** the second **additional** criteri~~a~~on **is satisfied**.

> **(1)   These two additional criteria shall be different from each other but do not need to differ from those that were satisfied for the initial designation of the person in the CalGang database.**
>
> **(2)   The satisfaction of these two additional criteria shall occur within a one year period.**

(c)   An officer shall not use the fact that a person's record is about to purge from the CalGang database in determining whether to stop or contact the designated person.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 754.~~6~~4. Retention Period for Juvenile Records.

(a)   A juvenile's record shall be retained in the CalGang database for up to three years, and upon termination of the retention period, the record shall be automatically purged from the database.

(b)   If a minimum of two additional criteria is added to a person's record in the CalGang database pursuant to section 752.**42 and the reasonable suspicion requirement set forth in subdivision (b) of section 752.2 remains satisfied**, the three-year retention period will be reset to begin on the date **of entry of** the second **additional** criterion **is satisfied**.

> **(1)   These two additional criteria shall be different from each other but do not need to differ from those that were satisfied for the initial designation of the person in the CalGang database.**
>
> **(2)   The satisfaction of these two additional criteria shall occur within a one year period.**

(c)   If a juvenile reaches 18 years of age while that person's record is retained in the CalGang database pursuant to subdivision (a), and two additional criteria are added to that person's record in accordance with section 752.**42 after the person reaches 18 years of age and the reasonable**

==suspicion requirement set forth in subdivision (b) of section 752.2 remains satisfied==, that person's record shall be retained for five years pursuant to section 754.2.

    ==(1)   These two additional criteria shall be different from each other but do not need to differ from those that were satisfied for the initial designation of the person in the CalGang database.==

    ==(2)   The satisfaction of these two additional criteria shall occur within a one year period.==

==(d)   An officer shall not use the fact that a person's record is about to purge from the CalGang database in determining whether to stop or contact the designated person.==

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 754.==8==6. Retention Period for Notice of Inclusion.

A Node ==Agency== or User Agency shall maintain copies of each notification to a recipient that was issued pursuant to subdivision (c) of Penal Code section 186.34 and the related documentation required under section 753.4~~6~~, for the length of time a record about the person to whom the notice pertains is in the CalGang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

§ 75==5==4.==8==. Retention Period for Information Requests and Responses.

An Agency shall maintain copies of all information requests under subdivision (d) of Penal Code section 186.34 and responses for the length of time a record about the person to whom the information request pertains is in the CalGang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

§ 755.==2. Retention Period for== Source Documents.

(a)   A Node **Agency** or User Agency that enters information into the CalGang database shall maintain the source documents supporting the entry. The source documents shall be retained for the same period as the CalGang database record they support.

~~(b)   Photographs are permitted to be used with source documents only if they are legally obtained.~~

~~(1)   A photograph utilized as a source document to satisfy a criterion shall have been captured within five years of the date on which that criterion is entered into the CalGang database.~~

(**b~~c~~**)   At any time source documents are found to be missing or incomplete to adequately support a criterion, the Node **Agency** or User Agency shall remove the unsupported criterion.

(1)   Removal shall be conducted within 30 calendar days from the date the Node **Agency** or User Agency discovered that the source documents were missing~~lacking~~ or incomplete~~inappropriate~~.

(2)   If a record in the CalGang database contains both adequate and inadequate source documents, the record shall remain in the database on the basis of the adequate source documents if there is enough information present to satisfy, as the case may be, the criteria requirement**s** pursuant to section 752.**24**.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

Article 10. Audits.
§ 755.4. A Node Agency or User Agency's Discretion to Perform Self-Audits.
(a)   At its discretion, a Node Agency or User Agency may audit its own records and shall report the results to the Department in writing within 30 calendar days of the date each audit is concluded.
(b)   A Node Agency or User Agency that created a record or entered subsequent criteria for a person in the CalGang database shall delete the entry or entries it created if:
(1)   During self-auditing the Node Agency or User Agency finds that the supporting documents are missing or incomplete.
(2)   The Node Agency or User Agency finds that the record is not in compliance with these regulations.

(3)   Intelligence was obtained in violation of applicable federal, state, or local law, policy, or ordinance.

(c)   At its discretion, a Node Agency or User Agency that created a record or entered subsequent criteria for a person in the CalGang database may delete the entry or entries it created for any other reason than those stated in subdivision (b) as long as it is substantiated.

(d)   Ten calendar days prior to deleting a record or an entry created by the deleting Node Agency or User Agency, the deleting Node Agency or User Agency shall communicate in writing with other Node Agencies or User Agencies that have entered additional information to support that record or entry in the CalGang database. The written communication shall identify the record or entry the deleting Node Agency or User Agency seeks to delete, the reason for its deletion, and the date it anticipates deleting the record or entry.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

§ 755.62. Peer Audits of Records in the CalGang Database.

(a)   At least three times per calendar year, Node Administrators shall conduct Peer Audits on a sample of randomly selected records from within their Node. Peer Audit assignments shall be randomly assigned by the Department and shall be completed within 60 calendar days from the date they are assigned. Upon completion of the Peer Audit assignments, Node Administrators shall provide the audit(s) and corresponding~~report the~~ results of the audit(s) to the Department. Any record and/or criteria found to be out of compliance with Articles 5 and 9 shall be purged from the CalGang database within 30 calendar days of the completion of the audit unless such record(s) and/or criteria were entered prior to ~~January~~July 1, 2020 and were in compliance with entry requirements at the time of entry.

(b)   Peer Audits of CalGang records created prior to July 1, 2020 shall ensure that:

    (1)   Each record has a minimum of two criteria that are adequately supported by source documents.

(2) **The scheduled purge date is not more than five years from the date of the satisfaction of the most recent criterion, unless the retention period was reset pursuant to section 754.6.**

(c) **Peer Audits of CalGang records created on or after July 1, 2020 shall ensure that:**

(1) **Reasonable suspicion exists as set forth in subdivision (b) of section 752.2.**

(2) The scheduled purge date is in compliance with the time period provided in Article 9.

(3) Each ~~audited~~ record ~~that was created on or after January 1, 2020, adheres to these regulations~~**satisfies the requirements set forth in subdivision (c) of section 752.2**.

(**d**~~e~~) The Department shall review the audit(s) and corresponding results for accuracy and compliance.

(**e**~~d~~~~e~~) The Department shall report a summary of the results of all audits annually on the Attorney General's website.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 755.8~~**4**~~**. Audits of Designated Criminal Street Gangs**~~**.**~~

(a) ~~**At least three times per calendar year,**~~**At least once every three years from the date a criminal street gang was designated in the CalGang database or from the last time an audit was conducted by the Department, a Node Agency, or a User Agency, a supervisor at each Node Agency and User Agency**~~**Node Administrators**~~ shall ~~**conduct**~~**complete** an audit of ~~**all**~~**that** criminal street gang **designated in the CalGang database**. **Within 30 calendar days of completion of the audit, the Node Agency or User Agency shall complete, sign, and submit a CalGang Gang Audit form CJIS 9005 (orig. November 2019), incorporated by reference herein, to the Department documenting the results of each audit and the date each designated criminal street gang was audited** ~~that contain less than three persons designated as a Gang Members or Associate~~.

~~**(b)** **Each criminal street gang with more than three persons designated as a Gang Member or Associate**~~~~**members**~~ ~~**shall be audited every five years from the date of its last audit to ensure that it complies with the criteria set forth by section 752.8**~~~~**3**~~.

~~**(c)** **If upon auditing, a Node Administrator discovers that a criminal street gang indicated in the CalGang database by a Node or User Agency in that Node has less than three**~~

~~persons designated as a Gang Members or Associate in its Node, the Node Administrator~~ ~~shall verify that the criminal street gang has three or more~~ ~~documented~~ ~~persons designated~~ ~~as a Gang Members or Associate across the CalGang database. If it is found that a~~ ~~criminal street gang contains less than three persons designated as a Gang Members or~~ ~~Associate in total, the criminal street gang and any records associated with persons entered~~ ~~in connection with that criminal street gang shall be purged from the CalGang database.~~

(**b**~~d~~)   Audits of a **designated** criminal street gang shall ensure that:

(1)   Reasonable suspicion was present at the time of the criminal street gang's initial designation if the criminal street gang was designated in the CalGang database on or after July 1, 2020.

(**2**~~1~~)   **The organization satisfies the requirements to be designated as a criminal street gang as set forth in section 753 if the criminal street gang was designated in the CalGang database on or after July 1, 2020**~~Associations or organizations designated as~~ ~~criminal street gangs have no less than three persons designated as a Gang Members~~ ~~or Associate in the CalGang database~~.

(**3**~~2~~)   Sufficient reasonable suspicion exists for the criminal street gang to continue being designated as such in the CalGang database.

(c)   A designated criminal street gang shall be purged along with its corresponding records from the CalGang database if an audit of a criminal street gang designated in the CalGang database is not completed within three years from the last audit or the original designation in the CalGang database, the Department does not receive a CalGang Gang Audit form from a Node Agency or User Agency for that designated criminal street gang, and/or an audit determines that the requirements in subdivision (b) are not satisfied.

(d)   By January 5 of each year, the Department shall provide a sample of randomly selected designated criminal street gangs to each Node Administrator for their Node Agency and/or User Agencies to audit. Node Administrators shall provide the audit(s) and corresponding results of the audit(s) to the Department on or before September 10 of that year. Any designated criminal street gang found to be out of compliance with Articles 6, 9, and 10 shall be purged along with its corresponding records from the CalGang database within 30 calendar days of the completion of the audit unless such designated criminal

street gang(s) were entered prior to July 1, 2020 and were in compliance with entry
requirements at the time of entry.

(e) **If a person has more than one record in the CalGang database, only the record**
associated with a designated criminal street gang being purged shall be removed from the
CalGang database.

(f) **The Department shall review the audit(s) and corresponding results for accuracy and**
compliance.

(g) **The Department shall report a summary of the results of all audits annually on the**
Attorney General's website.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36,
Penal Code.

§ 75~~5~~.6. The Department's Authority to Audit Node **Agencies** and User Agencies.

(a)   The Department may audit any and all records of each Node **Agency** or User Agency.
Each Node **Agency** or User Agency shall provide such information and documents as the
Department may request.   A Node **Agency** or User Agency shall grant the Department access to
the Node **Agency** or User Agency's facilities for this purpose.

~~(b)   Node or User Agencies that audit their own records shall report their results to the~~
~~Department in writing within 30 calendar days from the date each audit is concluded.~~

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

Article 11. Information Sharing and Reporting Data to the Department~~.~~
§ 75~~5.8~~6.2. Information Sharing.

(a)   Release of criminal intelligence information in the CalGang database is on a right to know
and need to know basis only. Nothing in this subdivision limits the sharing of information in the
CalGang database if permitted by section~~s~~ **753.6 or** 754**,** or Penal Code sections 186.34 and
186.35.

> **(1)   Criminal intelligence information shall not be made available to researchers**
> **outside of the Department's Research Center. The Department's Research Center**

==may use the criminal intelligence for the purposes stated, provided that any material==
==identifying individuals is not transferred, revealed, or used for other than research or==
==statistical activities and reports or publications derived therefrom do not identify==
==specific individuals. The Department's Research Center shall use the criminal==
==intelligence information in the CalGang database for the purposes of:==

==(A)   Conducting empirical research pursuant to subdivisions (*l*)(2) and (*l*)(3) of==
==Penal Code section 186.36.==

==(B)   Assisting the Department with audits and data clean-up efforts.==

==(C)   Continuing research to inform the Department's decision-making==
==deliberations and any future regulations pertaining to the CalGang database.==

(b)   Records shall not be attached to or referenced in any report, with the exception of statistical reports pursuant to subdivision (~~d~~==e==). When a reference is necessary, such documents shall only reflect that the information was obtained from a law enforcement source.

~~(c)   Records contained in the CalGang database shall not be disclosed for:~~

~~(1)   Purposes of enforcing federal immigration law, unless required by state or federal statute or regulation.~~

~~(2)   For employment, housing, or military screening purposes.~~

(==c==~~d~~)   Users are not prohibited or restricted from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of a person or from requesting from federal immigration authorities information regarding a person's immigration status, maintaining such information, or exchanging such information with any other federal, state, or local government entity, pursuant to sections 1373 and 1644 of title 8 of the United States Code.

(==d==~~e~~)   All requests for statistics shall be submitted in writing to the Node Administrator and may be released with the approval of the Department. A copy of the request and released statistics shall be forwarded to the Node Administrator and the Department.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code.

§ 756.==4.== Sharing Information through Printing and Other Mediums.

(a)   Printing privileges may be granted at the discretion of each Node Administrator. Users shall demonstrate a compelling need to print database information before print privileges are extended.

(b)   Node Administrators shall report all Users with printing privileges to the Department in writing at or before each CGNAC meeting.

(c)   Each Node **Agency** or User Agency shall ensure that any printed copies of intelligence and investigation information are afforded security to prevent unauthorized access to or use of the data.

(d)   Printed documents that are no longer needed shall be destroyed **in a manner consistent with the Agency's confidential destruction process**.

(e)   A User is prohibited from using any other tool including, but not limited to:~ taking photographs, screenshots, or using computer or cellular phone applications, that would enable a User to copy database information.

(f)   If this section is violated, the Department ~~may take any or all of the actions provided in~~ **shall take action pursuant to** section 757**.4**.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code.

§ 756.**6**~~2~~. Annual Reporting of Data to the Department.

(a)   **Prior to** ~~November~~**October** 15 of each calendar year, Node and/or User Agencies shall provide to the Department**:**

   (1)   t~~T~~he zip code, Agency, race, gender, and age associated with any records that meet the following circumstances:

      (**A**~~1~~)   The number of times a Node and/or User Agency did not attempt to provide notice pursuant to Article 7 in the immediately preceding 12 calendar months because doing so would have compromised an active criminal investigation.

      (**B**~~2~~)   The number of times a Node and/or User Agency did not provide notification pursuant to Article 7 in the immediately preceding 12 months because doing so would have compromised the health or safety of a designated juvenile.

(C3)   The number of information requests that a Node and/or User Agency received in the immediately preceding 12 calendar months.

(D4)   The number of times a request for removal of a record was granted or denied by a Node and/or User Agency in the immediately preceding 12 calendar months.

(E5)   The number of times a petition under Penal Code section 186.35 was granted or denied by a court or dismissed by a petitioner in the immediately preceding 12 calendar months.

(2)   The number of proxy queries conducted by a Node Agency or User Agency, or an out-of-state agency or a federal agency with authorized Users, and the name of each agency for whom those proxy queries were conducted in the immediately preceding 12 calendar months.

(3)   A completed copy of a CalGang Misuse Investigation Reporting form CJIS 9008 (orig. November 2019), incorporated by reference herein, detailing the number of misuse investigations performed, the type(s) of misuse, and the outcome(s).

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code.

Article 12. ~~System~~Equipment Security,~~and~~ Inspection, and the Reporting of Missing Equipment

§ 756.84. Equipment Security and Inspection by the Department.

(a)   Measures shall be taken to place terminals and equipment that transmit or receive CalGang database information and any printouts of CalGang database information in an area with physical security that will provide protection from theft, damage, vandalism, or sabotage, and preclude access to and viewing of confidential information by unauthorized persons.

(b)   The Department may inspect equipment to ensure that it is in compliance with subdivision (a). A Node Agency or User Agency shall grant the Department access to the Node Agency or User Agency's facilities for this purpose.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

§ 75~~76.6~~. Notifying the Node Administrator and the Department of Missing Equipment.

(a)   A User Agency shall notify its Node Administrator in writing, within one calendar day, of any missing equipment that could potentially compromise the confidentiality and security of the CalGang database.

(b)   The Node Administrator shall notify the Department, within one calendar day, upon discovery of any missing equipment that could potentially compromise the confidentiality and security of the CalGang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

Article 13. System Misuse and Enforcement of these Regulations

§ 75~~7.2~~6.8. System Misuse.

(a)   ~~The Department is responsible for overseeing system discipline and conformity with these regulations.~~ **Information on a person or organization shall be excluded from the CalGang database if the information is collected merely on the basis:**

> **(1)   Of race, gender, age, or ethnic background.**

> **(2)   Of religious or political affiliations or beliefs.**

> **(3)   Of personal habits and/or predilections that do not violate any criminal law or threaten the safety of others.**

> **(4)   Of involvement in expressive activity that takes the form of non-violent civil disobedience that amounts, at most, to a misdemeanor offense.**

(b)   A User shall not conduct a query without a right to know and need to know. Additionally, a User shall not perform any of the following actions:

> **(1)   Query themselves, a family member, or friend.**

> **(2)   Query a high profile individual in the media for unauthorized purposes.**

> **(3)   Provide information contained in the CalGang database to another person for unauthorized purposes.**

> **(4)   Share passwords with any other person.**

(c)   Information contained in the CalGang database shall be disclosed only as permitted by these regulations. Without limiting the foregoing, information contained in the

CalGang database shall not be disclosed or released under any of the following circumstances:

(1) For purposes of enforcing federal immigration law, unless required by California state or federal statute or regulation.

(2) For employment, housing, or military screening purposes.

(3) For non-criminal internal affairs investigations.

(4) To the members of the general public or media.

(5) To another person who does not have a right to know and need to know.

(6) In any official reports.

(d) Any violation of these regulations shall be ~~investigated by the head of the User Agency or his or her designee and~~ reported to the Node Administrator and the Department within five ~~working~~business days of learning of any alleged system misuse.

(1) Any violation of these regulations shall be investigated by the head of the Node Agency or User Agency or their designee. The head of the Node Agency or User Agency or their designee shall review the Agency's internal processes and documentation to determine the absence or presence of negligence on the part of the User(s). Pending the results of the investigation, the Node Administrator may suspend access to the CalGang database for any User being investigated.

(2~~b~~) The Node Administrator shall revoke access to the CalGang database for any User who provides unauthorized access to the CalGang database or discloses information from the CalGang database for unauthorized purposes. Such an account, if suspended, may only be reinstated at the direction of the Department.

(3) Upon completion of the Node Agency or User Agency's review, the head of the Node Agency or User Agency or their designee shall forward the results of the investigation and any corrective actions taken to the Node Administrator and the Department. If the reported results and/or corrective actions do not resolve the problem to the satisfaction of the Department, the Department shall take action pursuant to section 757.4.

(e) Each Node Agency and User Agency shall annually complete, sign, and submit a CalGang Misuse Investigation Reporting form to the Department pursuant to subdivision (a)(3) of section 756.6.

(c)   Node Administrators are prohibited from creating user accounts that have the same level of access as the Node Administrator without express written authorization from the Department.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

Article 13. Enforcement of these Regulations by the Department.

§ 757.4. Enforcement of these Regulations by the Department.

(a)   **The Department is responsible for overseeing system discipline and conformity with these regulations.** If a User**, User Agency, and/or Node Agency** violates any law governing the CalGang database, including these regulations, the Department **shall take, or instruct a Node Administrator to take, one or more of the corrective actions set forth in subparagraph (1), and** may take any or all of the **additional** following actions **set forth in subparagraph (2).**:

    (1)   Corrective actions:

        (A)   Notify a supervisor and/or the head of a Node Agency or User Agency.

        (B)   Suspend access to the CalGang database pending retraining and/or passing a recertification exam.

        (C)   Subject the Node Agency or User Agency to a moratorium pending a review by the Department that ensures the issue has been adequately addressed.

        (D)   Conduct additional audits.

        (E)   Suspend and/or revoke the access of a Node Agency or User Agency to the CalGang database if a User or Users of the Node Agency or User Agency are found to be misusing the CalGang database or data contained therein on multiple occasions.

    (2)   Additional actions:

        (**A**1)   Issue a letter of censure.

        (**B**2)   Temporarily suspend access to the CalGang database.

        (**C**3)   Revoke access to the CalGang database.

(b)   The Department may suspend and/or revoke a User account if a User fails to adhere to any law governing the CalGang database, including these regulations. This includes failing to adequately document criteria in the CalGang database.

(c)   The Department may restrict or revoke the access of a User Agency to the CalGang database if a User or Users of the User Agency are found to be misusing the CalGang database or data contained therein on multiple occasions. Misuse includes failing to adhere to any law governing the CalGang database, including these regulations, and/or failing to adequately document criteria in the CalGang database. The User Agency may be subject to a moratorium pending additional audits imposed by the Department.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.