

## INITIAL STATEMENT OF REASONS

### PROBLEM STATEMENT

Criminal street gang activity in California is a significant threat to public safety. The CalGang database is a shared gang intelligence database created by proprietary software that has been in operation for over 20 years. It is designed to enhance officer safety and improve the efficiency of criminal investigations by providing a central repository of gang-related intelligence information reported by local law enforcement agencies. Data is entered directly into the CalGang database by multiple local law enforcement agencies to record and share gang intelligence information to facilitate cross-agency collaboration for investigating and prosecuting gang-related violent crimes.

The California Legislature (Legislature) adopted Assembly Bill (AB) 90 (Stats. 2017, Ch. 695) in October 2017, establishing the CalGang database in statute and shifting authority to the Department of Justice (Department) to oversee the administration of the CalGang database. AB 90 was introduced in response to an audit conducted by the California State Auditor's Office (State Auditor) in 2016. The State Auditor determined that the CalGang database needed a different oversight structure to ensure that the information in the database was reliable and all users adhered to requirements that protected the rights of the individuals listed therein. At the time of the audit, maintenance of the CalGang database was funded by the Department, but the database was governed by uncodified policies and procedures and two informal oversight committees, the California Gang Node Advisory Committee, which oversaw day to day operations, and the CalGang Executive Board, which made administrative and policy decisions. The committees were made up of representatives from law enforcement agencies and functioned independently from the State.

To maintain the integrity of the CalGang database, local law enforcement agencies using the database are required to comply with the criminal intelligence requirements in Code of Federal Regulations, Title 28, Part 23, and the Department's *Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities* (November 2007). However, the State Auditor determined that the previous governance structure did not adequately ensure that the user agencies were complying with either the federal regulations or the Department's guidelines.

In its audit, the State Auditor recommended that the Legislature adopt state law assigning the Department responsibility for oversight of the CalGang database and defining the requirements under which the database shall operate, such as periodic record reviews. AB 90 amended Government Code section 70615, added Penal Code section 186.36, and repealed and added Penal Code sections 186.34 and 186.35, all of which relate to the governance of the CalGang database and any other shared gang database in California. Subdivisions (k), (l), (n), and (o) of Penal Code section 186.36 set forth the topics on which the Department is required to promulgate regulations. As a result of the guidance provided by these subdivisions of Penal Code section 186.36, the Department puts forth two chapters of proposed regulations. Proposed

Chapter 7.5 pertains to the governance of the CalGang database and, in a separate rulemaking package, proposed Chapter 7.6 pertains to the governance of any other shared gang database.

The Department is committed to continuously working to improve the effectiveness of the database and the data therein, balancing the need of law enforcement users, and at the same time protecting individual's rights. Even after the regulations are adopted, the Department will continue collecting data and conducting empirical research to evaluate the effectiveness of the database. The Department will engage in a separate rulemaking process upon the conclusion of the empirical research to further bolster the oversight of the CalGang database and to enhance the quality and integrity of the data.

## **BENEFITS**

The Department anticipates that these regulations will benefit the health and welfare of California residents because they seek to establish and maintain a law enforcement intelligence database comprised of reliable information that can only be used for the limited purpose of assisting criminal investigators. Through increased training, requirements concerning the entry of information, regular and thorough oversight, and strict limitations on the use of the database, these regulations are part of a continuing effort to produce an effective database that protects the privacy rights of Californians.

Specifically, these regulations place strict limitations on the use of this intelligence tool. The fact that an individual is entered into the database cannot form the basis of any official action, including any step within the criminal law process, or any impact on civilian matters such as employment, education, or receipt of benefits. The regulations expand training requirements to address best practices for gathering criminal intelligence, how to mitigate the entry and release of inaccurate data, implicit bias, and the negative impact of releasing data for unauthorized purposes. The regulations place limits on who may enter data into the database, and require node and user agencies to include additional justification when utilizing specific criteria for entry into the database and maintain source documentation and other pertinent information for specified periods of time. The regulations directly impact criteria that is used to enter an individual into the database, make the criteria for designating an individual as a gang member or associate more robust, increasing the minimum age for entry into the database, and limiting the circumstances when a tattoo may be used as a way to designate an individual as a gang member or associate. They implement the requirement that an individual be notified of his or her inclusion in the database, and they increase the number of required audits of records in the database both for individuals and gangs and implement an audit requirement in relation to proxy queries.

These regulations will ensure that the local law enforcement agencies that enter information into the database and use the CalGang database collect and maintain criminal intelligence, do so in a manner that preserves the privacy rights of the individuals listed therein.

## **PURPOSE AND NECESSITY**

### **§ 750. Title and Scope.**

The purpose of this regulation is to establish the scope of the new chapter—Chapter 7.5, named “Department of Justice Regulations for the Fair Governance of the CalGang Database.” It is necessary to include this regulation because it explains that the entire chapter is devoted to governing only one shared gang database, the CalGang database. It distinguishes the CalGang database from any other shared gang databases and establishes that any other shared gang databases shall be governed by Chapter 7.6. This distinction is necessary because the CalGang database is the only shared gang database that exists in California at this time. The Department has access to the CalGang database and drafted regulations that are in sync with the current CalGang database system functions. Additionally, this regulation is necessary because it establishes January 1, 2020 as the effective date of the proposed chapter, and clarifies that these regulations will not be applied retroactively.

#### **§ 750.2. Purpose of the CalGang Database.**

The purpose of this regulation is to provide background regarding the objective of the CalGang database, which is to be a forum for collecting gang-related criminal intelligence that can be shared with node and user agencies throughout California. This regulation is necessary because it clarifies that the information in the CalGang database is only used as gang-related criminal intelligence with node and user agencies and that it cannot be used to take official actions. Additionally, this regulation is necessary to prevent law enforcement agencies that use this database from inadvertently using the intelligence in the CalGang database without further investigation to levy serious offenses on a person or take any other actions that may impact the life of a person.

#### **§ 750.4. Definition of Key Terms.**

Subdivisions (a) through (ee) of this regulation define terms that will be used throughout the chapter. It is necessary for these terms to be defined because many of these terms may have multiple definitions depending on the context of their usage.

Subdivision (a) establishes that “access” means the ability to view, query, add, delete, or retrieve records in the CalGang database. This definition is necessary because there are multiple ways in which the CalGang database can be accessed. For example, some users have view-only access, so they can view records but not make changes to them. Other users, such as Node Administrators, have full accessibility to the CalGang database and possess the ability to view, query, add, delete, and retrieve records. The level of access that is granted to a user by the Department or a Node Administrator depends on the user’s right to know and need to know.

Subdivision (b) establishes that “agency” means any law enforcement agency. The purpose of this term is to distinguish it from node agency or user agency because an agency that is not a node agency or a user agency may or may not have access to the CalGang database, pursuant to Article 8 of these regulations. This definition is necessary so that there is no confusion between a user agency, node agency, or an agency.

Subdivision (c) establishes that “audit” means the process of objective examination of the CalGang database pertaining to the maintenance of records, as well as the examination of a sample of randomly selected records to determine whether the CalGang database is in

compliance with these regulations. This definition is necessary because it defines what an audit is and how the audits in Article 10 of the regulations will be conducted.

Subdivision (d) establishes that “CGNAC” means the California Gang Node Advisory Committee. This definition is necessary for clarity purposes because California Gang Node Advisory Committee is used in its acronym form in Articles 3 and 11 of this chapter.

Subdivision (e) establishes that “contact” means any lawful interaction between a person and a law enforcement officer. This definition is necessary because it is used in Articles 5 and 7 as the only time a law enforcement officer may gather gang-related criminal intelligence to input into the CalGang database pursuant to the requirements set forth in Article 5. This definition is intended to cover all interactions, which include but are not limited to, surveillance and observations, which are permissible under the Fourth Amendment to the United States Constitution.

Subdivision (f) establishes that “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. This definition is necessary to provide clarity on how criminal predicate should be defined by law enforcement officers who work with gathering gang-related criminal intelligence. This definition is based on the one provided in Code of Federal Regulations, Title 28, Section 23.20(c) and the Department’s *Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities* (November 2007) page 3.

Subdivision (g) establishes that “Department” means the California Department of Justice. This definition is necessary to specify the state agency that is issuing these regulations and distinguishes that it is the California Department of Justice, not the United States Department of Justice.

Subdivision (h) establishes that “dissemination” means the sharing of criminal intelligence among law enforcement authorities in any agency or agencies on a need to know and right to know basis. This definition is necessary to provide clarity on how dissemination should be defined by law enforcement officers who work with the CalGang database. This definition is based on the one provided in the Department’s *Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities* (November 2007) page 3.

Subdivision (i) establishes that a “gang associate” means a person who satisfies the requirements set forth in subdivision (c) of section 752.6. This definition is necessary because it provides law enforcement with a standardized definition for gang associate.

Subdivision (j) establishes that a “gang member” means a person who satisfies the requirements set forth in subdivision (b) of section 752.6. This definition is necessary because it provides law enforcement agencies with a standardized definition for gang member.

Subdivision (k) establishes that a “juvenile” means a minor or a person between the ages of 13 through 17. This definition is necessary because a juvenile is typically understood to mean any person that is under 18 years of age. The Department seeks to clarify that it has made a policy decision to limit the age of the juveniles that may be entered into the CalGang database to those who are 13 through 17 years of age. No juveniles below the age of 13 shall be entered into the CalGang database.

Subdivision (l) establishes that “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 and necessary to the performance of a specific law enforcement activity. This definition is necessary because it provides law enforcement agencies with a standardized definition for the need to know. This definition is based on the one provided in the Department’s *Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities* (November 2007) page 4.

Subdivision (m) establishes that a “node” means a geographically located cluster of participating law enforcement agencies with access to the CalGang database that may exist from time to time. This definition is necessary because nodes are a central part of the operating structure of the CalGang database, and the term is used throughout the regulations.

Subdivision (n) establishes that a “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. This definition is necessary because it defines who a Node Administrator is and clarifies his or her functions.

Subdivision (o) establishes that a “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. This definition is necessary to clarify that the Department authorizes a Node Administrator to designate a person to perform the same functions as the Node Administrator if the Node Administrator is not available.

Subdivision (p) establishes that a “node agency” means the law enforcement agency where a Node Administrator is located. This definition is necessary to specify where the Node Administrator can be found, as well as establish the link between node agency and Node Administrator.

Subdivision (q) establishes that a “non-user” means a person or an agency that does not have access to the CalGang database. This definition is necessary because it contrasts a non-user from a user.

Subdivision (r) establishes that an “offense consistent with gang activity” means either those offenses that are listed in subdivisions (a) or (e) of Penal Code section 186.22, Penal Code section 186.26 or 186.28, or those offenses committed in a manner described in subdivision (b)(1) of Penal Code section 186.22. This definition is necessary because it narrows the types of offenses that law enforcement agencies can use to designate as consistent with gang activity, and

cite them as such when entering information into the CalGang database in order to meet the criterion specified in subdivision (a)(2) of section 752.4.

Subdivision (s) establishes that a “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 or user agency being audited. This definition is necessary because it clarifies what a peer audit entails in the context of performing audits of the records and the documentation that supports the records in the CalGang database.

Subdivision (t) establishes that “purge” means the elimination of any record from the CalGang database and/or any printed form of the record when it is no longer in compliance with these regulations. This definition is necessary because it clarifies that when a node or user agency purges a record from the database, it must also purge any printed copies of the record.

Subdivision (u) establishes that “reasonable suspicion” means the 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. This definition is necessary to provide clarity on how reasonable suspicion should be defined by law enforcement officers who work with gathering gang-related criminal intelligence. This definition is based on the one provided in Code of Federal Regulations, Title 28, Section 23.20(c) and the Department’s *Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities* (November 2007) page 4.

Subdivision (v) establishes that “record” means information contained in the CalGang database that pertains to a particular person. This definition is necessary because it specifies that criminal intelligence gathered by a law enforcement agency and entered into the CalGang database is either entered into a record belonging to a person or a record belonging to a person is created if the gang-related criminal intelligence meets the requirements set forth in Article 5.

Subdivision (w) establishes that “reliable source” means someone who the officer reasonably believes is trustworthy based on the totality of circumstances such as, but not limited to, the following factors: (1) basis of knowledge; (2) veracity; and (3) reliability. This definition is necessary because AB 90 required the Department to purge any information that was entered into the CalGang database if it was provided by an untested informant. (Pen. Code, § 186.36, subd. (r).) The Legislature did not require the Department to remove information from the CalGang database that was provided by a reliable informant. The Department defined reliable source so that node or user agencies could use this definition any time they believe that a person meets the criterion provided in subdivision (a)(3) of section 752.4. The definition for reliable source uses factors from *Alabama v. White* (1990) 496 U.S. 325, a case which set forth the “test” for determining whether reasonable suspicion exists based on an informant’s statements to the police.

Subdivision (x) establishes that “revoked,” as it applies to a user’s account, means the account is invalid and the user is permanently prohibited from accessing the account. This definition is

necessary to clarify how a user account that is revoked differs from a user account that is suspended.

Subdivision (y) establishes that “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 a need to know. This definition is necessary because it provides law enforcement agencies with a standardized definition for the right to know. This definition is based on the one provided in the Department’s *Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities* (November 2007) page 4.

Subdivision (z) establishes that “source documents” mean documentation that supports one or more criteria 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. This definition is necessary because it defines the types of documents that are considered source documents so that they can be used to satisfy the existence of the criteria set forth in section 752.4.

Subdivision (aa) establishes that “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. This definition is necessary to clarify how a user account that is suspended differs from a user account that is revoked.

Subdivision (bb) establishes that “system misuse” or “account misuse” means unauthorized access or misuse of information in the CalGang database. This definition is necessary to provide Node Administrators, node agencies, and user agencies with guidance on what this term means as it is used throughout the regulations.

Subdivision (cc) establishes that “unauthorized access” means access by a person who does not have a need to know and a right to know. This definition is necessary because it specifies that access is unauthorized and cannot be granted if a need to know and a right to know is not present.

Subdivision (dd) establishes that “user” means authorized employees listed within subdivision (k)(6) of Penal Code section 186.36 whose employment duties require access to the CalGang database. This definition is necessary because it simplifies the requirements set forth by subdivision (k) of Penal Code section 186.36 into one word, “user,” so that this term can be easily understood by the persons affected by these regulations as they read through the text of the regulations.

Subdivision (ee) establishes that “user agency” means a law enforcement agency that has access to the CalGang database. This definition is necessary and was included in these regulations so that a user agency could be distinguished from a node agency and an agency.

## **§ 750.6. Access to the CalGang Database.**

The purpose of subdivisions (a) through (e) is to set forth the requirements that shall be fulfilled by a user before s/he is granted access to the CalGang database. These subdivisions are necessary because under Code of Federal Regulation, Title 28, Section 23.20(e) access to the CalGang database is only granted to individuals with a need to know and a right to know the information contained therein. This protects the privacy of those California residents who are designated as gang members or associates in the CalGang database.

The purpose of subdivision (a) is to limit access to the CalGang database to employees meeting the definition of authorized employees within subdivision (k)(6) of Penal Code Section 186.36. This subdivision is necessary because granting access to employees who do not meet the definition of authorized employees would expose the information contained within the CalGang database to individuals who do not have a need to know and a right to know.

The purpose of subdivision (b) is to satisfy the requirement set forth in subdivision (k)(2) and (o) of Penal Code section 186.36 and require standardized training for CalGang database users.

The purpose of subdivision (c) is to require user agencies to enter into a written memorandum of understanding or user agency agreement with their respective node agency before a person employed by the user agency may receive access to the database. This subdivision is necessary because keeping written documentation of all users is important for auditing purposes to allow the Department to maintain oversight of all user agencies.

The purpose of subdivision (d) is to require a user to complete a CalGang User Agreement form (revised February 2019). The completion of the form is necessary because it notifies a potential user what constitutes proper use of the CalGang database and any restrictions that the user shall adhere to if granted access to the CalGang database. The user's signature on the form indicates that the user has agreed to comply by contents of the CalGang User Agreement form. The Department requires a Node Administrator to forward all completed forms to the Department so that the Department can view each form to confirm that all users are being notified of what constitutes appropriate use of the CalGang database and any restrictions that the user shall adhere to if the user is granted access to the CalGang database.

The purpose of subdivision (e) is to outline the information that agencies must formally submit to the Department in order to request access to the CalGang database. This subdivision is necessary because it informs the requesting agency that the Department is responsible for determining if an agency has the ability to access the CalGang database and what factors the Department will evaluate when making its determination. Requiring agencies to submit requests in writing provides the Department with a means to track and audit requests for access to the CalGang database. Furthermore, this subdivision is necessary because it implements a process by which the Department may screen agencies interested in accessing the CalGang database based on the information that is provided in a request. Additionally, requiring the agency to provide a point of contact and a training coordinator will enable the Department to communicate with the agency and ensure that the agency is prepared to supply a dedicated training coordinator.



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

The purpose of this regulation is to address sharing information from the CalGang database with federal and out-of-state law enforcement agencies, as authorized in subdivision (l)(7) of Penal Code section 186.36. This regulation is necessary because it provides that federal and out-of-state agencies who wish to access the CalGang database shall be held to the same standards, as set forth in these regulations, as user agencies within the state of California. The memorandum of understanding that each federal or out-of-state agency shall enter into with the Department is not an agreement that is incorporated by reference in the regulation because it is not a form document that will apply generally to all federal and/or out-of-state agencies; rather each memorandum of understanding shall be tailored to address the access requirements of the specific requesting federal or out-of-state agency.

**§ 751. The Node Administrator's Role and Admission as a Node Agency.**

The purpose of subdivision (a) is to depict the responsibility that a node agency has to all users in its node. This subdivision is necessary because it specifies the administrative oversight the Department expects a node agency to conduct. It is vital for a node agency to understand that it is responsible for ensuring that all users in its node comply with these regulations.

The purpose of subdivision (b) is to provide an agency that is interested in becoming a node agency with guidance on how the Department will evaluate a request to become a node agency. This subdivision is necessary because it informs the requesting agency that the Department is responsible for determining if an agency has the ability to become a node agency and what factors the Department will evaluate when making its determination. These factors are based on the responsibilities that must be met by a node agency and are necessary to remove any ambiguity as to the review and determination process adhered to by the Department.

The purpose of subdivision (c) is to specify that every node agency has to enter into a memorandum of understanding with the Department in order to be recognized as a node agency by the Department. This subdivision is necessary because it informs the requesting agency that the Department requires an agency to enter into a memorandum of understanding with the Department if the Department approves its request to become a node agency. The memorandum of understanding that each node agency shall enter into with the Department is not an agreement that is incorporated by reference in the regulations because it is not a form document that will apply generally to all node agencies; rather, each memorandum of understanding shall be tailored to address the access requirements of the specific node agency.

The purpose of subdivision (d) is to clarify that the Department is responsible for creating administrative accounts for each Node Administrator. This subdivision also specifies how to submit a request to the Department for the creation of an administrative account. This subdivision is necessary because Node Administrators presently have the ability to create administrative accounts without the Department's knowledge and the Department seeks to take sole responsibility for creating such accounts for oversight purposes. A Node Administrator's user account for the CalGang database is called an "administrative account" because it differs

from the account of a standard CalGang user. Specifically, an administrative account belonging to a Node Administrator has full access to the CalGang database. Hence, a Node Administrator's CalGang account enables the Node Administrator to perform all of the following functions: view, query, add, delete, and retrieve records in the database. This is necessary to ensure that the Node Administrator can monitor the manner in which its user agencies are using the CalGang database. If the Department continues to allow Node Administrators to create an administrative account for a user without the Department's knowledge, the Department cannot monitor whether the user to whom administrative access was granted indeed meets the same level of need to know and the right to know as a Node Administrator. Furthermore, this subdivision is necessary because the Department seeks to specify to all CalGang users that, as of January 1, 2020, the Department will be responsible for creating all administrative accounts.

### **§ 751.2. CalGang Database User Terms and Account Security.**

The purpose of subdivision (a) is to inform user agencies that they shall each have at least one point of contact whose information the user agency shall communicate to its Node Administrator and the Department. This subdivision is necessary because it specifies the role of a user agency's point of contact and the necessity of the Department and the user agency's Node Administrator to be aware of the identity of the point of contact. It is necessary for a user agency to notify its Node Administrator every time it changes a point of contact because the Node Administrator works closely with the point of contact at each user agency in its node. Node Administrators work with the point of contact at its user agencies to facilitate training requests, communicate any updates or changes to the CalGang database, and retrieve source documents when Node Administrators are reviewing records in the CalGang database to determine that the source documents properly support the existence of the record in the CalGang database. Moreover, it is necessary for a Node Administrator to inform the Department of any changes to a point of contact at one of its user agencies because the Department needs the ability to reach out to the point of contact at any given user agency to resolve any potential issues that may arise with training, entry of information into the CalGang database, system requirements, or for any other reason. The Department has provided the Node Administrator with a maximum of 30 calendar days to notify the Department if a point of contact is changed because the Department acknowledges that the Node Administrator may be preoccupied with cases and other pressing tasks and may be unable to notify the Department immediately of the change of the contact. The Department determined that 30 calendar days, if not sooner, is a reasonable length of time to expect a Node Administrator to report changes to the Department that pertain to a point of contact.

The purpose of subdivision (b) is inform node or user agencies entering information into the CalGang database that they are responsible for its legality, relevance, accuracy, timeliness, and completeness. This subdivision is necessary because it places the onus for determining that the information meets the threshold for entry on the agency that is entering the information.

For subdivisions (c) through (f), the Department enables user accounts to be suspended and/or revoked because it acknowledges that a revoked account is permanently unavailable for use by the person to whom it was assigned, whereas use of a suspended account can be reinstated by the Department or a Node Administrator for the person to whom it was assigned. It is common for

law enforcement officers to be transferred to different units within an agency or to take a leave of absence for a number of legitimate reasons. Hence, a user may take a leave of absence only to return to the same employment after a few months, or a user may be separated from the gang unit within the node or user agency because the user was transferred to another unit unrelated to criminal street gangs, but that same person may eventually be transferred back to the gang unit after a few years. In cases like these, a suspended account can be reactivated for that user as soon as the user returns to that gang unit.

The purpose of subdivision (c) is to specify that a Node Administrator is responsible for the prompt deactivation of accounts within the node managed by that Node Administrator. This subdivision also guides the Node Administrator, or the Department if the Node Administrator is unavailable, to suspend and/or revoke an account any time a user is separated from employment at a node or user agency. This subdivision is necessary because it provides a procedure for the requirements imposed on the Department by subdivision (x) of Penal Code section 186.36. The Department imposes a maximum of 30 calendar days for a user agency to inform either its Node Administrator or the Department, if the Node Administrator is unavailable, of the separation of a user because the Department wants to work quickly to suspend and/or revoke a separated user's account. Considering the heavy work load that all law enforcement agencies must complete on a daily basis, the Department believes that 30 calendar days is a reasonable time for a user agency to inform the Node Administrator or the Department of a separation of a user. Such a timeframe will be sufficient to protect the integrity of the CalGang database, as the Department does not want anyone who no longer has a need to know and a right to know the information in the CalGang database to have access to it.

Moreover, in subdivision (c)(2) the Department imposes a 10-calendar-day deadline from the date the Department or the Node Administrator learned of a separation to suspend and/or revoke the separated user's account. The Department and Node Administrators shall do their best to suspend and/or revoke a user account as soon as possible, but the Department has imposed 10 calendar days as being the maximum amount of time that either the Department or a Node Administrator may wait to suspend and/or revoke a separated user's account. Such a timeframe will be sufficient to protect the integrity of the CalGang database, as the Department does not want anyone who no longer has a need to know and a right to know the information in the CalGang database to have access to it.

The purpose of subdivision (d) is to express that a user's account shall be suspended and/or revoked if the user no longer has the need to know and the right to know the information contained within the CalGang database. At times, employees of an agency are moved around to perform different jobs, so an employee's duties may change from those that require access to the CalGang database to those that do not require access to the CalGang database. This subdivision is necessary because it accounts for the possibility that a user's account can be suspended and/or revoked even if the user does not take a leave of absence or is not separated from employment with that user agency. Moreover, this subdivision is necessary because a user's level of access to the CalGang database—whether that is to only view data, have the ability to add data, or have other functionality—depends on the user's need to know and right to know. Sometimes, a user's need to know and right to know decreases because the user's job functions may be changed by management (i.e., the user only works on gang-related cases 25 percent of the time whereas the

user previously worked on gang-related cases 100 percent of the time), and accordingly, the user's access to the CalGang database may be reduced only to those parts of the database that the user needs to fulfill the user's job duties.

The purpose of subdivision (e) is to address situations when the integrity of the CalGang database is compromised due to a user's misuse of his or her own CalGang account. This subdivision is necessary because it specifies what a user agency, Node Administrator, and the Department should do in circumstances where a user compromises the integrity of the CalGang database through misuse of the CalGang database. Moreover, the Department requires that all misuse be reported to the Department within five calendar days of discovery of the misuse by the Node Administrator. The Department determined that a five-day timeframe will be sufficient to protect the integrity of the CalGang database, as the Department does not want anyone who no longer has a need to know and a right to know the information in the CalGang database to have access to it.

The purpose of subdivision (f) is to address situations where a user account has been inactive for 90 calendar days. This subdivision is necessary because it specifies how a user and a Node Administrator should handle accounts that have been inactive for 90 calendar days and how to reactivate a user's account if reactivation is properly requested pursuant to this subdivision. The 90 and 180-calendar-day requirements mentioned in this subdivision were already in place prior to the adoption of these regulations and the Node Administrators have already been adhering to these timeframes. The Department does not want to change these timeframes because it believes that they are proper. Furthermore, the Department has added the requirement that a user or user agency shall notify its Node Administrator in writing within 30 calendar days from the date the leave of absence commences. This requirement is necessary because a Node Administrator should be vigilant when a user is on a leave of absence so that the Node Administrator can ensure that the user's account is not being misused or accessed by another person while that user is on a leave of absence. The Department believes that 30 calendar days is enough time for a user agency to report this information to its Node Administrator because a user agency has the option to notify the Node Administrator sooner than the thirtieth day. Also, the Department wants to allow a user agency more than 10 or 15 calendar days to report this information. There are cases where a user and the user agency may not be aware that the user has to take a leave of absence because it could be a result of obtaining an injury on the job or some other unforeseen circumstance. The Department has determined that a 30-calendar-day timeframe to report such information is sufficient to protect the integrity of the CalGang database and to give a user agency the ability to timely notify its Node Administrator.

#### **§ 751.4. Specific Policies and Procedures Set by Node Agencies and User Agencies.**

The purpose of this regulation is to inform node and user agencies that they may establish more restrictive policies and procedures than those provided by these regulations as long as such restrictive policies and procedures relate to either: user access, use of the CalGang database, or the entry of information into the CalGang database. This regulation is necessary because it sets forth the process that a node or user agency shall undergo before it implements more restrictive policies and procedures, including obtaining approval from the Department prior to implementation. This is necessary in order for the DOJ to maintain oversight and ensure the

policies and procedures are consistent with both these regulations and the purpose of the CalGang database. Further, more restrictive policies and procedures, such as requiring that three criteria be identified and documented prior to entering an individual into the CalGang database rather than the two required by these regulations, can enable a node or user agency, and the Department by extension, to more tightly regulate records entered into the CalGang database.

#### **§ 751.6. Proxy Query to the Information Contained in the CalGang Database.**

The Department is responsible for ensuring that the CalGang database and the information contained therein is only used for authorized purposes. As such, subdivisions (a) through (c) are necessary in order to safeguard the CalGang database, the information it contains, and, by extension the privacy rights of the individuals designated therein.

The purpose of subdivision (a) is to control who is able to view the information contained in the CalGang database and define the process for a non-user that demonstrates a right to know and a need to know to be able to access it. Proxy query requests are requests that a non-user makes by contacting a user of the CalGang database. The form that is incorporated in this subdivision documents whether information from the CalGang database was disseminated and to whom. This subdivision is necessary for the Department to monitor the dissemination of information to non-users and ensure that no information is provided for unauthorized purposes or to non-users who do not have a need to know and a right to know. The Department determined that requiring the completion of the form would be the most straight-forward way to track who has requested access, for what purpose, whether requests are granted, and what information is disseminated, for auditing purposes. It also ensures that all necessary information regarding the request is captured and entered into the CalGang database accurately.

The purpose of subdivision (b) is to monitor the frequency of proxy query requests made by non-users and place a limitation on the number of times per year a proxy query may be placed. The Department determined that a non-user can request information via proxy query up to 12 times a year. The Department concluded that on average, the same non-user makes requests via proxy query three to four times per year. The limit of 12 times per year would allow a non-user who has a need to know and a right to know in all cases the ability to request information via proxy query once per month if a case s/he is working on requires it. This subdivision is necessary to limit the access of non-users to information contained within the CalGang database and to require the Department to annually audit the number of proxy query request made by each non-user for system integrity. Further, it is vital to ensuring that individuals who submit proxy query requests are not doing so to bypass the requirements for obtaining direct access to the CalGang database.

The purpose of subdivision (c) is to specify that this Article does not limit or supersede other areas of these regulations or the Penal Code. This subdivision is necessary because the Department wants to be clear as to the extent that this Article may impact other law.

#### **§ 751.8. User Training.**

The purpose of this section is to ensure compliance with subdivisions (k)(2) and (o) of Penal Code section 186.36.

The purpose of subdivision (a) is to establish that only instructors approved by the Department, a node administrator, or a node administrator's designee may provide training on the CalGang database. This subdivision is necessary because it will ensure that training is consistent and provided by individuals who have a thorough understanding of the system and its uses.

The purpose of subdivision (b) is to specify minimum training requirements for users. This subdivision is necessary because it provides universal training requirements. Standardizing a baseline training program ensures that all users are aware of and understand applicable laws, policies, and procedures in regards to the CalGang database; how to identify and designate individuals as gang members and associates; how to utilize the CalGang database; and appropriate and inappropriate uses of information contained therein. This is vital to avoiding erroneously designating individuals as gang members or associates.

Moreover, subdivisions (b)(11) through (b)(13) were included as protections for the health and welfare of the public. These subdivisions are necessary to ensure that users are aware of and understand the impact that designation as a gang member or associate can have on the individuals listed in the CalGang database. One general concern voiced by some members of the GDTAC and many members of the public is that designation as a gang member or associate can be influenced by law enforcement bias and application of stereotypes. These regulations are necessary to ensure that users of the CalGang database are aware of potential implicit bias, as well as the effect that misuse of the information contained in the CalGang database can have on the public.

The purpose of subdivision (c) is to enable training instructors or Node Administrators to require additional training hours. This subdivision is necessary to account for areas where additional region-specific gang-related training might be needed. For example, a training instructor or Node Administrator may choose to include training regarding criminal street gangs or trends present in only its region. The Department wants to make it clear that training instructors and Node Administrators are not restricted from doing so.

#### **§ 752. Initial Exam Information and Recertification Exam.**

The purpose of subdivisions (a) through (c) is to explain the certification and recertification process. These regulations are necessary to put safeguards in place, ensure users who access the CalGang database have undergone the required training and understand all aspects of the CalGang database, including who may and may not be included therein, and inform users that they may not use the database for unauthorized purposes. Without this certification, neither the Department nor the Node Administrator will be able to verify that a user meets the qualifications for access to the CalGang database, and the chances of misuse of information contained in the CalGang database increase significantly.

Moreover, the purpose of subdivision (b) is to specify the length of time for which a certification or recertification is valid and require users to submit a CalGang User Agreement Form. The

regulations are necessary to establish that users are required to recertify every two years in order to refresh their knowledge of the CalGang database, as well as learn about any changes that have been made to policies and procedures during that time. Constant use can desensitize an individual to the specific requirements for access and use, so it is vital to ensure that knowledge stays current. In addition to proving knowledge of the CalGang database, it is important for accountability and auditing purposes that users acknowledge their understanding of and adherence to the CalGang database policies and procedures. .

The purpose of subdivision (c) is to require certification results and forms to be stored in a centralized location and only made available to specified individuals. The Department does not see any need for individuals other than Node Administrators, IT contractors, and the Department to have the ability to access the recertification documentation, so the regulation is necessary to limit access to those individuals.

The purpose of subdivision (d) is to protect the privacy rights of the individuals designated in the CalGang database by requiring users who are unable to pass the certification or recertification exam to undergo additional training prior to being allowed access to the information contained within the CalGang database. This subdivision is necessary because it is vital that users of the CalGang database be familiar with its functions; criteria that qualifies individuals for designation in the system and the associated meanings of same; policies, procedures, regulations, and best practices regarding its use; security and information dissemination requirements, and consequences for misuse. Failure of the certification or recertification exam may illustrate that the user does not adequately understand the CalGang database or parameters of appropriate use. As such, it is necessary for those who fail the exam on multiple attempts to be retrained and retested prior to their access to the system beginning or resuming. This protects the privacy rights of the individuals designated in the CalGang database

The purpose of subdivision (e) is to address situations where a user has not logged into the CalGang database for 180 calendar days. This subdivision is necessary because it specifies how to handle these situations, including recertification and/or retraining requirements. The 180-day requirement mentioned in this subdivision was already in place prior to the adoption of these regulations and the Node Administrators have already been adhering to these timeframes. The Department does not want to change these timeframes because it believes that they are proper.

#### **§ 752.2. Requirements to Become an Approved Instructor.**

The purpose of these regulations is to establish the requirements and process for becoming an approved instructor and require recertification training for previously-approved instructors. These regulations are necessary to ensure that only the most qualified individuals with a high level of system proficiency are training others on the CalGang database. Requiring recertification training for instructors is necessary to ensure that instructors are aware of any changes and can educate users accordingly on system changes or updates, new mandates, and regulations.

#### **§ 752.4. Criteria to be Designated as a Gang Member or a Gang Associate.**

The purpose of this section is to list all gang related criteria in one section for clarity purposes. These criteria were shared with the GDTAC and crafted in conjunction with the GDTAC's advice. In addition, the purpose of this section is to codify existing designation criteria, while requiring thorough documentation in order to substantiate their use.

The purpose of subdivision (a) is to define the criteria for designating a person as a gang member or gang associate pursuant to subdivision (1)(2) of Penal Code section 186.36. This is necessary because such criteria are not currently denoted in existing statute.

The purpose of subdivision (a)(1) is to establish that an admission to being a gang member or gang associate under circumstances that do not undercut truthfulness is a criterion for designation as a gang member or gang associate in the CalGang database. This subdivision is necessary because its inclusion will ensure that the self-admit criterion is more reliable and protect persons from being entered into the database if they self-admit to being a gang member as a result of force, fear, duress, or threat of bodily harm from individuals who participate in gang-related activities. Requiring documentation of the circumstances surrounding the self-admit will also indicate whether a person was under the influence or in an altered mental state at the time.

The purpose of subdivision (a)(2) is to establish that being arrested for an offense consistent with gang activity is a criterion for designation as a gang member or gang associate in the CalGang database. This subdivision is necessary because the Department wants to clarify that an arrest for any one or more of the offenses defined as being consistent with gang activity qualifies as a criterion for designation in the CalGang database.

The purpose of subdivision (a)(3) is to specify that a reliable source identifying an individual as a gang member or gang associate may be utilized as a criterion for entry into the CalGang database. This subdivision is necessary because case law from *Alabama v. White* (1990) 496 U.S. 325 provides a definition for reliable source that is restrictive enough to ensure that a source is, in fact, reliable enough for the source's identification to be treated as truthful.

The purpose of subdivision (a)(4) is to clarify and revise the previous criterion for when a person is seen associating with an individual meeting the criteria for entry into the CalGang database as a gang member. This subdivision is needed because the previous criterion included the language, "person must be arrested with and has been seen associating with" gang members. This caused issues in court because it was believed that a gang member had to be both arrested with and seen associating with other gang members in order to meet the criterion. Law enforcement officials with whom the Department engaged asserted that, based on their extensive knowledge of and history with gang members, association with gang members is a strong indicator of a person being involved in, or associated with, a gang.

The purpose of subdivision (a)(5) is to establish that being seen displaying one or more symbols and/or hand signs tied to a specific criminal street gang may be used as a criterion for entry into a shared gang database and to require law enforcement to document the criterion as specified. This subdivision is necessary because it increases the documentation requirements for law enforcement officers. It also protects against inaccurate designation as a gang member or gang



associate for an individual who displays widely-known and recognized symbols and/or hand gestures for a gang in a non-threatening or joking manner as opposed to using it to identify himself or herself as a member or associate of a criminal street gang.

The purpose of subdivision (a)(6) is to establish that a person being seen at one or more gang-related addresses or locations can be used as a criterion for entry into the CalGang database and require the law enforcement officer to document pertinent information regarding the encounter(s). This subdivision is necessary because gang addresses and locations are designated as such due to their high gang presence. By including gang locations/addresses that a person must stay away from in gang injunctions, the courts have established the existence of gang locations/addresses. Thus, presence at a gang address or location is a strong indicator of gang membership and association. The regulation is also necessary because requiring that specific information be documented enables the record to be audited.

The purpose of subdivision (a)(7) is to establish that being seen wearing a style of dress or accessories tied to a specific criminal street gang may be used as a criterion for entry into the CalGang database. This subdivision is necessary because requiring that the style of dress or accessories tie to a specific criminal street gang protects against inaccurate designation as a gang member or gang associate for an individual who happens to be wearing colors identified with multiple criminal street gangs. The regulation is also necessary because requiring that specific information be documented provides clear justification for inclusion of the criterion if/when the record is audited or challenged.

The purpose of subdivision (a)(8) is to establish that having one or more tattoos, marks, scars, or branding indicating criminal street gang membership may be used as a criterion for entry into the CalGang database. This subdivision is necessary because criminal street gangs can be territorial of any marking associated with their gang; thus, having a tattoo, mark, scar, or branding that is tied to a criminal street gang is a strong indicator of gang membership or association. This subdivision is also necessary because requiring that specific information be documented provides clear justification for inclusion of the criterion if/when the record is audited or challenged.

The purpose of subdivision (b) is to inform law enforcement officers that they do not need to collect information to meet two criteria during one contact. This subdivision informs law enforcement officers that they are able to collect the information on separate occasions in order to meet the requirements to be entered into the CalGang database. This subdivision is necessary because it allows law enforcement the flexibility to document criteria on multiple occasions and enter them cumulatively as one record.

The purpose of subdivision (c) is to require criteria to be supported by source documents. This subdivision is necessary because documentation is the only way to substantiate a designation to an auditor, so it is vital that source documents be accurate, complete, and easy to interpret.

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

The purpose of subdivision (a) is to establish the minimum age requirement for entry into the CalGang database. This subdivision is necessary because the Department reviewed and analyzed existing research on gang membership and association, along with statistical data regarding the ages of individuals designated within the CalGang database, and concluded that 13 years of age was a proper age for entry. (Cal. Dept. of Justice, *Gang Membership, Duration, and Desistance: Empirical Literature Review*, Drafted to Support AB90 (CalGang) Work (undated), and Cal. Dept. of Justice, Number of Minors Per Age in CalGang, (Mar. 11, 2019)).

The purpose of subdivisions (b) and (c) is to require that a person must meet, based on a trained law enforcement officer's reasonable suspicion, at least two criteria listed in these regulations, as specified, in order to qualify for initial designation as a gang member or gang associate, respectively, in the CalGang database. These subdivisions are necessary because they specify the standard for entry in the CalGang database. The reasonable suspicion standard is consistent with Code of Federal Regulations, Title 28, Section 23.20(a) and the Department's *Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities* (November 2007) page 7. In addition, based on the Department's research, meeting two criteria is consistent with the requirements for shared gang databases outside of California. The Department was unable to locate meaningful research to support changing the number of criteria that must be satisfied. Further, it is necessary to differentiate between initial entry of an individual designated as a gang member and an individual designated as a gang associate because different requirements must be met for each.

Moreover, the purpose of subdivision (c)(1) is to specify that a gang associate's record must be linked to the record of a gang member, as well as satisfy at least one additional criteria, in order to be entered into the CalGang database. This subdivision is necessary to convey to the public that not everyone can be entered as an associate based only on their association with a gang member. This regulation is also necessary because it can be unclear presently that a gang associate record cannot be created unless it is linked to that of a gang member in the CalGang database.

#### **§ 752.8. Other Rules Pertaining to the Entry of a Person in the CalGang Database.**

The purpose of subdivision (a) is to allow for a single criterion to be added to a record after the initial entry of two criteria identified in section 752.4 are entered. This subdivision is necessary to specify that an individual whose information has been purged from the CalGang database may be designated again if they meet two criteria identified in section 752.4.

The purpose of subdivisions (b) and (c) is to establish that a criterion may not be duplicated on subsequent occasions unless specified conditions are met. These subdivisions are necessary in order to safeguard the rights of individuals.

The purpose of subdivision (b) is to restrict the re-entry of a tattoo, mark, scar, or branding into the database that remains unmodified and on the same place on a person's body that was previously used to satisfy a criterion, unless the record of that person meets the elements of subdivision (d) or has since been purged from the CalGang database. This subdivision is necessary to eliminate duplication of criterion unless the record of the person noting the criterion

is being openly displayed, presented, or flashed as a means of intimidation or has been purged from the CalGang database. This would be helpful in a situation where a law enforcement officer comes into contact with a person who no longer participates in gang activity but has an old gang tattoo that s/he was unable to have removed. Additionally, this subdivision is necessary to clarify that a law enforcement officer is restricted from re-entering an existing criterion, which would prevent it being used as a means to extend a purge date for a record.

The purpose of subdivision (c) is to describe the limitations of entry of a tattoo, mark, scar, or branding into the database. This subdivision addresses how law enforcement officers may handle instances when a person has the same or similar tattoo, mark, scar, or branding on multiple parts of their body for purposes of documenting separate and distinct criteria and ensures that each is documented only once each. This subdivision is necessary because it is possible that the law enforcement officer who documented the tattoo, mark, scar, or branding initially did not notice the same or similar tattoo on the difference part of the individual's body when s/he initially designated the person in the CalGang database and/or the individual obtained the same or similar tattoo, mark, scar, or branding subsequent to contact with the original law enforcement officer.

The purpose of subdivision (d) is to establish that a tattoo, mark, scar, or branding that was previously used to satisfy a criterion may be re-entered into the CalGang database only if the person is openly displaying, presenting, or flashing the tattoo, mark, scar, or branding in a public setting. This subdivision is necessary because tattoos, marks, scars, or branding can be used by gang members to cause fear and intimidation to those around them and jeopardize the safety of the public. Additionally, the Department wants to establish the relevant circumstances that must be documented to ensure proper use of the criterion.

### **§ 753. Criteria for an Organization to be Designated as a “Criminal Street Gang.”**

The purpose of subdivision (a) is to establish policies and procedures for designating a criminal street gang in the CalGang database, as required by subdivision (I)(4) Penal Code section 186.36. This subdivision is necessary because such requirements are not specifically addressed in CalGang's current policies and procedures. This subdivision sets forth a documentation requirement so that organizations and associations are not added arbitrarily.

The purpose of subdivision (a)(1) is to establish that a node or user agency must have reasonable suspicion that is able to be articulated, as well as documentation of the basis of the reasonable suspicion prior to entering a new criminal street gang into the CalGang database. This subdivision is necessary to establish a standard for designating an organization as a criminal street gang. The reasonable suspicion standard is consistent with Code of Federal Regulations, Title 28, Section 23.20(a) and the Department's *Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities* (November 2007) page 7. This subdivision also ensures that users clearly outline sufficient facts to establish their basis for believing that there is a reasonable possibility that the organization is involved in a criminal activity or enterprise. A hallmark of a criminal street gang, as defined in subdivision (a)(1) of Penal Code section 186.34, is having the commission of an enumerated

crime as one of its primary activities; without that, an organization cannot rise to the level of criminal street gang.

The purpose of subdivision (a)(2) is to specify that an association or organization must have at least three individuals who meet the criteria to be designated as gang members in the CalGang database in order to be classified as a criminal street gang. It also requires that a request for the association or organization to be classified as a criminal street gang in the CalGang database be reviewed and approved by a Node Administrator prior to entry. This subdivision is necessary to ensure that the association or organization both meets the definition of criminal street gang outlined in subdivision (a)(1) of Penal Code section 186.34 and is reviewed and approved by a Node Administrator, who usually has some gang expertise, or will confer with a person who has such expertise prior to approving entry into the CalGang database.

The purpose of subdivision (a)(3) is to specify that an association or organization must have a common sign, symbol, and/or name in order to be classified as a criminal street gang in the CalGang database. It also requires the node or user agency to include documentation of same and explain why the agency interprets it as belonging to the proposed criminal street gang. This subdivision is necessary because documentation is necessary for the Node Administrator's review and to ensure that the association or organization meets the definition of criminal street gang outlined in subdivision (a)(1) of Penal Code section 186.34. It is also necessary because documentation substantiates the entry of the criminal street gang into the CalGang database when an audit is conducted.

The purpose of subdivision (a)(4) is to specify that the organization, association, or its members must have collectively or individually engaged in a pattern of definable criminal activity in order to be classified as a criminal street gang in the CalGang database. This subdivision is necessary to ensure that users clearly document sufficient facts to establish their basis for believing that there is a reasonable possibility that the organization is involved in a criminal activity or enterprise. A hallmark of a criminal street gang, as defined in subdivision (a)(1) of Penal Code section 186.34, is engagement by its members in a pattern of definable criminal activity; without that, an organization cannot rise to the level of criminal street gang.

The purpose of subdivision (b) is to establish that only the Department or a Node Administrator can designate an organization as a criminal street gang in the CalGang database. This subdivision is necessary as a protection measure, to ensure that gangs are not being added to the database without a checks-and-balances system being in place.

### **§ 753.2. Supervisory Review Process.**

The purpose of this regulation is to require node and user agencies to conduct a supervisory review of all criminal street gang intelligence prior to entry into the CalGang database, as required in subdivisions (k)(3) and (l)(8) of Penal Code section 186.36. This regulation is necessary to require an additional level of review in order to protect the safety of the public and the integrity of the system by ensuring that information meets the threshold for inclusion in the CalGang database and was obtained in a manner consistent with applicable law, policy, and ordinance. This requirement is consistent with the Department's *Model Standards and*

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

The purpose of subdivision (a) is to stipulate the circumstances in which a node or user agency has the ability to delete a record that the node or user agency created or entered into the CalGang database outside of the audit process. This subdivision is necessary because there are many reasons, outside of the audit process, that a node or user agency would need to remove a record, such as discovering that two records for the same individual exist. In this case, the Department wants to enable a node or user agency that discovers the duplication to carry the pertinent information into one entry and remove the duplicate record.

The purpose of subdivision (b) is to require the deleting node or user agency to notify the other node or user agencies that have entered additional information to support that record or entry in the CalGang database. This subdivision is necessary because there must be a notification system in place so that the node and user agencies that have used or contributed to the record or entry being deleted are aware that that record is no longer valid. The deletion of a record could affect another record or entry that a node or user agency has entered. An example would be one agency removing a record for a gang member to whom one or more gang associates are linked. If the gang member is removed, then the records or any gang associated linked to him or her would need to be reexamined to ensure it still meets the threshold for inclusion in the CalGang database. Additionally, there may be another record for the same individual that a node or user agency entered based on the criteria in the record or entry that will be deleted. In this example, the node or user agency would need to be made aware that the record is being deleted so they can adjust its records accordingly if the individual no longer meets the threshold for inclusion in the CalGang database.

**§ 753.6. Notifying a Person of Inclusion in the CalGang Database.**

The purpose of subdivisions (a) through (i) is to implement subdivision (1)(5) of Penal Code section 186.36 and establish the policies and procedures for delivering a notice of inclusion to a person who will be entered into the CalGang database. These subdivisions clarify reasons that a notice would not be sent and address situations when issuing a notice would compromise an active investigation or the health or safety of a juvenile designated in the CalGang database in accordance with subdivision (c) of Penal Code section 186.34.

The purpose of subdivision (b) is to establish the specific methods of notice delivery that may be used at the discretion of the node or user agency delivering the notice. This subdivision is necessary because other methods of delivery can be insecure. One example of such a method is email, which can be hacked or sent to the wrong person by mistake. The purpose of this subdivision is also to specify that a law enforcement officer will presume that the address provided by the juvenile at the point of contact is the correct physical address for at least one parent or guardian. This presumption is necessary because it prevents the law enforcement officers from being required to perform extensive research into the accuracy of addresses provided at the point of contact with a juvenile.

Moreover, subdivision (b)(1) requires law enforcement officers to confirm the physical address provided by a juvenile at the point of contact if it is suspected that the juvenile will be designated as a gang member or gang associate. This subdivision is necessary because it is possible for individuals who are 17 years of age or younger to live with someone who is not a parent or guardian. This subdivision will provide the user agency or node agency responsible for ensuring that notifications of inclusion are sent with the current physical address for both the juvenile and the juvenile's parent or guardian.

The purpose of subdivision (c) is to expand upon the requirement set forth in subdivision (c) of Penal Code section 186.34 and require that additional information be included in a written notice to a person of his or her designation in the CalGang database. This subdivision is necessary because each node or user agency has its own version of a notification of inclusion. This subdivision will standardize the components that must be included in a notification without placing unnecessary burdens or restrictions on the node or user agency issuing the notification.

The purpose of subdivision (d) is to provide a node or user agency issuing a notice of inclusion with the discretion to include additional specified information therein while also setting parameters of what information may be released. This subdivision is necessary because inclusion of information outside of that listed in this subdivision could potentially compromise and active investigation and/or the mission of the CalGang database.

The purpose of subdivision (e) is to require a node or user agency to document the attempted delivery of each notice. This subdivision is necessary because requiring that specific information be documented provides clear substantiation that a node or user agency did its due diligence in attempting to notify the designee of his or her inclusion in the CalGang database.

The purpose of subdivision (f) is to establish circumstances under which the notice requirement set forth in subdivision (c) of Penal Code section 186.34 will be satisfied. This subdivision further explains that in the event a juvenile to whom the notice pertains resides at the same physical address as a parent or guardian, the node or user agency shall send two notices, one addressed to the juvenile and one addressed to the parent or guardian, to fulfill the notice requirement prescribed by subdivision (c) of Penal Code section 186.34. This subdivision is necessary because a loop of trying to verify receipt of a notification can go on indefinitely. For instance, it is not uncommon for individuals to provide an inaccurate or old address. Without reasonable stipulations as to what satisfies the notification requirements, node or user agencies could exhaust valuable time and resources on something outside of their control.

The purpose of subdivision (g) is to address circumstances in which the first attempt at notifying an individual of the individual's inclusion in the CalGang database fails to be delivered and the node or user agency has more than one method of contacting the individual. This subdivision further specifies the actions a node or user agency shall take if the circumstances arise. This subdivision is necessary because a node or user agency is expected to perform due diligence in notifying a person of inclusion in the CalGang database and the Department wants to clarify what constitutes due diligence in these circumstances.

The purpose of subdivision (h) is to limit the places a node or user agency may knowingly send notice letters. This subdivision is necessary because sending a notice letter to one of the areas listed as prohibited herein can compromise the privacy of the recipient of the notification, as well as interfere with the recipient's employment or housing opportunities if it is mistakenly opened and read by an individual other than the intended recipient.

The purpose of subdivision (i) is to specify the circumstances in which a node or user agency would not be required to attempt to deliver a notice of inclusion in the CalGang database and, further, establishes the documentation that must be completed by a node or user agency in these circumstances. This subdivision is necessary because subdivision (c) of Penal Code section 186.34 stipulates that notices of inclusion are not required to be sent if doing so would compromise an active criminal investigation or the health and safety of a juvenile designated in the CalGang database. As these circumstances are unique, it is important to establish requirements that must be met in lieu of notifying the individual of his or her inclusion in the CalGang database. This subdivision is also necessary because requiring the documentation of reasoning for a notification of inclusion not being sent provides clear substantiation that sending a notice would compromise an active investigation of the health and safety of a juvenile, as specified, should the record be audited or challenged.

#### **§ 753.8. Information Requests and Verifying the Identity of the Requesting Party.**

The purpose of subdivisions (a) through (c) is to allow any agency to develop a verification of identity form to seek the requesting persons' information to determine if an information request is made by an authorized person pursuant to subdivision (d) of Penal Code section 186.34. These subdivisions additionally set the limitations as to what information an agency may seek from the requesting party. These subdivisions are necessary to allow an agency the authority to verify the identity of individuals submitting information requests to the agency without being burdensome on the requesting party or infringing on the privacy of the requester or the individuals designated within the CalGang database.

#### **§ 754. An Agency's Response to an Information Request.**

The purpose of subdivisions (a) through (d) is to implement subdivision (l)(6) of Penal Code section 186.36 and establish and standardize the policies and procedures for responding to an information request. These subdivisions specifically mention an agency's response because the responding party is not always the agency that originally entered the person into the CalGang database and could be any law enforcement agency. These subdivisions are necessary because subdivision (d) of Penal Code section 186.34, which provides the foundation for information requests and associated responses, does not stipulate specific information that must be included in a response to an information request.

The purpose of subdivision (a) is to establish the information that shall be communicated in a response to an information request pursuant to subdivision (d) of Penal Code section 186.34. This subdivision is necessary because transparency into the process ensures accountability, while standardization ensures that requesters receive the same information without compromising the security and integrity of the CalGang database and the records therein.

The purpose of subdivision (b) is to allow an agency the ability to include additional information within the response at the agency's discretion. This subdivision is necessary because stipulating what information can be included in the response to an information request ensures information that could compromise the security and integrity of the CalGang database and the information therein is not disseminated.

The purpose of subdivision (c) is to require agencies 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. This subdivision is necessary because it ensures that the provisions of subdivision (d) of Penal Code section 184.34 are met and protects the integrity of open investigations as well as the safety of the public.

The purpose of subdivision (d) is to establish that an agency is not required to respond to an information request if doing so would 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. This subdivision is necessary because it supports and clarifies the exemption provided in subdivision (d) of Penal Code section 186.34.

Moreover, subdivision (d)(1) requires that agencies document instances in which an information request is not responded to and maintain the documentation until the record pertaining to that person is purged from the CalGang database. This subdivision is necessary because it ensures that documentation for exemptions is maintained for auditing purposes.

#### **§ 754.2. Agency's Response to a Request for Removal.**

The purpose of this regulation is to allow an agency the discretion to deliver a notice denying a request for removal from the CalGang database after the 30-day time frame established by subdivision (e) of Penal Code section 186.34 as deeming a request for removal denied. This regulation is necessary because statute does not specify whether the issue being addressed by this section is authorized and the Department thinks that it is reasonable to allow delivery of denials subsequent to the 30-day time frame.

#### **§ 754.4. Retention Period for Records.**

This purpose of this regulation is to implement subdivision (l)(3) of Penal Code section 186.36 and specify the retention period for records in the CalGang database and to clarify how the entry of additional criteria affects the resetting of the retention period. The Department is maintaining the current five-year retention period for records in the CalGang database. This regulation is necessary because the statute does not currently dictate the retention period. The Department reviewed and analyzed existing research on the duration of gang membership and concluded that the research was inconclusive. On average, gang careers for adolescents tended to last less than three years for a majority, but most gang members identified by law enforcement officers are adults, and empirical research tends to focus exclusively on youth. (Cal. Dept. of Justice, *Gang Membership, Duration, and Desistance: Empirical Literature Review*, Drafted to Support AB90



(CalGang) Work (undated), pages 20-21). In addition, the Department has not located any substantial research to justify reducing the retention period and a five-year retention period is consistent with Code of Federal Regulations, Title 28, Section 23.20(h), and the Department's *Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities* (November 2007) page 22. The Department will continue to research average duration of gang membership and association and will update the retention period if research supports doing so.

#### **§754.6. Retention Period for Notice of Inclusion.**

The purpose of this regulation is to require node and user agencies to 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. This subdivision is necessary for auditing purposes and/or for substantiation if an individual designated in the CalGang database asserts that s/he was not notified of inclusion in the CalGang database.

#### **§ 754.8. Retention Period for Information Requests and Responses.**

The purpose of this regulation is to require agencies to maintain copies of all information requests received pursuant to subdivision (d) of Penal Code section 186.34, along with the associated responses. This subdivision is necessary for auditing purposes. It is also necessary should an individual challenge his or her inclusion in the CalGang database, as subdivision (c) of Penal Code section 186.35 stipulates that the evidentiary record for purposes of petitions to be removed from the CalGang database is limited to the information contained within the response to the information request.

#### **§ 755. Source Documents.**

The purpose of subdivision (a) is to require a node or user agency that enters information into the CalGang database to maintain the supporting source documents. This subdivision is necessary to substantiate the inclusion of each record in the CalGang database. The Department requires node or user agencies to document their contacts thoroughly to ensure that the reasons for designating a person in the CalGang database are substantiated and meet the threshold for inclusion. Such substantiation must be made available to an auditor and should be easy to evaluate when an auditor reads the source documents.

The purpose of subdivision (b) is to permit photographs that are legally obtained to be used as source documents. The phrase "legally obtained" was used to cover any pictures captured through legal means and not only through the consent of the individual. This would be applicable, for example, in an instance where an individual posts a picture of himself or herself displaying a personal tattoo of a gang symbol on social media. This subdivision would allow a node or user agency to include that picture as a source document to substantiate a criterion for designation in the CalGang database.

The purpose of subdivision (c) is to require a node or user agency to remove unsupported criteria if the associated source documents are found to be missing or incomplete. This subdivision is

necessary because all criteria associated with a CalGang record must be substantiated by source documents.

Moreover, subdivision (c)(1) establishes a time frame for removal of any criteria for which the source documents are found to be lacking or inappropriate. This subdivision is necessary because there is currently no time frame stipulating when removal shall be conducted. The Department has provided the node or user agency with a maximum of 30 calendar days to remove the unsubstantiated criteria because the Department acknowledges that the node or agency may be preoccupied with cases and other pressing tasks and may be unable to immediately remove the criteria. The Department determined that 30 calendar days, if not sooner, is a reasonable length of time.

#### **§ 755.2. Peer Audits of Records in the CalGang Database.**

The purpose of subdivisions (a) through (c) is to address subdivision (n) of Penal Code section 186.36 by requiring periodic audits of the information contained within the CalGang database to ensure its accuracy, reliability, and proper use. These subdivisions are necessary to codify existing practice and standardize procedures as well as ensure transparency of the audit process.

The purpose of subdivision (a) is to require that Node Administrators conduct peer audits three times per calendar year, as well as establish time frames for peer audit completion and purging of records and/or criteria found to be out of compliance with Articles 5 and/or 9 of these regulations. This subdivision codifies the existing practice in which peer audits are conducted three times per year. This subdivision is necessary to ensure that Node Administrators conduct and complete peer audits regularly and in a timely manner. The Department further requires that Node Administrators report the results of the audit to the Department in order to ensure accountability and allow the Department to review the practices and results of the peer audits as a part of its oversight responsibilities.

The purpose of subdivision (b) is to establish the parameters of peer audits required by this section. This subdivision is necessary to provide standardization for the elements that must be considered and analyzed during the course of a peer audit and uphold the integrity of the information contained within the CalGang database.

The purpose of subdivision (c) is to address and clarify subdivision (p)(2) of Penal Code section 186.36 by requiring the Department to report a summary of the results of all audits annually to the public on the Attorney General's website. This subdivision is necessary in order to ensure transparency to the public.

#### **§ 755.4. Audits of Criminal Street Gangs.**

The purpose of subdivisions (a) through (c) is to address subdivision (q) of Penal Code section 186.36 by requiring periodic audits of all criminal street gangs listed in the CalGang database to ensure they are accurate, reliable, and meet the threshold for inclusion. These subdivisions are necessary to codify existing practice and standardize procedures as well as ensure transparency of the audit process and implement subdivision (q) of Penal Code section 186.36.

The purpose of subdivision (d) is to establish the parameters of audits of criminal street gangs listed in the CalGang database. This subdivision is necessary to provide standardization for Node Administrators and uphold the integrity of the CalGang database.

#### **§ 755.6. The Department's Authority to Audit Node and User Agencies.**

The purpose of subdivision (a) is to clarify the Department's role and establish its authority to access and audit information and documents for each node or user agency. This subdivision is necessary because the Department requires access to all records in order to thoroughly engage in its oversight responsibilities. The phrases "may audit" and "may request" are purposefully permissive to demonstrate the Department's ability to choose if and when a review or audit of individual records, information, or documents is necessary.

The purpose of subdivision (b) is to require node or user agencies that audit their own records to report to the Department the results and to specify a time frame in which results are required to be reported. The Department chose 30 calendar days as the time frame in which results shall be reported to the Department in order to allow ample time for node or user agencies to compile information without putting a strain on their resources. This subdivision is necessary because it ensures that results of audits conducted outside of the Department are reported to the Department in a timely manner.

#### **§ 755.8. Information Sharing.**

The purpose of this section is to specify how information within the CalGang database may be utilized, purposes for which disclosure is prohibited, and what information may be shared with federal immigration authorities. An audit of the CalGang database conducted by the State Auditor found that its users were not fully adhering to restrictions on information sharing meant to protect the rights of the individuals whose information is included in the CalGang database. These subdivisions are necessary to address this finding and prohibit it from continuing to occur.

The purpose of subdivision (a) is to specify that release of the information contained in the CalGang database shall only be on a right to know and need to know basis. This requirement is consistent with Code of Federal Regulations, Title 28, Section 23.20(e) and the Department's *Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities* (November 2007) page 17. This subdivision is necessary because the privacy of the individuals designated in the CalGang database is dependent on closely controlling who has access to the information included therein and ensuring that those individuals have a valid reason for accessing it.

The purpose of subdivision (b) is to restrict the reference to or attachment of CalGang records in reports. This subdivision is necessary because, as specified in section 750.2 of these regulations, as an intelligence database, the CalGang database is not meant to provide users with information upon which official actions may be taken. Inclusion of CalGang records in a report could result in the information being used as a basis for official actions. Thus, this subdivision will ensure

that the records in the CalGang database are not used as in a manner that is inconsistent with these regulations, as well as maintain their confidentiality.

The purpose of subdivision (c) is to implement subdivisions (k)(7) and (k)(8) of Penal Code section 186.36 and to establish purposes for which CalGang records shall not be disclosed. This subdivision is necessary because the health and welfare of California residents is paramount and disclosure of records within the CalGang database for the restricted purposes would pose a threat to the ability of an individual designated in the CalGang database to stay in the United States, find employment and/or housing, and/or join the military.

The purpose of subdivision (d) is to specify that users may send to, and receive from, other federal, state, or local government entities information regarding a person's citizenship and immigration status. This subdivision is necessary to expressly state that it does not interfere with or supersede with federal law.

The purpose of subdivision (e) is to require that requests for statistics be submitted to the Department prior to release. This subdivision is necessary to ensure the Department is aware of information being released for oversight purposes. Statistical requests are received regularly, and it is important for the Department to ensure that any information released is consistent with current methodologies for querying and producing the records across agencies.

#### **§ 756. Sharing Information through Printing and Other Mediums.**

The purpose of subdivision (a) is to establish that Node Administrators have the responsibility of granting users printing privileges at their discretion. This subdivision is necessary because limiting printing privileges is crucial to maintaining system integrity and security while protecting the rights of those designated within the CalGang database.

The purpose of subdivision (b) is to require Node Administrators to report users with printing privileges to the Department. This subdivision is necessary because the Department needs to be aware of all users and associated levels of access and privileges in order to ensure that users are not being granted access outside of their right to know and need to know and, by extension, protect the privacy of the individuals designated in the CalGang database.

The purpose of subdivision (c) is to ensure that each node or user agency affords the same level of security to printed copies of intelligence and investigation information as it does for information viewed in the CalGang database. The purpose of subdivision (d) is to require the destruction of printed documents that are no longer needed. The purpose of subdivision (e) is to prohibit a user from sharing information through other means including, but not limited to, taking pictures or screenshots or using computer or cellular phone applications to enable a user to copy CalGang database information. These subdivisions are necessary because protecting the privacy of those California residents who are designated in the CalGang system is paramount and the Department cannot do so if users have the ability to circumvent the Department's oversight.

The purpose of subdivision (f) is to establish that the Department may take action if node or user agencies violate the subdivisions set forth in this section. This subdivision is necessary because

without the authority to take action against a user who violated the section, the Department would be unable to enforce these regulations.

#### **§ 756.2. Annual Reporting of Data to the Department.**

The purpose of these regulations is to require node and user agencies to report to the Department information pertaining to notices not provided, information requests received, requests for removal of records, and petitions made under Penal Code section 186.35. This subdivision is necessary because subdivision (p) of Penal Code section 186.36 requires the Department to provide an annual report of this and other information to the public. Most of the data components required to be included in the annual report are available to the Department via the CalGang database; however, the information listed in this section is not currently captured in the CalGang database. Additionally, the statute does not currently require agencies to report this information to the Department; therefore, it is necessary to include this requirement under these regulations. November 15<sup>th</sup> was selected as the deadline for agencies to provide the Department with the specified information in order to allow the Department time to analyze and incorporate it in the annual report due on February 15<sup>th</sup>, per subdivision (p) of Penal Code section 186.36.

#### **§ 756.4. Equipment Security and Inspection by the Department.**

The purpose of subdivision (a) is to address subdivision (k)(4) of Penal Code section 186.36 by ensuring system integrity and precluding access by unauthorized personnel. This regulation is necessary to establish physical security measures for terminals and equipment that transmit or receive database information without prescribing exact locations in which equipment must be located. The regulation is consistent with Code of Federal Regulations, Title 28, Section 23.20(g).

The purpose of subdivision (b) is to require node or user agencies to grant the Department access to inspect equipment that facilitates access to the CalGang database. This is necessary to enable the Department to ensure compliance as a part of its oversight responsibilities.

#### **§ 756.6. Notifying the Node Administrator and the Department of Missing Equipment.**

The purpose of these regulations is to address subdivision (k)(5) of Penal Code section 186.36 by requiring user agencies to notify their respective Node Administrator of any missing equipment that could compromise the confidentiality and security of the CalGang database. These regulations establish a one-calendar-day time frame for both a user agency to notify its Node Administrator and the Node Administrator to notify the Department. These regulations are necessary to ensure prompt notification to the Node Administrator and the Department. As the equipment could potentially compromise the confidentiality and security of the CalGang database and the individuals listed therein, it is vital that notification be made as soon as possible to allow the Department to immediately engage with the impacted user agency and work with the Node Administrator to institute safeguards against unauthorized access.

#### **§ 756.8. System Misuse.**

The purpose of subdivision (a) is to establish that any violation of CalGang database-related policies and procedures shall be investigated by the head of the user agency or his or her designee and reported to the Node Administrator and the Department. This subdivision is necessary because most law enforcement agencies have an internal affairs unit who investigates any officer or civilian misconduct. It is important for the Node Administrator and the Department to be notified of any violations to enable them to practice appropriate oversight.

The purpose of subdivision (b) is require a Node Administrator to revoke access to the CalGang database for any user who discloses information from the CalGang database for unauthorized purposes. This subdivision is necessary because disclosing information for unauthorized purposes is a blatant disregard for the laws, policies, and procedures that govern use of the CalGang database and is not to be taken lightly.

The purpose of subdivision (c) is to prohibit a Node Administrator from creating user accounts with the same level of access as the Node Administrator without obtaining authorization from the Department. This subdivision is necessary because 1) Node Administrators are held to a higher standard due to the fact that they have the highest level of access to the CalGang database possible, and 2) must be trained and certified accordingly, then approved by the Department pursuant to this chapter. A Node Administrator granting an individual who has not been trained, certified, and approved in accordance with this chapter the same level of access as the Node Administrator bypasses the established requirements and puts the security and integrity of the CalGang database at risk.

#### **§ 757. Enforcement of these Regulations by the Department.**

The purpose of this section is to specify the actions that the Department may take if a user violates any law governing the CalGang database. This section is a restatement of subdivision (u) of Penal Code section 186.36. Restatement of the consequences for violation in this subdivision is necessary because it makes it clear that no violations of the statutes and regulations that govern the CalGang database will be tolerated.

### **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

#### **Creation or Elimination of Jobs Within the State of California**

The Department determines that these regulations will not have a significant impact on the creation or elimination of jobs within the State of California. The Department has determined that these regulations will not affect job creation or elimination in the private sector because the Department does not require small businesses to participate in the use of the CalGang database in any way, and training is typically provided by personnel within the node or user agencies. It is possible that existing or new user agencies could choose to contract with a private business to conduct the training; however, it is not possible for the Department to anticipate how many user agencies may do so or what the scope of the training would be.

#### **Creation of New Businesses or the Elimination of Existing Businesses Within the State of California**

For the reason identified above, the Department determined that these regulations will not create new business or eliminate existing businesses within the State of California.

#### Expansion of Businesses Currently Doing Business Within the State of California

For the reason identified above, the Department determined that these regulations will not expand existing businesses within the State of California.

#### Cost to Any Local Agency or School District

These regulations could result in additional costs to local government to the extent that California law enforcement agencies choose to participate in the CalGang database. However, it is difficult to approximate the potential fiscal effect these proposed changes may have, due to the fact that participation in the CalGang database is voluntary. The Department has determined that most of the California law enforcement agencies that currently participate in the CalGang database already meet most of the proposed standards and would experience little to no fiscal impact.

#### *California Law Enforcement Agencies that Currently Participate in the CalGang Database*

The Department of Justice identified two main areas that could potentially result in costs to California law enforcement agencies that choose to participate in the CalGang database (hereafter referred to as user agencies): updating and reprinting field interview cards, training persons who will have direct access to the CalGang database. These regulations increase the documentation that must be created and maintained by user agencies. While it is not a requirement set forth in these regulations, some user agencies may choose to update their field interview cards that are used, for the purposes of the CalGang database, to document interactions with suspected gang members or gang associates. After conferring with existing user agencies, the Department determined that updating and reprinting field interview cards would cost a user agency approximately \$13 per booklet.

There are more than 800 law enforcement agencies in California, 187 (or approximately 23%) of which were CalGang user agencies as of April 4, 2019. According to the 2017 Crime in California report published by the Department, there were 78,715 sworn law enforcement personnel in California in 2017. If the agencies of approximately 25% of those sworn law enforcement personnel update and reprint field interview cards as a result of these regulations, the Department estimates that local agencies could incur a cost of approximately \$266,000.

In addition, user agencies may incur an unknown cost as a result of the list of components that must be included in user training, as outlined in section 751.8 of these regulations. Currently, individuals who require direct access to the CalGang database must undergo training prior to being granted access. The existing training is standardized; however, these regulations add new components that must be incorporated into all training. Expanding the training requirements could result in user agencies needing to dedicate more work hours to participating in and/or teaching the training if it is conducted by users of the CalGang database. As the manner in

which individuals satisfy the training requirements will differ across user agencies, it is difficult to estimate the potential cost that expanding the training requirements would pose to each user agency or the user agency community as a whole.

As of April 4, 2019, there were approximately 3,000 active CalGang users, all of whom would need to adhere to the new training requirements. The Department estimates that these requirements could result in as few as two and as many as eight additional hours of training being required of existing active users. Many of the existing users are employed at the Detective classification, so the Department is using that as the basis for estimating the cost of additional staff hours. According to the California Employment Development Department, the median salary for a Detective in California was approximately \$98,000 annually, or \$47 hourly, in 2018 (Retrieved April 26, 2019, from <https://www.labormarketinfo.edd.ca.gov/OccGuides/Detail.aspx?Soccode=333021&Geography=0604000073>). Using this data, the Department estimates that local agencies could incur an approximate cost ranging from \$282,000 to \$1,128,000.

It should be noted that Penal Code section 186.36 requires specified data elements to be included in the annual report published by the Department. The information specified in the regulation is not currently captured in the CalGang database; thus, it was requested from user agencies in 2017 and 2018. While all user agencies provided the information, there was no mandate in place for them to do so. As all were able to do so, this requirement of the regulation should not result in additional costs to existing user agencies.

Existing user agencies that choose to withdraw from the CalGang database as a result of these regulations would incur non-fiscal impact in the form of decreased access to cross-jurisdictional gang-related intelligence information. The CalGang database is a statewide, low cost, securely networked intelligence database that houses data on suspected members and associates of criminal street gangs, descriptions, tattoos, vehicles, and field interviews. Withdrawing from the CalGang database would eliminate the easy accessibility of the information housed therein, and require an agency to reach out to each jurisdiction in order to obtain the data.

In summary, the Department estimates that existing user agencies could incur costs ranging from \$548,000 to \$1,394,000 in order to fully comply with these regulations.

#### *California Law Enforcement Agencies that Do Not Currently Participate in the CalGang Database*

It is unknown how many, if any, California law enforcement agencies who do not currently participate would choose to participate in the CalGang database after these proposed regulations are adopted. The Department is assuming that it will receive requests from 10 agencies annually for the purposes of estimating the cost of these regulations.

Such agencies could incur costs as a result of some of the requirements outlined in these regulations, most of which would be related to staff time. For example, agencies that want to begin participating in the CalGang database would be required to designate a point of contact. This individual would be responsible for facilitating training, retrieving source documents, and



updating CalGang records, as necessary. The extent of the staff time that would need to be dedicated to this role would depend on the number of individuals who will require direct access to the CalGang database and the records therein, the level of suspected gang activity in the area, and the level of participation in the database, among other factors. The Department estimates that these activities would occupy no more than 10% of the designated individual's time. Assuming the responsibility would be assigned to a Detective, the Department estimates that a new user agency could incur a cost of approximately \$9,800 annually for the performance of the point-of-contact duties. This would result in local agencies incurring a cost of \$98,000 annually.

Pursuant to Penal Code section 186.36, any individual with access to the CalGang database or the records contained therein are required to undergo the comprehensive training. The Department estimates that required training hours could range from four to 16, depending on the method of instruction and length of each component instituted by the Node Administrator. Based on the number of existing user agencies (187) and active users (3,000), the Department estimates that approximate 16 individuals per new user agency would need to participate in training. The Department estimates that local agencies could incur approximate costs ranging from \$30,000 to \$120,000 in staff time as a result of attending training.

As noted above, the training is typically provided by node or user agencies; however, the agencies could also choose to work with an outside vendor to provide some specific components of the required training, such as database security or implicit bias. The costs resulting from contracted training would depend on the components being taught, the number of participants, and the length of the class(es), and would vary widely. As such, the Department cannot estimate the potential cost to local agencies.

Pursuant to Penal Code sections 186.34, user agencies are required to notify an individual prior to designating him/her as a gang member or gang associate in the CalGang database. It also authorizes an individual to request information from a law enforcement agency as to whether s/he is designated in the CalGang database, requires the agency receiving the request to respond, except as specified, and outlines a process by which an individual can contest his/her designation in the database. While the specific information that must be contained in the designation notifications and information request responses are delineated in Sections 753.6, 754, and 754.2 of the regulation, the statute implements the requirements on local agencies. As such, the associated costs are not a result of the regulations. In an effort to alleviate impact to user agencies, the Department has made every attempt to enact performance standards rather than prescribing actions, as often as possible.

In summary, the Department estimates that local agencies could incur approximate costs ranging from \$128,000 to \$218,000 annually as a result of new user agencies being added after enactment of these regulations.

Agencies seeking to become node agencies would incur more costs than those that simply want to participate as user agencies. Section 751 of these regulations stipulates the requirements to become a node agency, including the ability to provide technical support and pay costs associated with training of users, designation of staff to manage the node, and travel expenses for participation in meetings that occur three times per year. Also included in a node agency's

responsibilities are account management for the user agencies it services and coordination of any requests for CalGang statistics from external entities.

The Department funds a contract with the vendor responsible for maintenance of the CalGang database, including any systematic changes. As such, technical support services required of node agencies is limited to assisting users in navigation of the database and communicating needs to the Department, the costs of which would be staff time.

Travel expenses for participation in meetings would vary, depending on meeting location. The triannual meetings last three days each, occur in different locations throughout the state, and are attended by Node Administrators or their designees. Taking into account potential airfare, hotel, and per diem costs, the Department estimates that travel costs would average \$2,000-\$2,500 annually for any new node agency.

The Department estimates that each node agency could potentially need one-half to one position dedicated to the Node Administrator duties, depending on the size of the node for which the node agency would have oversight responsibilities and the number of user agencies therein. That individual would be responsible for the technical support, user training, and account management duties identified above. The individual would also be responsible for conducting peer audits as required by these regulations, at each triannual meeting noted above. As there are currently no node agencies located in Northern California, the Department estimates that there could be a need for approximately two more node agencies. If two new node agencies were established and each new node agency appointed one Node Administrator at the Detective classification, then the state could incur additional costs of approximately \$196,000 annually.

In summary, the Department estimates that local agencies could incur costs totaling approximately \$201,000 annually if two new node agencies were established after enactment of these regulations.

#### Cost or Savings to Any State Agency

These regulations could also result in additional costs to State government, specifically the Department. The Department received an ongoing appropriation and position authority for 11.0 new positions, beginning in the Fiscal Year 2017-2018, in relation to an audit conducted by the California State Audit regarding the CalGang database and Assembly Bill 90 (2017), which requires the CalGang regulations. This appropriation, based on input from the Department, was designed to enable the Department to address the following areas of responsibility:

- Drafting regulations to establish parameters for usage, data governance, etc.
- Providing administrative support to the technical advisory committee.
- Overseeing the review of the approximately 200,000 individual records currently in the system.
- Developing marketing materials such as Information Bulletins to increase both agency usage and knowledge and understanding of regulations.
- Developing, implementing, and maintaining training and audits.

- Conducting system user outreach to discuss enhancements and additional features to better meet agency needs.
- Creating and publishing quarterly and annual reports.
- Ensuring implementation of audit recommendations and legislative mandates.
- Building safeguards to protect against entry of incomplete and unverified records, as well as those for which criteria for entry has not been met.
- Ensuring that individuals are notified prior to being designated in the CalGang system.
- Generating relevant CalGang statistics.
- Facilitating coordination between the California Gang Node Advisory Committee, technical advisory committee, and technical and administrative teams within the Department, as well as all associated meeting.

In developing the regulations, the Department has determined that it will need one Associate Governmental Program Analyst (AGPA) in addition to the resources already appropriated. The AGPA is needed to address the expanded audit and training responsibilities of the Department, as outlined in these regulations. There are currently three positions dedicated to performing the administrative functions outlined above; however, the demand for training has exceeded their capabilities, as has the need to conduct back-end audits of new and existing data within the CalGang database.

These regulations are beneficial to the health and welfare of California's residents because they address accuracy, consistency, transparency, and fairness in the collection, accessing, and sharing of gang membership or association designations in the CalGang database, including enacting reforms recommended in the State Auditor's 2016 audit of the CalGang database. These regulations will benefit California residents by providing protections against sharing of CalGang database records for inappropriate purposes and errant designation in the CalGang database. These regulations will also benefit agencies that opt to participate in the CalGang database by providing greater access to useful criminal prevention and investigative tools by increasing the accuracy of the information contained therein.

#### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.**

1. California State Auditor, *The CalGang Criminal Intelligence System, As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals' Privacy Rights*, Report 2015-130 (Aug. 2016).
2. Cal. Dept. of Justice, *Gang Membership, Duration, and Desistance: Empirical Literature Review*, Drafted to Support AB90 (CalGang) Work (undated).
3. Cal. Dept. of Justice, *Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities*, (Nov. 2007).
4. Cal. Dept. of Justice, *Number of Minors Per Age in CalGang*, (Mar. 11, 2019).

#### **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE**

### **ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The Department finds that these regulations would not have statewide adverse economic impact on businesses because these regulations seek to regulate persons who are law enforcement officers only, not a part of a business.

### **REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES**

No other reasonable alternatives were presented to, or considered by, the Department that would be either more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome.

### **DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS**

The Department determines that these regulations are not duplicative, nor do they pose a conflict with federal regulations, including Code of Federal Regulations, Title 28, Part 23.