

ADDENDUM TO INITIAL STATEMENT OF REASONS (OAL File No. 2019-0430-05)

On May 10, 2019, the Department of Justice (Department) published proposed regulations regarding the Fair and Accurate Governance of Shared Gang Database Systems, pursuant to the authority provided in Penal Code section 186.36. These and other rulemaking documents are available for review on the Attorney General's website at <https://oag.ca.gov/bciis/regs>.

The Department heard public comment on the proposed regulations until June 25, 2019. During that time, the Department also held public hearings on June 26, 2019 (Los Angeles) and June 27, 2019 (Sacramento). Oral comments on the proposed regulations were accepted at each of these hearings and transcribed by a certified court reporter.

The Department reviewed all comments received during the public comment period. In response to these public comments, and to clarify the regulations as originally proposed, the Department has modified its proposed regulations, and has prepared this Addendum to the Initial Statement of Reasons (Addendum).

This Addendum explains the modifications and the reasons for these modifications in the "Necessity of Modifications to Proposed Regulations" section below.

NECESSITY OF MODIFICATIONS TO PROPOSED REGULATIONS

§ 770. Title and Scope.

This provision was amended to add "[a] shared gang database shall not be used when making street-level determinations on who to stop and detain." This addition is in response to public comments which noted that the regulations did not previously place a limitation on the use of the database for stopping and detaining people.

§ 770.2. Definition of Key Terms.

Subdivision (d). The definition of "contact" was amended to add "lawful" before the word "observation." This amendment is in response to public comments noting that the previous definition did not require observations by law enforcement to be made lawfully. This provision was additionally amended to remove "Gang" before "Associate." This amendment was made to reflect the change in these terms being combined into "A Gang Member or Associate" in subdivision (g) of section 770.2.

Former Subdivision (e). The definition of "criminal predicate" was removed to avoid duplication of the definition of "reasonable suspicion" in subdivision (m). Both of these definitions were based on the Code of Federal Regulations, Title 28, Section 23.20(c). The Department felt that it was no longer necessary to have both definitions in these regulations.

Subdivision (g) (formerly subdivision (h)). The definition of "Gang Associate" was amended by adding "Member or" before "Associate." This new definition is a result of the Department no

longer distinguishing a difference in the designation of a person as a Gang Member or a Gang Associate in a shared gang database and instead applying the same criteria requirements to any person. This provision was also amended to add “to be designated in the shared gang database” after “the requirements.” This was amended made for clarity.

Former Subdivision (i). The definition of “Gang Member” was removed because Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (g).

Subdivision (j) (formerly subdivision (l)). The definition of “Non-User” was amended nonsubstantively to replace “the” with “a” before “shared gang database. This was amended to clarify that this definition refers to any shared gang database, not one specific one.

Former Subdivision (q). The definition of “reliable source” was removed due to the removal of the criterion (a)(3) in what is now section 771.6. This definition is no longer necessary as “reliable source” is no longer used in the text of the regulations.

Subdivision (x) (formerly subdivision (aa)). The definition of “User” was amended nonsubstantively to replace the word “require” with “warrant.” This amendment was made because not all User’s employment duties “require” that they have access to a shared gang database; however, their duties may “warrant” access to the database.

§ 770.4. Access to a Shared Gang Database.

New Subdivision (b)(1). This provision was added to clarify that the System Administrator is the only entity that may grant access to a User from an out-of-state agency or a federal agency and only upon approval by the Department. This provision is necessary to ensure that User Agencies cannot grant access to an out-of-state or a federal agency.

New Subdivision (e). The purpose of this provision is to outline the information that agencies must formally submit to the System Administrator in order to request access to a shared gang database. This provision is necessary because it informs the requesting agency that the System Administrator is responsible for determining if an agency has the ability to access a shared gang database and what factors the System Administrator will evaluate when making its determination. Requiring agencies to submit requests in writing provides the System Administrator with a means to track and audit requests for access to a shared gang database. Furthermore, this provision is necessary because it implements a process by which the System Administrator may screen agencies interested in accessing a shared gang 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 System Administrator to communicate with the agency and ensure that the agency is prepared to supply a dedicated training coordinator.

New Subdivision (f). This provision was added to specify that the System Administrators have the responsibility of approving or denying written requests for access to a shared gang database

from Agencies. This provision is necessary so that System Administrators understand their role regarding requests for access to a shared gang database.

New Subdivision (f)(1). This provision was added to specify that the System Administrator will be responsible for reviewing requests for access to a shared gang database received from an out-of-state or a federal agency and that, if the System Administrator enters into a memorandum of understanding with the requesting agency, that memorandum of understanding will be maintained by the System Administrator.

New Subdivision (i). This provision was added to clarify that a proxy query can be requested by a Non-User that does not have access to a shared gang database. This addition is in response to public comments noting that the access requirements were confusing surrounding proxy queries.

Former § 770.6. Limitations to the Access Provided to an Out-of-State Agency or a Federal Agency.

This section was removed to avoid duplication of content already contained in section 770.4. The requirements and restrictions specific to an out-of-state or a federal agency have been consolidated and added to section 770.4.

New § 770.6. Shared Gang Database User Terms and Account Security.

This section was added to incorporate the language from proposed section 751 of Chapter 7.5: Department of Justice Regulations for the Fair and Accurate Governance of the CalGang Database (OAL File No. 2019-0430-06). This addition is in response to public comments requesting this language be incorporated.

Subdivision (a). This provision was added to inform User Agencies that they shall each have at least one person as the point of contact whose information the User Agency shall communicate to its System Administrator. This subdivision is necessary because it specifies the role of a User Agency's point of contact and the necessity of the System Administrator and the Department to be aware of the identity of the point of contact. It is necessary for a User Agency to notify its System Administrator every time it changes a point of contact because the System Administrator works closely with the point of contact at each User Agency. System Administrators work with the point of contact at its User Agencies to facilitate training requests, communicate any updates or changes to the shared gang database, and retrieve source documents when System Administrators are reviewing records in the shared gang database to determine that the source documents properly support the existence of the record in the shared gang database. Moreover, it is necessary for a System 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 a shared gang database, system requirements, or for any other reason. The Department has provided the System 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 System 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 System Administrator to report changes to the Department that pertain to a point of contact.

Subdivision (a)(3). This provision was added because the System Administrators are the only people that may create accounts. This provision is necessary for quality control to prevent point of contacts from also creating accounts.

Subdivision (b). This provision was added to inform User Agencies entering information into a shared gang database that they are responsible for its legality, relevance, accuracy, timeliness, and completeness. This provision is necessary because it places the onus for determining that the information meets the threshold for entry on the User Agency that is entering the information.

Subdivision (c). This provision was added to specify that a System Administrator is responsible for the prompt deactivation of accounts. This subdivision also guides the System Administrator, or the Department if the System Administrator is unavailable, to suspend and/or revoke an account any time a User is separated from employment at a 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 System Administrator or the Department, if the System 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 System Administrator or the Department of a separation of a User. Such a timeframe will be sufficient to protect the integrity of the shared gang 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 shared gang database to have access to it.

Subdivision (c)(2). This provision was added to impose a 10-calendar-day deadline from the date the Department or the System Administrator learned of a separation to suspend and/or revoke the separated User's account. The Department and System 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 System 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 shared gang 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 shared gang database to have access to it.

Subdivision (d). This provision was added 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 shared gang 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 shared gang database to those that do not require access to the shared gang 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 shared gang 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 shared gang database may be reduced only to those parts of the database that the User needs to fulfill the User's job duties.

Subdivision (e). This provision was added to address situations when the integrity of the shared gang database is compromised due to a User's misuse of his or her own shared gang database account. This subdivision is necessary because it specifies what a User Agency, System Administrator, and the Department should do in circumstances where a User compromises the integrity of the shared gang database through misuse of the shared gang database. Moreover, the Department requires that all misuse be reported to the Department within five calendar days of discovery of the misuse by the System Administrator. The Department determined that a five-day timeframe will be sufficient to protect the integrity of the shared gang 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 shared gang database to have access to it.

Subdivision (f). This provision was added 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 System 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 reasoning is based on practices related to the CalGang database, which is currently the only shared gang database in California. The 90 and 180-calendar-day requirements mentioned in this subdivision were already in place prior to the adoption of these regulations and 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 System Administrator in writing within 30 calendar days from the date the leave of absence commences. This requirement is necessary because a System Administrator should be vigilant when a User is on a leave of absence so that the System 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 System Administrator because a User Agency has the option to notify the System 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 shared gang database and to give a User Agency the ability to timely notify its System Administrator.

§ 770.8. Proxy Query to the Information Contained in a Shared Gang Database.

Subdivision (a). This provision was amended to replace “that” with “who” after “a Non-User.” This was amended for proper grammar and clarity. This provision was additionally nonsubstantively amended to add a space between “permit” and “any.” This was amended to correct a grammatical error.

New Subdivision (a)(3). This provision was added to address situations in which a Non-User is unable to complete a form that collects the information in subparagraph (2) of this section prior to receiving the requested information. This provision allows a proxy query to be conducted when a “Non-User has an urgent need to request a proxy query while in the field.”

New Subdivision (a)(3)(A). This provision was added to require a Non-User requesting a proxy query while in the field to provide the same information as that required in the form. This provision is necessary to allow the User conducting the proxy query to obtain the contact and identification information of the Non-User.

New Subdivision (a)(3)(B). This provision was added to inform the Non-User of the limitations placed on the use of information from the shared gang database. This provision is necessary because the Non-User has not undergone training on the shared gang database.

New Subdivision (a)(3)(C). This provision was added to ensure that both the Non-User requesting a proxy query and the User are aware that a signed form must still be sent to the User when a query is conducted as a result of urgent need absent a precipitating form. Furthermore, there is a 10 day requirement for the submission of this form to allow the Non-User ample time to complete and mail the form to the User who conducted the proxy query. This provision is necessary so that a signed form can be maintained on file for auditing purposes.

New Subdivision (a)(3)(D). This provision was added to require the Non-User requesting the proxy query to agree to sign and send this form within 10 days before the proxy query will be conducted on his or her behalf. This provision is necessary so the Non-User agrees to send a signed form, ensuring that a signed form can be maintained on file for auditing purposes.

New Subdivision (a)(3)(E). This provision was added to hold the User accountable for ensuring that a signed form is received. This provision is necessary so that a signed form can be maintained on file for auditing purposes.

Subdivision (c). This provision was amended to replace “section 773.2” with “Article 8.” This amendment was made to specify that nothing in Article 8 shall be limited by subdivision (a).

§ 771. User Training

Subdivision (b)(1). This provision was amended to remove “criminal predicate” because the definition of “criminal predicate” was removed from the regulations. This provision was also

nonsubstantively amended to add quotation marks around “criminal street gang” and “reasonable suspicion” to indicate that these are defined terms.

Subdivision (b)(2). This provision was amended to remove “and” after “Gang Member” and “a Gang” before “Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (g) of section 770.2.

Subdivision (b)(3). This provision was nonsubstantively amended to add a space between “ordinances” and “regarding.” This was amended to correct a grammatical error.

New Subdivision (b)(12). This provision was added to require that training address “the impact of data collection on community members.” This addition is in response to a public comment requesting the inclusion of this topic in the training.

§ 771.4. Requirements to Become an Approved Instructor.

Subdivision (a). This provision was amended nonsubstantively to add “shall be” before “approved” for clarity. Additionally, there is a nonsubstantive addition of “and” before “shall be graduates of the training” to specify that the instructors need to both be approved and graduates of the training and that these requirements are not interchangeable. There is another nonsubstantive addition of “be” before “tested in system proficiency” for proper grammar.

The Department also amended this provision to remove “or” before a System Administrator and to add and “or a System Administrator’s Designee.” This amendment was made to authorize the System Administrator’s Designee to approve instructors when the System Administrator is not available. This provision was also amended to add a requirement that instructors “have User experience with a shared gang database verified by the System Administrator” to ensure that instructors have relevant experience with a shared gang database before training any User. The addition of the System Administrator verifying this experience will ensure that instructors are credible and knowledgeable on the material on which they will be training Users.

New Subdivision (b). This provision was added to require the name of any instructor approved by a System Administrator or System Administrator’s Designee to be reported to the Department. This provision is necessary so that the Department can maintain records of instructors who are training on a shared gang database and to ensure the Department can contact all trainers with updated training material, policies and procedures, etc.

Subdivision (c) (formerly subdivision (b)). This provision was amended to add “[i]nstructors shall be subject to annual recertification training.” This provision is necessary so that instructors can be annually informed of any system changes or updates, new mandates, and regulations of which they may be otherwise unaware.

New Subdivision (d). This provision was added to specify that the Department has the authority to revoke training privileges of an instructor. This provision is necessary to make the instructor-related regulations enforceable.

§ 771.6. Criteria to be Designated as a Gang Member or Associate.

The title of this section was amended to remove “a Gang” before “Associate” to reflect the change in these terms being combined into “A Gang Member or Associate” in subdivision (g) of section 770.2.

New Subdivision (a). This provision was added so that the need for reasonable suspicion would not be overlooked when designating a person as a Gang Member or Associate in a shared gang database. “Reasonable suspicion” was previously incorporated into subdivision (b) of section 752.6, but the Department added this new provision so that the requirement of having reasonable suspicion before designating a person as a Gang Member or Associate in a shared gang database is clear.

Subdivision (b) (formerly subdivision (a)). This provision was amended to specify that the criteria listed in this subdivision are in addition to the requirement that subdivision (a) be satisfied. This provision was additionally amended to remove “a Gang” before “Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (g) of section 770.2.

Subdivision (b)(1) (formerly subdivision (a)(1)). This provision was amended to include “currently-active” before “Gang Member or Associate.” This amendment is in response to public comments noting that the previous provision could have unintentionally been satisfied by people admitting to past gang membership or association. This provision was additionally amended to remove “a Gang” before “Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (g) of section 770.2.

New Subdivision (b)(2)(A). This provision was added to require that an arrest for an offense consistent with gang activity be “documented on an arrest or crime report.” It further stipulates that “[a] field interview card or report may be used as a source document if it is used in conjunction with an arrest or crime report.” This addition is necessary for clarity.

Former Subdivision (a)(3). This provision was removed in response to public comments.

Former Subdivision (a)(4). This provision was removed in response to public comments.

Subdivision (b)(3) (formerly subdivision (a)(5)). This provision was amended to add “accessories” before “symbols.” This amendment was made because the Department acknowledges that certain accessories are representative of gang membership or association.

New Subdivision (b)(3)(A). This provision was added to specify that an item of clothing shall not be considered a symbol. This provision is necessary to ensure that a color of clothing or style of dress is not documented as a symbol, but rather an item of clothing has a symbol on it that satisfies the criterion in subdivision (b)(3).

Former Subdivision (a)(6). This provision was removed in response to public comments.

Former Subdivision (a)(7). This provision was removed in response to public comments.

Subdivision (b)(4) (formerly subdivision (a)(8)). This provision was amended to add “or association” after “criminal street gang membership.” This amendment was made to specify that a tattoo, mark, scar, or branding can be indicative of criminal street gang association as well as membership.

New Subdivision (d). This provision was added to clarify that the regulations are consistent with the Code of Federal Regulations Title 28 Section 23.20 and the five year limitation placed on maintaining intelligence records. This addition is in response to public comments noting that there was confusion on the time limit for satisfaction of criteria.

§ 771.8. Minimum Age of Entry and Requirements to Enter a Person into a Shared Gang Database.

Subdivision (b). This provision was amended to add “or Associate” after “Gang Member.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (g) of section 770.2. This provision was nonsubstantively amended to replace “based on a trained law enforcement officer’s reasonable suspicion” with “by a trained law enforcement officer” due to the changes made to subdivision (a) of section 771.6. This provision was also amended nonsubstantively to remove “initially” before “entered.” The Department changed the requirement for restarting the retention period to be the entry of two criteria which resulted in the requirement for initial and subsequent entry now being the same.

Former Subdivision (c). This provision was removed because the definition of “Gang Associate” was removed.

Former Subdivision (c)(1). This provision was removed because the definition of “Gang Associate” was removed.

§ 772. Other Rules Pertaining to the Entry of a Person in a Shared Gang Database.

Former Subdivision (a). This provision was removed in response to public comments requesting that the same number of criteria be required to restart the retention period as are required for initial entry into the a shared gang database. This provision is no longer necessary as the requirements for reentry and subsequent entry are now the same as those for initial entry.

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

Subdivision (a)(1). This provision was amended nonsubstantively to remove “articulable” before “reasonable suspicion.” This amendment was made for the purpose of consistency.

Subdivision (a)(2). This provision was amended to change “Gang Members” to “a Gang Member or Associate” and “the Gang Members” to “each Gang Member or Associate.” This provision was additionally amended to remove “the three” before “Gang Members.” These amendments were made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (g) of section 770.2.

Subdivision (c). This provision was added to address the retention period for criminal street gang records in a shared gang database and satisfy the requirement outlined in Penal Code section 186.36(l)(4).

§ 772.4. Supervisory Review Process.

This provision was amended to add “[a]ny intelligence data obtained in violation of any applicable federal, state, or local law, policy, or ordinance shall not be entered into a shared gang database.” This amendment is in response to a public comment noting that the previous version only required the supervisory review to determine if intelligence data was obtained in violation of any of the aforementioned statutes, policies, or ordinances, but did not stipulate that any such data shall not be entered into a shared gang database.

Article 7. Notice of Inclusion in a Shared Gang Database

This article title was amended to replace “Notification” with “Notice.” This amendment was made for consistency with the language used throughout these regulations.

§ 772.8. Notifying a Person of Inclusion in a Shared Gang Database.

Subdivision (a). This provision was amended to replace “the” with “a” before “shared gang database.” This amendment was made to specify that a person shall be notified of their inclusion in any shared gang database, not just one specific shared gang database.

Subdivision (b). This provision was amended to replace “may” with “shall” to clarify that delivery of the notice is not optional.

Subdivision (b)(1). This provision was amended to remove “a Gang” before “Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (g) of section 770.2.

Former Subdivision (c)(1). This provision was removed because Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in (g) of section 770.2 and there is no longer a difference in the designation of a person as a Gang Member or a Gang Associate.

Subdivision (c)(1) (formerly subdivision (c)(2)). This provision was amended to remove “[t]he basis for the designation” and add “[t]he criteria supporting the person’s designation as a Gang Member or Associate.” This amendment was made to require a notice of inclusion in a shared gang database to include the criteria that the designee met in order to be designated as a Gang Member or Associate.

New Subdivision (c)(2). This provision was added to require a notice of inclusion in a shared gang database to include “[t]he date(s) of the contacts or observations on which the criteria for designation were satisfied.” The purpose of this provision is to provide the person being notified of their inclusion in the database with as much information as possible as to why they are being designated and when the contacts or observations that led to their designation were made.

New Subdivision (c)(4). This provision was added for consistency with section 754 and to require the Penal Code reference in the notice of inclusion so the person receiving the notice will be aware that they have a legal right to petition the court to review their designation.

Subdivision (c)(5) (formerly subdivision (d)). This provision was added to change the inclusion of “the name of the criminal street gang that the person is connected to in the database” from being optional to mandatory. The purpose of this provision is to provide the person being notified of their inclusion in the database with as much information as possible regarding their designation.

Former Subdivision (d). This provision was removed and added to subdivision (c) to change the inclusion of “the name of the criminal street gang that the person is connected to in the database” from being optional to mandatory.

Subdivision (h). This provision was amended to replace “the” with “a” before “shared gang database.” This amendment was made to specify that this exemption to sending a notice of inclusion applies to any shared gang database, not just one specific shared gang database. This provision was additionally amended to remove “a Gang” before “Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (g) of section 770.2.

New Subdivision (i). This provision was added to clarify that the information contained in this section concerning the notice of inclusion and the attempted delivery of this notice shall be captured in the shared gang database. This provision is necessary so that the Department may audit and ensure that Agencies comply with these regulations.

§ 773. Information Requests and Verifying the Identity of the Requesting Party.

New Subdivision (a)(1). This provision was added to specify that an attorney may send an information request on behalf of a client. This addition is in response to a public comment requesting that attorneys be allowed to communicate with law enforcement agencies for information as to a client’s designation in a shared gang database.

Subdivision (c). This provision was amended to include “in either of the following ways:” to allow for presentation of a school identification card to verify a person’s identity in addition to the acknowledgement form outlined in subdivision (c)(1). This provision was additionally amended to move the requirements for an acknowledgement form to subdivision (c)(1).

New Subdivision (c)(2). This provision was added to allow a person to use a school identification card to verify their identity. This addition is in response to public comments requesting accommodations for individuals who may not have a driver’s license.

§ 773.2. An Agency’s Response to an Information Request

Subdivision (a)(2). This provision was amended to remove “a Gang” before “Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (g) of section 770.2.

Subdivision (a)(3). This provision was removed and replaced with “[t]he criteria supporting the person’s designation as a Gang Member or Associate in the shared gang database.” These amendments were made to require a notice of inclusion in a shared gang database to include the criteria that the designee met in order to be designated as a Gang Member or Associate.

New Subdivision (a)(4). This provision was added to require a notice of inclusion in a shared gang database to include “[t]he date(s) of the contacts or observations on which the criteria for designation were satisfied.” The purpose of this provision is to provide the requester with as much information as possible as to why they were designated and when the contacts or observations that led to their designation were made.

New Subdivision (a)(7). This provision was added to change inclusion of “[t]he name of the criminal street gang that the person is connected to in the database” from being optional to mandatory. The purpose of this provision is to provide the requester with as much information as possible regarding their designation.

Former Subdivision (b). This provision was removed and added to subdivision (a) to change inclusion of “[t]he name of the criminal street gang that the person is connected to in the database” from being optional to mandatory.

Subdivision (b) (formerly subdivision (c)). This provision was amended to remove “a Gang” before “Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (g) of section 770.2.

Subdivision (c) (formerly subdivision (d)). This provision was amended to remove “Gang” before “Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (g) of section 770.2.

New Subdivision (d). This provision was added to clarify that the information contained in this section concerning the response to an information request, or lack thereof, shall be captured in a shared gang database. This provision is necessary so that the Department may audit and ensure that Agencies comply with these regulations.

§ 773.4. An Agency’s Response to a Request for Removal.

The title of this section was amended to add “An” before “Agency’s” to correct a grammatical error.

New Subdivision (b). This provision was added to establish that an Agency is not required to respond to a request for removal 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 a shared gang database. This provision is necessary because it supports and clarifies the exemption provided in subdivision (d) of Penal Code section 186.34.

New Subdivision (b)(1). This provision was added to require agencies to document instances in which a request for removal is not responded to and maintain the documentation until the record pertaining to that person is purged from a shared gang database. This provision is necessary because it ensures that documentation for exemptions is maintained for auditing purposes.

New Subdivision (c). This provision was added to require an Agency receiving a request for removal to “consider any evidence presented by a person requesting removal.” This addition is in response to a public comment suggesting that the successful completion of parole or probation be considered as evidence that a person is no longer affiliated with a gang. The Department further incorporated other examples of evidence that shall be considered.

§ 773.6. Retention Period for Adult Records.

The title of this section was amended to add “Adult” before “Records” to indicate that the retention period for adult records and juvenile records are different.

Subdivision (a). This provision was amended to add “[t]he record of a person who is 18 years of age or older” to reflect that the five-year retention period is now only applicable to adults. This amendment is in response to public comments stating that retention periods should be based on empirical research, which indicates that gang membership is shorter for juveniles.

Subdivision (b). This provision was amended to specify that the same number of criteria is required to reset the retention period as is required for entry. This amendment is in response to public comments requesting the number of criteria required to reset the retention period be the same as that required for entry. This provision was additionally amended to add “pursuant to section 771.8” for clarity.

New § 773.8. Retention Period for Juvenile Records.

New Subdivision (a). This provision was added to require a shorter, three-year retention period for juveniles. This amendment is in response to public comments stating that retention periods should be based on empirical research, which indicates that gang membership is shorter for juveniles.

New Subdivision (b). This provision was amended to specify that the same number of criteria is required to reset the retention period as is required for entry. This amendment is in response to public comments requesting the number of criteria required to reset the retention period be the same as that required for entry.

New Subdivision (c). This provision was added to specify that the retention period for a record will change if two additional criteria are added to the record of a juvenile after the juvenile reaches 18 years of age.

§ 774.4 (Formerly 774.2). Source Documents.

Subdivision (b)(1). This provision was added to specify that a photograph being entered as a source document into the shared gang database must be captured within five years of the date of entry of the criterion. This amendment is in response to public comments noting that the regulations did not previously specify the need for photographs to be current.

Subdivision (c)(1). This provision was amended nonsubstantively to replace “lacking” with “missing” and “inappropriate” with “incomplete.” This amendment was made for consistency with the language used in subdivision (c).

Subdivision (c)(2). This provision was amended to removed “subdivision (b) or (c) of” before “section 771.8.” This amendment was made because the entirety of section 771.8 pertains to the entry requirements.

§ 774.6 (Formerly 774.4). Audits of Records in a Shared Gang Database.

Subdivision (a). This provision was amended to replace “once” with “three times” before “per calendar year.” This amendment was made in response to a public comment.

§ 774.8 (Formerly 774.6). Audits of Criminal Street Gangs.

Subdivision (a). This provision was amended add “designated in a shared gang database” after “criminal street gangs” for clarity. This provision was also amended to replace “Gang Members” with “persons designated as a Gang Member or Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (g) of section 770.2.

Subdivision (b). This provision was amended to replace “Gang Members” with “persons designated as a Gang Member or Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (g) of section 770.2.

Subdivision (c). This provision was amended to replace “Gang Members” with “persons designated as a Gang Member or Associate.” This subdivision was additionally amended to replace “documented Gang Members” with “persons designated as a Gang Member or Associate.” These amendments were made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (g) of section 770.2.

Subdivision (d)(1). This provision was amended to replace “Gang Members” with “persons designated as a Gang Member or Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (g) of section 770.2.

§ 775 (Formerly 774.8). The Department’s Authority to Audit User Agencies.

This provision was amended to add “[a] User Agency shall grant the Department access to the User Agency’s facilities for this purpose.” This amendment was made to require access to be granted to the User Agency’s facilities at the Department’s request when conducting an audit of a User Agency. This amendment is necessary to enable the Department to ensure compliance as a part of its oversight responsibilities.

§ 775.2 (Formerly 775). Information Sharing and Disclosures.

Subdivision (a). This provision was amended to add “[a]ll records and information contained in a shared gang database are confidential and are for the use of law enforcement agencies, as defined in Penal Code section 186.34(a)(3), only.” This addition is necessary to specify the limitations of information sharing. This provision was amended to replace “the” with “a” before “shared gang database.” This amendment was made to specify that this subdivision does not place a limitation as specified on any shared gang database, not just one specific shared gang database.

New Subdivision (e). This provision was added because the Department felt it was necessary to further clarify the purpose of a shared gang database and to ensure that a shared gang database shall only used for criminal investigative purposes.

New § 775.4. Sharing Information through Printing and Other Mediums.

This section was added to incorporate the language from proposed section 751 of Chapter 7.5: Department of Justice Regulations for the Fair and Accurate Governance of the CalGang Database (OAL File No. 2019-0430-06). This addition is in response to public comments requesting this language be incorporated.

Subdivision (a). This provision was added to establish that System 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 a shared gang database.

Subdivision (b). This provision was added to require System 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 a shared gang database.

Subdivision (c). This provision was added to ensure that each User Agency affords the same level of security to printed copies of intelligence and investigation information as it does for information viewed in a shared gang database.

Subdivision (d). This provision was added to require the destruction of printed documents that are no longer needed.

Subdivision (e). This provision was added 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 shared gang database information. These subdivisions are necessary because protecting the privacy of those California residents who are designated in a shared gang database is paramount and the Department cannot do so if Users have the ability to circumvent the Department's oversight.

Subdivision (f). This provision was added to establish that the Department may take action if 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.

§ 776 (Formerly 775.6). System Misuse.

Subdivision (a). This provision was amended to replace “System Administrator or the System Administrator’s Designee” with “ head of the User Agency or his or her designee and reported to the System Administrator within five business days.” This amendment is in response to a public comment requesting a timeframe be placed on reports of violations.

§ 776.2 (Formerly 775.8). Enforcement of these Regulations.

New Subdivision (c). This provision was added to specify that the Department and/or System Administrator may restrict or revoke the access of a User Agency to a shared gang database and not only an individual User as the regulations previously provided. This provision is necessary to hold User Agencies accountable for the actions of their Users. Furthermore, this provision was added to enable the Department to properly investigate misuse of a shared gang database.