

15-DAY PUBLIC COMMENTS AND DEPARTMENT OF JUSTICE RESPONSES

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750.2(c), Purpose of the CalGang Database	14.31	<p>“§ 750.2 (c) states that the database ‘shall not be used for the purposes of documenting immigration status.’ However, § 751.4(a)(4)(B)(1) goes on to also state ‘The database shall not be used for the purpose of enforcing general immigration law, unless required by California state or federal statute or regulation’ The more complete language should be used whenever immigration status is mentioned.”</p>	<p>No change has been made in response to this comment because section 750.2 broadly defines the purpose of these regulations whereas subdivision (a)(4)(B)(1) is the specific language that a User must read to a Non-User when a proxy query is being requested. It is necessary to have the more specific language read to the Non-User because the Department assumes that the Non-User would not have received any training on the CalGang database or regulations. It is not necessary to have the more specific language all throughout these regulations because any User will receive the training listed in section 751.6 which includes the impact of releasing data for unauthorized purposes.</p>
750.2(d) and 750.2(e), Purpose of the CalGang Database	14.32	<p>“§ 750.2 (d) (e) states that ‘The mere fact of a person’s designation in the CalGang database, by itself, shall not be used [for enumerated purposes.]’ A person’s designation in CalGang should never be used for any of the enumerated purposes, even if not used by itself. Only source documents should ever be used for any purpose other than investigations.”</p>	<p>No change has been made in response to this comment because the Department’s intent was exactly as the commenter stated. Only source documents can be used as evidence; however, as the source documents may be included in the CalGang database, the Department stated “...the CalGang database, by itself, shall not be used...”</p>
750.4(e), “Contact” definition	14.33	<p>The definition of “contact” in § 750.4 (e) includes the reading of a social media internet page or the search of a cell phone. Since these sorts of interactions are not usually</p>	<p>No change has been made in response to this comment because the reading of a social media internet page or the search of a cell phone could be done lawfully and therefore, would fit the</p>

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		considered “contacts” under the word’s usual definition, this should be explained in the definition.	definition of “contact” as these examples would be “any lawful observation.” Furthermore, this comment does not pertain to the changes proposed in the Second Modification to Text of Proposed Regulations, as no changes were proposed to the definition of “contacts.”
750.4(h), “Gang Member or Associate” definition	14.16	“[W]e believe the regulations current language regarding ‘associates’ is, in part, the result of a misreading of the language in PC §§ 186.34-186.36. The phrase ‘gang member, associate, or affiliate’ in those statutes is not meant to create three distinct categories. Rather, these three terms are supposed to be read as inclusive of any synonym of ‘member.’... To be consistent with statute, the regulations should not refer to ‘member’ and ‘associate’ as if they were two different categories. Rather, ‘member’ and ‘associate’ should be used with ‘affiliate,’ or else ‘member’ should be used alone. The definitions section should explain this.”	No change has been made in response to this comment because it appears to be based on the misunderstanding that a person may be designated in a shared gang database based on a criterion that the person is a “gang associate.” However, these regulations permit designation and entry based only on whether the person is a “Gang Member or Associate,” which is a defined term that incorporates specific requirements for entry. Only once a person is entered into the CalGang database could there be a separate notation made in the database that the law enforcement suspects the person is a “non-member gang associate.” This notation serves only an ancillary purpose and does not alter the specific requirements for initial entry into the database.
	14.19	“Revise § 750.4 (h) to state ‘Gang Member, Associate, or Affiliate means a person who satisfies the requirements to be designated in the CalGang database set forth in subdivision (c) of section 752.2.’ The	No change has been made in response to this comment as the Department selected the term “Gang Member or Associate” based on the requirement in subdivision (1)(2) of Penal Code section 186.36 to establish “criteria

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		<p>phrase ‘Gang Member or Associate’ should be replaced with ‘Gang Member, Associate, or Affiliate’ whenever used. Or, in the alternative, the phrase ‘Gang Member or Associate’ should be replaced simply with ‘Gang Member’ and § 750.4 (h) should be revised to state ‘In these regulations, [G]ang Member is synonymous with the phrase Gang Member, Associate, or Affiliate as used in Penal Code sections 186.34 through 186.36.’</p>	<p>for designating a person as a gang member or associate...” The Legislature included the term “affiliate” when drafting Assembly Bill (AB) 90 (Stats. 2017, Ch. 695) because the term “affiliate” was used in the CalGang database at that time; however, the term “affiliate” has since been removed from the database and all prior instances have been systematically changed to reflect the term “associate.” It is the Department’s interpretation that AB 90 was not meant to create three distinct categories for designating a person in the CalGang database, rather one which the Department has labeled “Gang Member or Associate.”</p>
	15.1	<p>“[T]his new draft adds back in gang association as a category and criterion, effectively disregarding our previous comment. While we see that the Department has attempted to mitigate the harm of including gang association as a category and criterion, we believe these attempts are insufficient.”</p>	<p>No change has been made in response to this comment because it appears to be based on the misunderstanding that a person may be designated in a shared gang database based on a criterion that the person is a “gang associate.” However, these regulations permit designation and entry based only on whether the person is a “Gang Member or Associate,” which is a defined term that incorporates specific requirements for entry. Only once a person is entered into the CalGang database could there be a separate notation made in the database that the law enforcement suspects the person is a “non-member gang associate.” This notation serves only an ancillary purpose and does not alter the specific requirements for initial entry into the</p>

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			<p>database. The Department has determined that there is a legitimate need for law enforcement to be able to identify whether a person is a full-fledged member versus someone who is more tangentially connected to the gang but still reasonably suspected to be engaging in criminal activity.</p>
	15.3	<p>“Since the protections in the new criterion are insufficient, the reintroduction of the ‘gang associate’ category would seem to encourage the inclusion of records about us and our colleagues. By adding this category, there is no need for law enforcement officers to identify individuals as gang members, but only that individuals meet the outlined criteria and associate with gang members. This could potentially compromise the work of gang intervention and street outreach work by labelling individuals who are employed to proactively engage the gang-involved population as gang members or associates. Based on our collective experience, there is a likelihood that officers could mis-identify gang workers as gang associates or even gang members. The impacts of being placed onto the gang database will negatively impact our profession and thereby deter future gang workers from entering the field.”</p>	<p>No change has been made in response to this comment because subdivision (a)(4)(A) of section 752.2 specifies that “[n]o person, including, but not limited to, family members and outreach workers, shall be considered for designation under this criterion unless there is reasonable suspicion that they contribute to, or are participating in, the criminal street gang’s illegal activities.” In addition, this comment appears to be based on the misunderstanding that a person may be designated in a shared gang database based on a criterion that the person is a “gang associate.” However, these regulations permit designation and entry based only on whether the person is a “Gang Member or Associate,” which is a defined term that incorporates specific requirements for entry.</p>

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	16.1	“Associate should be stricken.”	No change has been made in response to this comment because the Department has determined that there is a legitimate need for law enforcement to be able to identify whether a person is a full-fledged member versus someone who is more tangentially connected to the gang but still reasonably suspected to be engaging in criminal activity.
	18.04, 20.04	“Eliminate the classification of ‘gang associate,’ as this term in particular is overly subjective and criminalizes people based on their connections to family and neighbors. The proposed DOJ regulations still allow the inclusion of individuals who ‘associate’ with alleged gang members, continuing the extent its reach to family members, neighbors, co-workers and classmates. It is unjust and unconstitutional to include in a criminal intelligence database records of a person who is not suspected of being involved in criminal activity or who is not an active participant of a criminal organization. It is directly contrary to the purposes of a database of ‘gang members.’ Individuals who are not believed to be ‘active gang members’ should not be included within this database, particularly given the impacts gang allegations have on one’s opportunities and life chances.”	Regarding the comment concerning the classification of gang associate, no change has been made in response to this comment because it appears to be based on the misunderstanding that a person may be designated in a shared gang database based on a criterion that the person is a “gang associate.” However, these regulations permit designation and entry based only on whether the person is a “Gang Member or Associate,” which is a defined term that incorporates specific requirements for entry. Only once a person is entered into the CalGang database could there be a separate notation made in the database that the law enforcement suspects the person is a “non-member gang associate.” This notation serves only an ancillary purpose and does not alter the specific requirements for initial entry into the database. Regarding the comment concerning associating with alleged gang members, no change has been made in response to this comment because subdivision (a)(4)(A) of section 752.2 specifies that “[n]o

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			<p>person, including, but not limited to, family members and outreach workers, shall be considered for designation under this criterion unless there is reasonable suspicion that they contribute to, or are participating in, the criminal street gang’s illegal activities.”</p>
<p>750.4(p), “Offense consistent with gang activity” definition</p>	<p>7.2, 9.2</p>	<p>“There is a wide range of criminal behavior engaged in by criminal street gang members that arguably would not fit into the current definition.... The regulation does not reference Penal Code Section 186.22(d) which includes public offenses punishable as a felony or a misdemeanor committed as a gang crime. Lastly, many misdemeanor offenses committed by gang members would not be included. As an example,... an officer observes an individual tagging gang graffiti and contacts him/her [and then] subsequently makes the arrest for the graffiti offense... since the arrest does not meet the second criterion of ‘an offense consistent with gang activity’ as defined in Section 750(p), no entry into the CalGang database would be permissible.”</p>	<p>Regarding the comments concerning the range of criminal offenses that would not fit into the current definition and misdemeanor offenses, no change has been made in response to these comments as the Department constructed this definition based on the offenses that the Legislature determined were consistent with gang activity in subdivision (a)(1) of Penal Code section 186.34. However, in response to law enforcement concerns, the Department extended the scope of this definition to include all other felony offenses that have a nexus to gang activity. The Department maintains that the decision not to extend this definition to include misdemeanor offenses complies with the mandate in AB 90 that criteria for entry not be overbroad. Regarding the comment concerning a reference to subdivision (d) of Penal Code section 186.22, no change has been made in response to this comment because that subdivision references convictions which are not applicable to this definition or these regulations. Regarding the comment concerning the graffiti example, no</p>

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			change has been made in response to this comment because if an individual was tagging criminal street gang graffiti, this would be a display of criminal street gang symbol and could be used to satisfy subdivision (a)(5) of section 752.2; therefore, the arrest concern would not be applicable.
	8.1	“Criminal street gangs are constantly evolving and are committing a variety of criminal activities to make money, increase their influence, and to intimidate others in their neighborhoods. By limiting the use of “other misdemeanor” crimes will negatively influence the effectiveness of law enforcement to track the current criminal activity and trends of criminal street gang members.”	No change has been made in response to this comment as the Department constructed this definition based on the offenses that the Legislature determined were consistent with gang activity in subdivision (a)(1) of Penal Code section 186.34. However, in response to law enforcement concerns, the Department extended the scope of this definition to include all other felony offenses that have a nexus to gang activity. The Department maintains that the decision not to extend this definition to include misdemeanor offenses complies with the mandate in AB 90 that criteria for entry not be overbroad.
Article 3, Access to the CalGang Database, Admission, and Dissemination of Intelligence	12.14	“The DOJ should impose more rigorous safeguards in the provisions on access and proxy sharing to prevent adverse immigration consequences...[A]llowing the DOJ to grant access to out-of-state agencies not only exceeds the authority granted to the DOJ under the statute but undermines the	Regarding the comment concerning safeguards, no change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations. Regarding the comment concerning out-of-state access, no change has been made in response to this comment because under subdivision

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		protections the Legislature thought necessary...”	(a)(3) of Penal Code section 186.34, out-of-state and federal agencies are included in the definition of “law enforcement agencies;” therefore, it is the Department’s interpretation that out-of-state agencies and federal agencies may request access to the CalGang database. When the Legislature amended AB 90 during the drafting process, it specifically removed subdivision (g) from Penal Code section 186.36 which would have explicitly forbid access to any federal agency, multistate agency, or agency of another state to access a shared gang database. (Sen. Amend to Assem. Bill 90 (2017-2018 Reg. Sess.) Sept. 8, 2017.) Following the removal of this subdivision, no language was incorporated that would otherwise suggest that it was still the intent of the Legislature for the Department to forbid access to the aforementioned parties.
750.6, Access to the CalGang Database	18.07, 20.12	“[E]liminate all access to shared gang databases in California by agencies outside of California, including all federal agencies, in order to go farther in protecting the spirit if not the letter of the law enacted with AB 90. Given that federal agencies including Alcohol, Tobacco and Firearms (ATF), Federal Bureau of Investigation (FBI), and Drug Enforcement Administration (DEA) are required to share information with other federal agencies, blocking Immigration and Customs	No change has been made in response to this comment because under subdivision (a)(3) of Penal Code section 186.34, out-of-state and federal agencies are included in the definition of “law enforcement agencies;” therefore, it is the Department’s interpretation that out-of-state agencies and federal agencies may request access to the CalGang database. When the Legislature amended AB 90 during the drafting process, it specifically removed subdivision (g) from Penal Code

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		<p>Enforcement (ICE) access to CalGang does little to protect people from unfair immigration prosecution, detention and deportation, including in cases where a person has no criminal conviction.”</p>	<p>section 186.36 which would have explicitly forbid access to any federal agency, multistate agency, or agency of another state to access a shared gang database. (Sen. Amend to Assem. Bill 90 (2017-2018 Reg. Sess.) Sept. 8, 2017.) Following the removal of this subdivision, no language was incorporated that would otherwise suggest that it was still the intent of the Legislature for the Department to forbid access to the aforementioned parties.</p>
	20.16	<p>“Publicize, on the State Department of Justice website, any Memorandum of Understanding (MOU) that grants CalGang access to an agency or individual, and update MOUs on an annual basis.”</p>	<p>Regarding the comment concerning publishing MOUs, no change has been made in response to this comment because MOUs are available upon request by submitting a Public Records Act request under Government Code sections 6250 through 6270.5. However, the Department has agreed to publish, on the Department’s website, the names of the agencies that enter into an MOU with the Department.</p>
751(a), CalGang Database User Terms and Account Security	5.1	<p>“I suggest a drop-down list of acceptable reasons available to choose from, along with an ‘other’ reason and a free-form text box for reasons that don’t fit the ones listed. Also, examples of unacceptable reasons, and why they are deemed unacceptable would be helpful as well.”</p>	<p>The Department accepts this comment in part and intends to add a free-form box in the CalGang database for Users to document the reason for their query. Additionally, the Department will provide examples of acceptable and unacceptable reasons during training.</p>

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Former 751(b), CalGang Database User Terms and Account Security	20.13	“Keep this section in the regulations to better ensure accountability with Node or User Agencies who have access to enter data into the database. They must be responsible for ensuring legality, accuracy, and integrity.”	No change has been made in response to this comment because this provision was removed and incorporated into the new subdivision (b) to read “Node Agencies or User Agencies that enter information into the CalGang database are responsible for ensuring compliance with these regulations.”
751(d), CalGang Database User Terms and Account Security	20.14	“Reduce the amount of time a User Agency and Node Administrator has for suspending or revoking a User’s account... This proposed timeline seems to leave the database compromised or open to unauthorized users for over a month. Reduce the time the User Agency is required to notify the Node Administrator, to 7 days (five business days), and reduce the time the Node Administrator has to suspend or revoke the User’s account to 3-5 days.”	No change has been made in response to this comment as the Department has determined that the current time periods are reasonable and not unduly burdensome on law enforcement agencies.
751.4, Proxy Query to the Information Contained in the CalGang Database	20.18	“The regulations should eliminate the ability of individuals and/or agencies to conduct “proxy queries” that give individuals and agencies access to CalGang without authorization and with relatively little oversight.”	No change has been made in response to this comment as the Department recognizes the need for law enforcement agencies to share information with each other within the scope of these regulations. Under subdivision (a) of section 751.4, in order to conduct a proxy query, the Non-User must demonstrate that they have a need to know and a right to know.

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751.6, User Training	20.15	Require any training for law enforcement and civilian personnel on CalGang and shared gang database regulations and use to include at least three hours led by people impacted by gang allegations and organizers who have challenged gang allegations in order that users are aware of the serious and adverse impact gang labeling has on an individual, their family and their community.	No change has been made in response to this comment because, when conducting training, the regulations require approved instructors to address the potential positive and negative impacts of collecting data on suspected gang member or associates, on communities impacted by criminal street gangs, and on persons designated in the CalGang database and permits Node Administrators to supplement the training requirements in the regulation.
751.6(b)(13), User Training	14.34	“The new language in § 751.6 (b) (13) still does not adequately capture the concerns we expressed in our previous comments. Our concern is that agencies and officers do not consider the negative impacts of stopping people to interrogate them about gang membership, inspect their tattoos, and document their personal identifying information. While these practices are sometimes necessary, they should never be done without consideration of their potential harm. We recommend the following language: ‘The impact on community members of invasive, confrontational, or humiliating data collection practices, and the impact of inclusion in the CalGang database.’”	The Department accepts this comment in part and has modified the language to require training on “the positive and negative impacts of collecting data on suspected gang member or associates, on communities impacted by criminal street gangs, and on persons designated in the CalGang database.”
Article 5, Designating a Person in the	15.2	The current Article 5 of these regulations merely requires law enforcement officers to add minimal	No change has been made in response to this comment because the Department believes the new

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CalGang Database and Adding Information to a Person's Record		documentation to the same ambiguous and overbroad criteria they used before. Where before, an officer needed to check a box claiming a person was 'in a gang area' and 'associating with a gang member,' under these rules they will also need to include documentation describing the location and association in vague terms. Our experience with police tells us that this minimal documentation requirement will provide absolutely no protection against being designated in a gang database by an officer who presupposes that we or our colleagues are gang members."	documentation requirements will help to ensure the accuracy and reliability of each criterion. Additionally, these documentation requirements are necessary for supervisory reviews and audits and the Department believes they will only serve to increase the accuracy of the CalGang database and reduce or prevent the likelihood of overinclusion.
752.2(a), Minimum Age of Entry and Requirements to Enter a Person into the CalGang Database	8.6	"Adult gang members know that juvenile members who commit crimes will often receive a lesser sentences than an adult. Therefore, the juvenile gang members are the ones often tasked to 'put in work' for the gang."	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.
	9.4	"Juveniles make up less than 1% of the database so we feel the addition of this section is unnecessary; however, this is concerning to us given the reality that the vast majority of youth who enter gangs are between the age of 11 and 15, with the peak years of 13 to 15. This cap would severely hinder law enforcements efforts to work with parents and social workers in their	No change has been made in response to this comment as the minimum age to be designated in the database is based on existing empirical research of youth gang participation as described in the Initial Statement of Reasons (ISOR).

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		efforts to prevent young adults from joining a gang.”	
	13.4	“[W]e remain concerned that limiting entry to persons over the age of 13 (proposed section 752.2(a))... will deprive law enforcement of potentially useful and vital information about juvenile gang members.”	No change has been made in response to this comment as the minimum age to be designated in the database is based on existing empirical research of youth gang participation as described in the ISOR.
	18.02	“Raise the minimum age. The proposed regulations state that no one under the age of 13 shall be entered into the CalGang Database. The raising of the minimum age would fall in line with several state laws and Prop 57, which eliminates the ability of the District Attorney to file youth directly into adult court. Several chaptered state bills encourage the raising of the age requirement such as, SB 1391 (Mitchell/Lara) which ends the transfer of youth under the age of 16 to adult court; SB 395 (Mitchell/Lara) which requires that all youth under the age of 16 speak to a defense attorney before any law enforcement interrogation in order to ensure that they understand their Miranda rights; SB 458 (Wright) which requires a local law enforcement agency to provide written notice to a minor’s parents/guardian prior to designating the minor as a suspected gang member, associate, or affiliate in a shared gang database.”	No change has been made in response to this comment as raising the minimum age to 16 would run contrary to the findings of empirical research studies that examine age of gang members and activity. These empirical studies show that self-identified gang membership typically begins between 12 and 14 years of age, peaking between 14 to 16 years of age, and decreasing by 17 years of age.

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	20.01	<p>“Remove all youth under the age of 18 from any shared gang database and ensure that no youth under the age of 18 are added to CalGang or another shared gang database in California. This is in line with other changes in state law that have reduced youth contact with the system including the passing of Prop 57, eliminating the ability of District Attorneys to direct file youth into adult court; the passing of SB 1391 (Mitchell/ Lara) ending the transfer of youth under 16 to adult court; SB 395 (Mitchell / Lara) requiring that all youth under 16 speak to a defense attorney before any law enforcement interrogation in order to ensure that they understand their Miranda rights; SB 439 (Mitchell) ending all prosecution of youth under the age of 12 except in the rare incidents of murder and forcible rape; the establishment of LA County’s Youth Diversion and Development program that will divert as many as 11,000 youth under 18 each year from arrest, booking and a criminal record; and the passing of a statewide youth diversion fund.”</p>	<p>No change has been made in response to this comment as the minimum age to be designated in the database is based on existing empirical research of youth gang participation as described in the ISOR.</p>
752.2(b), Minimum Age of Entry and Requirements to Enter a Person into the CalGang Database	3.2	<p>“The reasonable suspicion model also calls into question the ability to require a particular number of criteria. Why is two criteria enough? Why not four criteria? The set number of criteria requirement seems ripe to being overturned through a court decision when the reasonable</p>	<p>No change has been made in response to this comment because to the Department’s knowledge there is no empirical research to support or refute a particular number of criteria for entry. Until empirical research conducted by external researchers or the Department’s researchers can</p>

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		suspicion requirement is also met. It appears either the criteria guideline or reasonable suspicion guideline should be chosen, but not both.”	provide relevant data that conclusively demonstrates whether a particular number of criteria is probative of gang membership or association, the Department believes the requirements should remain.
	11.1	<p>“This requirement is unreasonable and it will ultimately lead to agencies no longer sharing their contacts with other agencies through Cal Gang.... [A] patrol officer will not have the skills or training to be able to document a gang member/ associate and show that a member/ associate had knowledge that one’s gang was involved in criminal activity. Furthermore, no gang member/ associate will admit to this, due to the potential of them being labeled as an informant in future cases and potentially placing them in harm’s way. By properly documenting the criteria as it is laid out in the policy, detectives/ officers will be able to show a member/ associates knowledge of a gang’s criminal activity without having to place that person in harm’s way by having them actually cooperate with law enforcement and be seen as an informant in their communities and amongst fellow gang members and associates. We need to have the ability to document our observations without needing to obtain a confession from a gang member about their gang’s crimes in the community.”</p>	<p>Regarding the comment concerning reasonable suspicion, no change has been made in response to this comment because the Department has determined that it is not unreasonable for an officer to have reasonable suspicion when entering someone into the CalGang database.</p> <p>Regarding the comment concerning a patrol officer’s skills, no change has been made in response to this comment because it will be the responsibility of each law enforcement agency to ensure that their officers document each criterion accurately.</p>

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	16.7	“Reasonable suspicion should be stricken and replaced with beyond a reasonable doubt. Gang database entries severely impact criminal cases and unless a defendant takes a deal, only a jury can decide beyond a reasonable doubt if someone committed a crime for the benefit of a ‘gang.’”	No change has been made in response to this comment as these regulations comply with the standards set forth in the Code of Federal Regulations, Title 28, Part 23 which governs the operating principles for shared gang databases. The Code of Federal Regulations, Title 28, Part 23 requires reasonable suspicion that an individual is involved in criminal conduct or activity for a project to collect and maintain criminal intelligence information on an individual and does not require the “beyond a reasonable doubt” standard. The “beyond a reasonable doubt” standard is associated with convictions and shared gang databases are criminal intelligence databases, not criminal history databases.
752.2(c), Minimum Age of Entry and Requirements to Enter a Person into the CalGang Database	6.2	“I concerned by the term ‘...trained law enforcement.’ Who determines that? Is that determined before entry into the database? Is something coming from the state that one day will require a state certified gang officer?”	A trained law enforcement officer is a law enforcement officer who has received the training set forth in section 751.6 of these regulations.
	7.3	“[This section] has been extensively rewritten to add many new and burdensome requirements which will hinder the collection of gang-related intelligence. As an example, two criteria are required under 754.4 for designation in the Database. However, if the criteria being used is contact at a gang related address	Regarding the comment concerning burdensome requirements, no change has been made in response to this comment because the Department has considered the need to balance law enforcement’s need for intelligence to solve crimes with protecting civil rights and privacy. This has resulted in added documentation requirements

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		(752.4(a)(6), in conjunction with 752.4(a)(7), gang clothes/colors, (which is further modified by having the officer explain why the gang clothing or colors are not part of the neighborhood or locality culture!)then another unique criteria must be found before designation, introducing for the first time the need to have three (3) criteria!”	for law enforcement to ensure the accuracy and reliability of each criterion. Additionally, these documentation requirements are necessary for supervisory reviews and audits and the Department believes they will only serve to increase the accuracy of the CalGang database and reduce or prevent the likelihood of overinclusion. Regarding the comment concerning three criteria, no change has been made in response to this comment for the reasons stated in the Second Addendum to Initial Statement of Reasons (SAISOR).
	13.3	“We remain concerned that requiring two criteria to be present in order to enter a subject into the database (proposed section 752.2(c)) will make it exceedingly likely that actual gang members and associates might avoid inclusion in the database. The current draft not only requires that a law enforcement officer have reasonable suspicion that the person may participate in a gang, but that two additional criteria be satisfied.”	No change has been made in response to this comment because to the Department’s knowledge there is no empirical research to support or refute a particular number of criteria for entry. Until empirical research conducted by external researchers or the Department’s researchers can provide relevant data that conclusively demonstrates whether a particular number of criteria is probative of gang membership or association, the Department believes the requirements should remain.
	14.05	“[I]f [our] auditing recommendation[s] are too time or resource intensive to be practical, then designating a person in a shared gang database or adding information to that person’s record should be allowed only when there is objective	No change has been made in response to this comment because a shared gang database is an intelligence database, and limiting entry of information to only “objective evidence not subject to officer discretion or subjectivity,” would

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		evidence not subject to officer discretion or subjectivity. Entry should be limited to only individuals subject to the California Penal Code section 186.30 registration requirement.”	preclude valuable intelligence information that is properly supported by reasonable suspicion.
	14.15	The phrase “gang associate” caused confusion during the Gang Database Technical Advisory Committee meetings and should be dropped. “This will help mitigate the possibility that officers will misinterpret the ‘gang associate’ category as meaning either of the several different definitions of ‘associate’ that were heard during the meetings of the Gang Database Technical Advisory Committee or that appeared in public comment from law enforcement officers during the last public comment period. Because neither of these commonly accepted definitions of ‘gang associate’ require evidence of active participation, using these definitions would violate these regulations, statute, and the U.S. and California Constitutions.”	No change has been made in response to this comment because it appears to be based on the misunderstanding that a person may be designated in a shared gang database based on a criterion that the person is a “gang associate.” However, these regulations permit designation and entry based only on whether the person is a “Gang Member or Associate,” which is a defined term that incorporates specific requirements for entry. Only once a person is entered into the CalGang database could there be a separate notation made in the database that the law enforcement suspects the person is a “non-member gang associate.” This notation serves only an ancillary purpose and does not alter the specific requirements for initial entry into the database.
	14.16	“[W]e believe the regulations current language regarding ‘associates’ is, in part, the result of a misreading of the language in PC §§ 186.34-186.36. The phrase ‘gang member, associate, or affiliate’ in those statutes is not meant to create three distinct categories. Rather, these three terms	No change has been made in response to this comment because it appears to be based on the misunderstanding that a person may be designated in a shared gang database based on a criterion that the person is a “gang associate.” However, these regulations permit designation and entry based

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		<p>are supposed to be read as inclusive of any synonym of ‘member.’... To be consistent with statute, the regulations should not refer to ‘member’ and ‘associate’ as if they were two different categories. Rather, ‘member’ and ‘associate’ should be used with ‘affiliate,’ or else ‘member’ should be used alone. The definitions section should explain this.”</p>	<p>only on whether the person is a “Gang Member or Associate,” which is a defined term that incorporates specific requirements for entry. Only once a person is entered into the CalGang database could there be a separate notation made in the database that the law enforcement suspects the person is a “non-member gang associate.” This notation serves only an ancillary purpose and does not alter the specific requirements for initial entry into the database.</p>
	16.2	<p>“If admission of being a gang member will be used in a court of law and has a harmful impact on sentencing, miranda rights and due process should be granted before being entered in a database.”</p>	<p>No change has been made in response to this comment because these regulations provide: “[t]hese regulations shall not be interpreted as authorizing the use of a person’s designation in the CalGang database as evidence of crime, or as probative of any other matter, in any phase of a criminal proceeding, including sentencing.” The Department believes this provision more appropriately addresses the matters in the comment.</p>
752.2(c)(3), Minimum Age of Entry and Requirements to Enter a Person into the CalGang Database	14.17	<p>“Revise § 752.2 (c) (3) to describe suspects as ‘non-member active participants’ instead of “gang associates”</p>	<p>No change has been made in response to this comment because this notation serves only an ancillary purpose and does not alter the specific requirements for initial entry into the database; therefore, the Department does not believe it is necessary to change this term.</p>

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	14.18	“Require that any record of an individual who is not a member of a gang include documentation of why that person is reasonably suspected of active gang participation.”	No change has been made in response to this comment because the Department intends on having a free-form field in the database for this documentation; however, as this notation serves only an ancillary purpose and does not alter the specific requirements for initial entry into the database, the Department does not believe it necessary to require this documentation.
752.4, Criteria to be Designated as a Gang Member or Associate	1.1, 2.1, 19.1	“The proposed regulations that would misidentify people wholly unconnected to gang activity as gang members or associates. I respectfully request that you finalize regulations that exclude the following criteria: (1) the person has been seen associating with persons meeting the criteria for entry or who have previously been entered as a Gang Member into the CalGang database; (2) the person has been seen at one or more gang-related addresses or locations; and (3) the person has been seen wearing clothing or colors that police believe are tied to a specific criminal street gang. These discriminatory criteria allow police to add people to a gang database simply because of where they live, with whom they socialize, and how they dress. They would unjustly target people of color for increased police surveillance.”	No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated

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			<p>counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	3.1	<p>“As the level of detail and specificity required of an FIR card for later CG entry increases it becomes as cumbersome and laborious as a formal arrest report for infractions and misdemeanors that often trigger a contact. Officers will be incentivized to opt for a formal arrest and/or booking of the individuals... as opposed to a less formal FI interview/contact.... If most of these changes are signed into law the most effective pivot someone in my position would make would be to brief and encourage officers/deputies to arrest all gang members and associates for any violations, no matter how minor. This would fulfill the necessity to document reasonable suspicion via probable cause, specifics of the elaborate new criteria, and capture images of tattoos during booking...”</p>	<p>Regarding the comment concerning the detail and specificity, no change has been made in response to this comment because the Department has considered the need to balance law enforcement’s need for intelligence to solve crimes with protecting civil rights and privacy. This has resulted in added documentation requirements for law enforcement to ensure the accuracy and reliability of each criterion. Additionally, these documentation requirements are necessary for supervisory reviews and audits and the Department believes they will only serve to increase the accuracy of the CalGang database and reduce or prevent the likelihood of overinclusion. Regarding the comment concerning encouraging arrests, no change has been made in response to this comment as supervisors should abide by their department’s policies and procedures</p>

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			<p>on arresting individuals and follow the guidance set forth by their chief. Any differences in policy and procedure that they direct to their subordinates should go through their respecting chain of command for approval before encouraging such an action.</p>
	4.3	<p>“The proposed regulatory changes also waters down the identifiers used in the validation process currently practiced by participating California law enforcement which were designed and utilized to provide accuracy and uniformity with the validation process. Self-admission of gang affiliation is an objective-criteria for including an individual in CalGang. So are photos of a person wearing gang apparel, posting pictures of themselves on social media displaying gang symbols and hand signs. The proposed regulations intend to remove gang attire from the validation process, and, recommends the term “association” be removed. One may be an associate on the way to becoming a full member. The associate is identified as such by the attire being worn and constantly being observed in the presences of the known gang member. The objective conclusion, from observations, based on law enforcements training and experience, is what they observed is consistent with gang behavior.”</p>	<p>Regarding the comment concerning identifiers, no change is needed in response to this comment, as the Department has added back in subdivisions (a)(3), (a)(4), (a)(6), and (a)(7), as amended, to the criteria section, 752.4. Regarding the comment concerning self-admission, no change is needed in response to this comment as self-admission is still a criterion in subdivision (a)(1) of section, 752.4. Regarding the comment concerning photographs, no change is needed in response to this comment as subdivision (f) of section 752.4 addresses the use of photographs as source documents. Regarding the comments concerning gang attire and association, no change is needed in response to these comments as subdivisions (a)(7) and (a)(4) address clothing and associations. If this comment is referencing the elimination of the defined term “gang associate,” no change is needed in response to this comment because the Department has combined Gang Member and Gang Associate into one category, Gang Member or Associate.</p>

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	6.1	“[W]hat concerns me is the time needed to properly document a suspected gang member or associate.”	No change has been made in response to this comment because the Department has considered the need to balance law enforcement’s need for intelligence to solve crimes with protecting civil rights and privacy. This has resulted in added documentation requirements for law enforcement to ensure the accuracy and reliability of each criterion. Additionally, these documentation requirements are necessary for supervisory reviews and audits and the Department believes they will only serve to increase the accuracy of the CalGang database and reduce or prevent the likelihood of overinclusion.
	7.1	“I would note that as the proposed regulations have moved through the process of implementation, they have only become more complex and administratively burdensome. While the intent of the latest changes may be to more clearly define gang member and associate designation criteria, the effect is to minimize the ability of gang officers to collect criminal intelligence information useful for investigative purposes. These latest proposed changes again serve to take away the stated purpose of the CalGang Database... ‘to provide law enforcement agencies with an accurate, <i>timely (emphasis added)</i> , and electronically-generated database of statewide gang-related intelligence.’”	No change has been made in response to this comment because the Department has considered the need to balance law enforcement’s need for intelligence to solve crimes with protecting civil rights and privacy. This has resulted in added documentation requirements for law enforcement to ensure the accuracy and reliability of each criterion. Additionally, these documentation requirements are necessary for supervisory reviews and audits and the Department believes they will only serve to increase the accuracy of the CalGang database and reduce or prevent the likelihood of overinclusion.

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	8.5	<p>“The amount of required information for each report and the criteria documentation has drastically increased. If these changes are approved, it will require retraining of all documenting officers, modifying the existing reports, and will increase the amount of time it required to complete the report. All of that will have a negative effect the efficiency of the CalGang database.”</p>	<p>Regarding the comment concerning the added documentation requirements, no change has been made in response to this comment because the Department has considered the need to balance law enforcement’s need for intelligence to solve crimes with protecting civil rights and privacy. This has resulted in added documentation requirements for law enforcement to ensure the accuracy and reliability of each criterion. Additionally, these documentation requirements are necessary for supervisory reviews and audits and the Department believes they will only serve to increase the accuracy of the CalGang database and reduce or prevent the likelihood of overinclusion. Regarding the comment concerning the retraining of deputies, no change has been made in response to this comment because these regulations will require training for all Users on all of the new rules governing the CalGang database. Regarding the comment concerning modifying existing reports, no change has been made in response to this comment as existing reports and source documents supporting current entries in the CalGang database will not need to be modified; however, other source documents that have not yet been entered may need to be updated to reflect the requirements set forth in these regulations.</p>

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	12.02	<p>The Department fails to rely on empirical research, codifies the prior criteria, and fails to provide an empirical basis for including these criteria. “The DOJ once again ignores its own empirical study and the additional research submitted by the public showing that many of these criteria—such as association, gang addresses, and colors of clothing—are weak indicators of gang membership at best, and would continue the overinclusion of Black and Latino residents simply because they reside within areas that law enforcement has targeted for gang policing.”</p>	<p>No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the</p>

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			regulation are strong indicators of gang membership.
	12.03	It is “crucial that the regulations require police to document the source material that purportedly supports the gang designation—including by mandating that bodycam footage be uploaded to CalGang whenever available—and that full disclosure of the source documents purportedly establishing the basis for an individual’s inclusion in CalGang be produced to allow for a meaningful challenge.”	Regarding the comment concerning uploading footage to the CalGang database, no change has been made in response to this comment as video footage cannot be added to the CalGang database for technical reasons; however, the Department has added a requirement for the wording of the admission to be documented and added subdivisions (e)(1) and (e)(2) to section 752.4 to require the law enforcement officer to indicate whether a recording of their contact with a person is available so that, if a recording exists, it can be reviewed and/or audited. Regarding the comment concerning the release of source documents, no change has been made in response to this comment. Penal Code section 186.34(c) and (d) require the release of a statement from the law enforcement agency regarding the basis of the designation. It does not require or authorize the release of source documents supporting the basis of the designation. Furthermore, on September 1, 2017, the Legislature deleted language in AB 90 that would have required production of source documents. No other language in the statute suggests the Legislature intended source documents be provided as part of a notice or a response to a request for information. See also Government Code section

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			6254(f) (exempting certain investigatory and intelligence information from disclosure under the Public Records Act). However, the Department has added language to require Node Agencies and User Agencies to identify the source documents in their possession and provide a description of how each source document supports any criteria in a notice or response to a request for information.
	12.04	“To prevent the continued overinclusion of people of color, the DOJ must avoid overbroad criteria or retention policies and unfettered law enforcement discretion.”	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.
	12.05	“[L]aw enforcement’s assertions of the accuracy of their own opinions should not be taken as fact and absolutely should not supersede existing empirical research to the contrary—as the DOJ has done.”	No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies

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			<p>included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	13.6	<p>“[I]n several places throughout the proposed regulations, there are burdensome documentation requirements related to the various criteria. These provisions will result in more time and resources being dedicated to working up and entering information into the CalGang pointer system. It will likely require retraining of responsible individuals, may prevent the inclusion of valuable intelligence, and could ultimately hurt the utility of the information and the system generally.”</p>	<p>No change has been made in response to this comment because the Department has considered the need to balance law enforcement's need for intelligence to solve crimes with protecting civil rights and privacy. This has resulted in added documentation requirements for law enforcement to ensure the accuracy and reliability of each criterion. Additionally, these documentation requirements are necessary for supervisory reviews and audits and the Department believes they will only serve to increase the accuracy of the CalGang database and reduce or</p>

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			<p>prevent the likelihood of overinclusion. Regarding the comment concerning the retraining of individuals, no change has been made in response to this comment because these regulations will require training for all Users on all of the new rules governing the CalGang database.</p>
	14.06	<p>“It is still our position that many of the criteria used in this draft are inherently ambiguous and overbroad, and therefore unlawful under PC § 186.36 (1) (2)... In a public comment signed by nineteen of the nation’s leading gang researchers, several of the criteria reintroduced in this most recent draft were described as weak indicators of gang membership, and this description was supported by a citation to research by Malcom Klein, the nation’s leading gang scholar. It is inconsistent with this research to reintroduce the previously deleted criteria, even in the elaborated form in which they appear in these regulations.... This quote from the statement of reasons (1) ignores the comment from the gang researchers, (2) ignores their cited research, and (3) effectively shifts the department’s approach from establishing criteria consistent with empirical research to an approach where any probative criteria might be accepted absent conclusive empirical research to the contrary. This statement of reasons also ignores that the requirement for new criteria</p>	<p>Regarding the comment concerning the criteria being ambiguous and overbroad, no change has been made in response to this comment because the Department has added new restrictive language to the CalGang criteria regulations to ensure the criteria for gang membership designation are unambiguous and not overbroad. Moreover, the revised regulations require that, in addition to meeting two (and in some instances, three) criteria for designation, law enforcement officers must provide justification for their reasonable suspicion that the person is in fact a current gang member above and beyond the criteria designated and that such reasonable suspicion must be confirmed by a supervisor and the agency via written attestations. Regarding the comment concerning the specific publication by Malcom Klein, no change has been made in response to this comment as this publication is a policy paper that had been previously reviewed by Department staff. In this article, Klein states “[b]ecause gang membership is usually a judgmental affair—there is</p>

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		<p>consistent with empirical research was made <i>because</i> the old criteria advanced by law enforcement officers was unacceptable. Enshrining the status quo criteria into these regulations is the exact <i>opposite</i> of the Legislature’s intent.”</p>	<p>seldom an organizational roster, record of dues-paying membership, or other documented formal gang membership system— criteria such as those [used for CalGang] make some sense. But obviously some criteria are more valid than others, and the requirement of meeting two or three of them does little to add certainty.” The Department agrees that designation criteria are necessary for entry into a gang database and that it is highly unlikely that all gang entry criteria are equally reliable indicators of gang membership. Unfortunately, in the decade since this essay was published, and in the essay itself, there has been a dearth of empirical research on gang membership indicators, particularly on adult street-gang members which constitute 98.7% of entries in the CalGang database. Of the few empirical studies that examine gang membership indicators to some extent, the population studied tended to be middle school children ages 11 to 14, which constitute about 0.09% of the CalGang population, making it difficult to generalize the findings for these regulatory purposes. Regarding the comment concerning the SAISOR explanation, no change has been made in response to this comment because the Department reviewed and was informed by the public comment made by Dr. Pyrooz and his colleagues. In their letter, Pyrooz and colleagues concede that adult street-</p>

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			<p>gang members are an understudied group and a weighting approach to designation criteria modeled after the California Department of Corrections and Rehabilitation’s (CDCR’s) approach “needs independent evaluation.” Based, in part, on their public comment, the empirical research conducted by Pyrooz and others, and a conversation with Dr. Pyrooz, the Department decided to reduce the record retention period for minors, and is developing an empirical study of gang membership indicator reliability, strength, and validity, including an examination of a weighted approach.</p>
	15.5	<p>“These regulations, as currently written, do little to provide the guidance law enforcement agencies need to stop their current practice of designating people as gang members based on overbroad, and ambiguous criteria.”</p>	<p>No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.</p>
	17.1	<p>“I use CalGang on a regular basis and I understand that proposed changes would likely make it more difficult and/or time consuming for LE to create and update records pertaining to a person’s affiliation with a criminal gang. In my opinion, this would likely result in less entries, and this would be no good for LE whatsoever.... Since no charges or allegations are actionable by LE for information found in CalGang, I</p>	<p>No change has been made in response to this comment because the Department has considered the need to balance law enforcement’s need for intelligence to solve crimes with protecting civil rights and privacy. This has resulted in added documentation requirements for law enforcement to ensure the accuracy and reliability of each criterion. Additionally, these documentation requirements are necessary for</p>

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		believe making it harder to document & update gang status would only benefit the gang members. Not to say I would applaud people being documented as gang members when in fact they are not, but still... most gang members in CalGang are self-admitted, any day & every day, so why belabor the point?"	supervisory reviews and audits and the Department believes they will only serve to increase the accuracy of the CalGang database and reduce or prevent the likelihood of overinclusion.
	17.2	"What would really benefit LE and the community, would be to direct CDCR to provide gang affiliations per in-custody interviews, which I understand are detailed and well documented interviews. Since a criminal street gang is a form of organized crime, I strongly believe this sort of information should be available to the LE community at large, and as easily as that found in CalGang. It can, and should be, identified as CDCR in-custody data, and existing restrictions should certainly remain as far as distribution goes, however I would consider this as extremely valuable in deterring crime and protecting the community."	No change has been made in response to this comment because it is outside the scope of these regulations.
752.4(a)(1), Criteria to be Designated as a Gang Member or Associate, "The person has admitted..."	6.3	"On page 19, § 752a '...under circumstances that do not undercut truthfulness.' This seems vague and an area that would be open to debate. How will this effect entry into a database? Will this be litigated before an entry?"	No change has been made in response to this comment as this subdivision requires the law enforcement officer to notate whether the person was arrested during the contact for violating subdivision (f) of Penal Code section 647 or subdivision (a) of Health and Safety Code section 11550

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			<p>and a requirement to document the wording of the admission, thus providing examples of circumstances that may undercut the truthfulness of an admission. These added documentation requirements will allow for a more thorough supervisory review process and provide more information during audits. Additionally, subdivisions (a)(1)(A), (a)(1)(B), and (a)(1)(C) have been added to section 752.4 to further clarify when this criterion shall not be satisfied. However, there is no reasonable way to catalog all circumstances that may undercut the truthfulness of an admission. Alternatively, eliminating this phrase entirely would result in more admissions satisfying this criterion because admissions that should be doubted would still be included.</p>
	7.4, 9.3	<p>“The imposition of a Miranda-like analysis is both unnecessary and burdensome prior to the use of a self-admission for entry into the Database.”</p>	<p>No change has been made in response to this comment because the Department believes that an admission can be influenced by many factors; therefore, it is necessary to evaluate the circumstances of the admission to ensure its reliability. Specific examples are provided in the ISOR and SAISOR.</p>
	14.08	<p>“[J]ust as you have prohibited the use of jail classifications to satisfy § 752.4 (a) (3), admissions during jail classifications should be similarly prohibited in § 752.4 (a) (1). In PC §</p>	<p>No change has been made in response to this comment because while subdivision (r)(l) of Penal Code section 186.36 excludes jail classification as a criterion, without</p>

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		186.36 (r) (1), the Legislature expressed a policy preference for encouraging candid discussions between prisoners and jailers about prisoners' gang membership so that prisoners may be housed safely. This cannot happen if these conversations are used as source documents in CalGang."	additional language, it does not appear the Legislature intended to exclude gang membership admissions even if made during an in custody classification interview. In other words, a competent and voluntary gang membership admission should be a valid criterion regardless of where made.
	14.22	"The currently proposed § 752.4 (a) (1) removes the word 'currently' from the phrase 'currently active gang member' from the admission criterion. The reason given is that 'currently-active' is confusing. Considering that reason, the regulations need some other way to distinguish between current and former gang members so that admissions of former membership are not used to satisfy the admission criterion."	No change has been made in response to this comment because no former membership or association shall satisfy this criterion which is indicated by the word "active."
	14.25	"Revise § 752.4 (a)(1) to require a person to admit to 'being a current and active gang member.'"	No change has been made in response to this comment because no former membership or association shall satisfy this criterion which is indicated by the word "active."
	20.05	"In our experience, a person's claim of gang membership or admission of membership when asked is the most commonly refuted criteria by community members. Given it's subjectivity, this criteria should be removed."	No change has been made in response to this comment because the Department has determined that this is a valid and valuable criteria based on feedback from the law enforcement community and empirical research.

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			1,2,3,4,5
752.4(a)(1)(C), Criteria to be Designated as a Gang Member or Associate. “The person has admitted...”	14.08	“[This subdivision] should be removed because social media posts are never reliable and the regulations should expressly note that admissions of former gang membership do not satisfy this criterion.”	No change has been made in response to this comment because the Department believes that when social media is carefully evaluated by a law enforcement officer, it can be used as an indicator of active criminal street gang membership or association. Subdivision (e)(3) of section 752.2 requires this careful evaluation and includes a list of factors the law enforcement officer must take into consideration.
	14.28	“§ 752.4 (a) (1) (C) should be revised to state that this criterion shall not be satisfied by posts on social media.”	No change has been made in response to this comment because the Department believes that when social media is carefully evaluated by a law enforcement officer, it can be used as an indicator of active criminal street gang membership or association.

¹ Winfree, L. T., Fuller, K., Vigil, T., & Mays, G. L. (1992). The definition and measurement of ‘gang status’: Policy implications for juvenile justice. *Juvenile and Family Court Journal*, 43(1), 29–37. <https://doi.org/10.1111/j.1755-6988.1992.tb00717.x>

² Esbensen, F.-A., Winfree, L. T., He, N., & Taylor, T. J. (2001). Youth gangs and definitional issues: When is a gang a gang, and why does it matter? *Crime & Delinquency*, 47(1), 105–130. <https://doi.org/10.1177/0011128701047001005>

³ Decker, S. H., Pyrooz, D. C., Sweeten, G., & Moule, R. K. J. (2014). Validating self-nomination in gang research: Assessing differences in gang embeddedness across non-, current, and former gang members. *Journal of Quantitative Criminology*, 30(4), 577–598. <https://doi.org/10.1007/s10940-014-9215-8>

⁴ Curry, G. D., Decker, S. H., & Egley Jr., A. (2002). Gang involvement and delinquency in a middle school population. *Justice Quarterly*, 19(2), 275–292. <https://doi.org/10.1080/07418820200095241>

⁵ Curry, G. D., & Spergel, I. A. (1992). Gang Involvement and delinquency among Hispanic and African-American adolescent males. *Journal of Research in Crime and Delinquency*, 29(3), 273–291. <https://doi.org/10.1177/0022427892029003002>

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			Subdivision (e)(3) of section 752.2 requires this careful evaluation and includes a list of factors the law enforcement officer must take into consideration.
752.4(a)(2), Criteria to be Designated as a Gang Member or Associate, “The person has been arrested...”	12.06	This criterion is ambiguous and overbroad. The Department disregards explicit instruction by the California Legislature by not eliminating this criterion as it is not consistent with empirical research. Pursuant to AB 90, this criterion should be excluded until such empirical research exists.	No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with

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			<p>whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	14.09	<p>“Arrests that do not result in a conviction, even limited by the new definition, are not reliable indicators of gang membership. In fact, an arrest that is not prosecuted or results in an acquittal is evidence that the arresting officer’s suspicion of gang membership is erroneous. If feasible, records based on § 752.4 (a) (2) should be removed if the arrest does not result in a conviction. If that is not feasible, then this criterion should be removed entirely.”</p>	<p>No change has been made in response to this comment because Title 28 of the Code of Federal Regulations does not limit the content of shared gang databases to convictions. An arrest which satisfies the definition of an “offense consistent with gang activity” must be based on reasonable suspicion that the individual is involved in criminal activity. The Department believes that such arrests are relevant criminal intelligence and should be included.</p>
	16.3	<p>“Gang activity should be stricken.”</p>	<p>No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang</p>

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			<p>member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	18.09, 20.06	<p>“Remove the criteria regarding ‘arrested for an offense consistent with gang activity listed in subdivision of 186.22 ‘STEP Act’ and replace it with ‘was convicted of a gang enhancement’. It allows for due process rights for an individual to challenge the allegations that their action(s) was/were ‘committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to</p>	<p>No change has been made in response to this comment because Title 28 of the Code of Federal Regulations does not limit the content of shared gang databases to convictions. An arrest which satisfies the definition of an “offense consistent with gang activity” must be based on reasonable suspicion that the individual is involved in criminal activity. The Department believes that such arrests</p>

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		promote, further, or assist in any criminal conduct by gang members.”	are relevant criminal intelligence and should be included.
752.4(a)(3), Criteria to be Designated as a Gang Member or Associate, “The person has been identified... by a reliable source.”	7.5	“Unfortunately, there are major caveats. The source cannot be a juvenile (even if a previously designated gang member) or a rival gang member! Query whether such a requirement makes sense when such hearsay exceptions as ‘excited utterances’ or even ‘dying declaration’ would allow evidence of statements made by a rival gang member who had witnesses a gang shooting as either the target or a victim! Neither exception makes sense!”	No change has been made in response to this comment. The Department has added back in this criterion in response to previous public comments, but with restrictions to increase the accuracy of entries in the database using this criterion. The restrictions are in response to public comments that juveniles and rival gang members are less reliable than other sources.
	12.06	This criterion is ambiguous and overbroad. The Department disregards explicit instruction by the California Legislature by not eliminating this criterion as it is not consistent with empirical research. Pursuant to AB 90, this criterion should be excluded until such empirical research exists.	No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file

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			<p>indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	12.07	<p>“The continued reliance on reliable source also remains inconsistent with existing law. Even though the current proposed regulations limit the invocation of this criterion, its use will prohibit individuals from meaningfully utilizing the scheme set forth by the legislature to challenge database inclusion because that scheme does not include any evidentiary hearing or ability to subpoena witnesses. While law enforcement must document the source’s alleged basis for its opinion that an individual is a gang member, an accused will have much less ability to challenge those allegations</p>	<p>No change has been made in response to this comment because the Legislature has provided for administrative and judicial remedies under the statute for challenging a gang database designation, and has specified the scope of permitted evidence for judicial review. Furthermore, these regulations disclaim any intention to alter the Legislature’s determinations about the scope of permitted evidence. The Department believes those seeking judicial review will have meaningful judicial proceedings available to them, consistent with legislative direction, in</p>

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		because they will not have access to the type of documentation—photographic records, body camera evidence, etc.—required when law enforcement makes similar observations and are not provided opportunity to confront the source...”	respect of the reliable source criterion and otherwise.
	14.07, 16.4	Remove this criterion.	No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to

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			accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.
	14.10	“[T]he basis for the informant’s identification of a person as a gang member must not be used to satisfy any other of the criteria. Otherwise, there is the possibility that a single incident could be double counted to satisfy the requirements for entry.”	No change has been made in response to this comment because many of the criteria were revised to require that they be observed by a law enforcement officer firsthand. Also, the law enforcement officer making the observation cannot also be counted as a reliable source for the purpose of this criterion. This helps prevent an officer from using reliable source to double count criteria from one incident.
752.4(a)(3)(A), Criteria to be Designated as a Gang Member or Associate, “The person has been identified... by a reliable source.”	13.5	We object to this provision. “In many circumstances, the information provided by, or derived from, a person in the classification process may be the most reliable inasmuch as it directly relates to the person’s safety and opportunity within a facility.”	No change has been made in response to this comment because subdivision (r)(1) of Penal Code section 186.36 required the Department to purge any criteria that was entered into the CalGang database if it was based on a jail classification.
752.4(a)(3)(B), Criteria to be Designated as a	8.2	“Many times, gang investigators will conduct interviews of suspected gang members and enter the information into the CalGang database. Based	No change has been made in response to this comment as this provision is intended to prevent a law enforcement officer from listing themselves as the

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<p>Gang Member or Associate, “The person has been identified... by a reliable source.”</p>		<p>upon their training and experience, gang investigators are the best resource for documenting a person as an active gang member or associate. By eliminating them, and other trained law enforcement officers who conduct interviews or complete the source document as a reliable source will negatively impact the effectiveness of the CalGang database.”</p>	<p>reliable source if they are conducting the interview or completing the source document to satisfy this criterion. If an officer conducts an interview of a suspected gang member, the information obtained could be used to support the satisfaction of a different criterion in section 752.4, provided it meets the requirements of that criterion, or this criterion if the person being interviewed is identifying another individual as an active member or associate of an active criminal street gang. For example, if a law enforcement officer interviews a suspected gang member and determines that the person has a tattoo indicating criminal street gang membership or association, this information should be used to support subdivision (a)(8) of section 752.4. Using this example, the law enforcement officer cannot then satisfy subdivision (a)(3) of section 752.4 using the same information that supported the satisfaction of subdivision (a)(8). If a law enforcement officer consults with another trained law enforcement officer who provides intelligence, the law enforcement officer being interviewed could be used as a reliable source provided they satisfy all other requirements of subdivision (a)(3) of section 752.4; however, the law enforcement officer conducting the interview or completing the source document could not list themselves as the reliable source for this criterion.</p>

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	14.10	“[W]e believe § 752.4 (a) (3). should be further changed to prohibit any law enforcement officer from being a reliable source under this criterion. If a law enforcement officer identifies a person as a gang member, that officer should create an independent source document.”	No change has been made in response to this comment because the Department believes it is important to allow law enforcement officers to provide intelligence to each other. Furthermore, subdivision (a)(3) of section 752.4 requires the law enforcement officer interviewing the reliable source to document “the specific information that serves as the basis for the opinion of the reliable source, why the information provided by the source is consistent with the criteria set forth herein, and the reason(s) that the reliable source has been deemed reliable.”
752.4(a)(4), Criteria to be Designated as a Gang Member or Associate, “The law enforcement has observed the person associating...”	3.4	“Once family members, or significant others are formally advised of the gang member or associate’s inclusion into CG, they should be subject to entry into CG as an ‘associate/supporter.’ ... Without addressing the underlying support network for criminal street gang behavior, society misses an opportunity to engage the family unit in a process that could direct an individual away from criminal associations and behavior where society’s only response is often punitive once the individual has been charged with a serious offense.”	No change has been made in response to this comment because subdivision (a)(4)(A) states that “[n]o person, including, but not limited to, family members and outreach works, shall be considered for designation under this criterion unless there is reasonable suspicion that they contribute to, or are participating in, the criminal street gang’s illegal activities.” If a family member or significant other is contributing to, or participating in, the criminal street gang’s illegal activities, then they may be considered for designation under this criterion.
	10.1, 14.07, 14.11, 18.03, 20.03	Remove this criterion.	No change has been made in response to this comment because the criteria are consistent with the Department’s empirical research in the rulemaking

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

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	12.06	<p>This criterion is ambiguous and overbroad. The Department disregards explicit instruction by the California Legislature by not eliminating this criterion as it is not consistent with empirical research. Pursuant to AB 90, this criterion should be excluded until such empirical research exists.</p>	<p>No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the</p>

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			regulation are strong indicators of gang membership.
	12.08	<p>“First, by allowing this criterion to be satisfied through association with anyone in CalGang—including gang “associates,” not only those alleged to be gang “members”—this could greatly extend the reach of the database. Second, we have seen that actions such as a family member “allowing” their purportedly gang-affiliated relative to associate with other alleged gang members in their shared home is a type of conduct law enforcement view as contributing to gang activity. Family members and other innocent associates therefore remain at risk—particularly given that law enforcement is allowed to include “non-member associates” in the database, whom they do not even have to purport are active members of any gang. While we continue to believe that this criterion should be eliminated completely, at minimum it must be further narrowed to limit it to associations in the commission of gang-related crime.... If association is to remain, it also should be deemed a weak criteria, potentially requiring the satisfaction of three criteria for inclusion under Section 752.2(c)(1) in addition to gang-related addresses and clothing.”</p>	<p>No change has been made in response to this comment because subdivision (a)(4)(A) of section 752.2 specifies that “[n]o person, including, but not limited to, family members and outreach workers, shall be considered for designation under this criterion unless there is reasonable suspicion that they contribute to, or are participating in, the criminal street gang’s illegal activities.” Additionally, subdivision (a)(4)(B) also states that “[i]ncidental community interactions that are not criminal in nature shall not be used to satisfy this criterion.”</p>
	15.1	<p>“[T]his new draft adds back in gang association as a category and</p>	<p>No change has been made in response to this comment because the criteria</p>

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		<p>criterion, effectively disregarding our previous comment. While we see that the Department has attempted to mitigate the harm of including gang association as a category and criterion, we believe these attempts are insufficient.”</p>	<p>are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>

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	15.4	<p>“[T]he current language regarding gang intervention and outreach workers might be counterproductive for the field. While the intent of the regulations provides some protections to differentiate the field of gang intervention, it could encourage active gang members to claim status as a gang intervention worker to avoid scrutiny or arrest. As we have experienced in the past, this can undermine the credibility of gang outreach workers in the community and among law enforcement and other municipal partners. Because there is no workable means for law enforcement officers to assess whether a person is an intervention or outreach worker, this well-intentioned language counterproductively puts our organizations at risk. Considering this, if the Department does not remove the associate category and criterion, we recommend that any reference to gang intervention and outreach be removed from the regulations. While we appreciate the Department’s attempt to respond to our concerns, we believe the current language regarding outreach workers will do us more harm than good. It would be better to just leave us out.”</p>	<p>No change has been made in response to this comment. This criterion requires a law enforcement officer to have reasonable suspicion that a person associating with a designated gang member or associate participated in illegal activities. The provision applies to all persons, not just family members and outreach workers. The Department believes that if a person is reasonably suspected of meeting this criterion, the law enforcement officer could reasonably assess employment or volunteer status of an outreach worker via various forms of employment, (e.g. a paystub, an employee badge, verification letter, etc). The Department intends to continue to monitor the CalGang database and the probative value of all of the criteria for any future regulations.</p>
752.4(a)(5), Criteria to be Designated as a	16.6	Remove this criterion.	No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking

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<p>Gang Member or Associate, “The law enforcement officer has observed the person displaying on or more symbols and/or hand signs...”</p>			<p>file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>

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752.4(a)(6), Criteria to be Designated as a Gang Member or Associate, “The law enforcement officer has observed the person at one or more gang-related addresses.”	7.6	“[T]he criteria based upon gang-related addresses seems to require that only graffiti and gang related crime at those addresses be committed by the designated criminal street gang associated with those addresses. However, the caveat that the address cannot be the residential address of a previously designated gang member, despite the fact that the address could be the home of the gang’s shot caller or the neighborhood gang hangout and congregating spot!”	Regarding the comment concerning graffiti and gang-related crime, no change has been made in response to this comment as this subdivision reads “including, <i>but not limited to</i> , graffiti by the related criminal street gang and crime originating by that criminal street gang at the address(es).” Regarding the comment concerning the residential address, no change has been made in response to this comment as this subdivision does not restrict the use of a residential address of a person who is already entered into the CalGang database if there is other reason to believe that the address is gang-related; this subdivision simply restricts this criterion from being satisfied “ <i>solely</i> by the fact that the address is the residential address of a person who is already entered into the CalGang database.”
	8.3	“Gang areas are specific areas throughout a gang’s territory, often marked with gang graffiti. These areas are occupied by gang members and trusted associates. These areas are not always associated to a specific address. They are sometimes alleyways, street corners, vacant fields, and/or parks. By requiring law enforcement officers to document a specific address in such cases could lead to them using the closest address to document the event. That may lead to innocent individuals, who have no connection	No change has been made in response to this comment because the Department has included the specific word “address,” rather than the more general word “location” to ensure that a person does not meet this criterion simply by being present in a neighborhood that has gang activity. Some addresses with gang activity, such as a park, might encompass areas where no gang activity takes place; therefore, the CalGang database will allow law enforcement to provide information about specific areas within an address where gang activity

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		to a criminal street gang, having their residence or business being entered into the CalGang database as a gang-related address.”	occurs. In addition, the Department plans to address the level of specificity required when using and documenting this criterion through training.
	10.1, 14.07, 14.12, 16.5, 18.03, 20.03	Remove this criterion.	No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with

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			<p>whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	12.06	<p>This criterion is ambiguous, overbroad, and will result in over-inclusion. The Department disregards explicit instruction by the California Legislature by not eliminating this criterion as it is not consistent with empirical research. Pursuant to AB 90, this criterion should be excluded until such empirical research exists.</p>	<p>No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law</p>

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			<p>enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
<p>752.4(a)(7), Criteria to be Designated as a Gang Member or Associate, “The law enforcement officer has observed the person wearing one or more items of clothing and/or colors...”</p>	<p>3.6</p>	<p>“The new gang clothing verbiage is vague and subject to changing gang trends. Gangs will adopt new styles and logos as gangs evolve. Terms like ‘general interest, neighborhood, locality, and local sports team’ are difficult to pin down and could be better explained later by a LEO gang expert during any subsequent criminal court proceedings much further down the road during a criminal case.”</p>	<p>No change has been made in response to this comment because the Department believes clothing and/or colors that are tied to specific and active criminal street gangs can vary and need to be open to the judgment and reasonable suspicion of the trained law enforcement officer observing the person wearing the item(s) of clothing and/or colors.</p>
	<p>10.1, 14.07, 14.13, 16.6, 18.03, 20.03</p>	<p>Remove this criterion.</p>	<p>No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that</p>

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			<p>the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	12.06	<p>This criterion is ambiguous, overbroad, and will result in over-inclusion. The Department disregards explicit instruction by the California Legislature by not eliminating this criterion as it is not consistent with empirical research. Pursuant to AB 90, this criterion should be excluded until such empirical research exists.</p>	<p>No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict</p>

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			<p>with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	14.13	<p>“[T]he public comments from law enforcement used to justify the re-introduction of this criterion fundamentally misunderstand the previous version of the criteria. A gang symbol may be worn. Clothing that satisfies the symbol criterion</p>	<p>No change has been made in response to this comment as the Department believes that clothing without symbols such as wearing multiple items of the same color (hat, shirt, jacket, and pants) can be indicative of gang membership. Regarding the comment</p>

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		<p>may be used to satisfy that criterion. Any clothing that does not satisfy that criterion, such as baggy pants, is not a reliable indicator of gang membership and should not be used.”</p>	<p>about baggy pants, that example would not be acceptable as subdivision (a)(7) of section 752.2 provides that “the law enforcement officer shall document the basis for believing that the person is wearing the clothing and/or colors to express gang membership or association.”</p>
<p>752.4(a)(8), Criteria to be Designated as a Gang Member or Associate, “The law enforcement officer has observed the person having one or more tattoos, marks, scars, or brandings...”</p>	<p>3.5</p>	<p>“Tattoos are semi-permanent. Tattoo removal and cover up are viable options for individuals who want to take action to change their behavior and lifestyle. Maintaining a gang tattoo and gang lifestyle that attracts repeated law enforcement contacts shows no interest in opting out of the gang mindset. I would much rather see the addition of a state generated website and phone number on the CG notification letter that lists tattoo removal providers and state programs to supplement the costs of such a procedure. Agencies and society in general are under no obligation to disregard gang tattoos that were voluntarily applied.”</p>	<p>No change has been made in response to this comment because the Department believes it may not always be feasible for a person to remove all tattoos, marks, scars, or brandings; additionally, the Department does not believe that it would be appropriate to require a person to do so. This subdivision does not require agencies and society to disregard gang tattoos, but rather limits the ability of law enforcement to use a single tattoo multiple times as more than one indicator of gang membership or association and prevents duplication and/or overuse of a single criterion; however, a single tattoo may still be used on subsequent occasions if it meets the elements set forth in subdivision (a)(8)(C) of section 752.4.</p>
	<p>7.7</p>	<p>The limitation on the use of gang tattoos is inappropriate and impractical. How are the Users supposed to know that a tattoo criterion has already been used once? Valuable contact intelligence will be</p>	<p>Regarding the comment concerning the limitation on the use of gang tattoos, no change has been made in response to this comment because the Department has considered the need to balance law enforcement’s need for intelligence to solve crimes with</p>

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		<p>lost after a contact is rejected by the database.</p>	<p>protecting civil rights and privacy. Furthermore, the Department believes it may not always be feasible for a person to remove all tattoos, marks, scars, or brandings; additionally, the Department does not believe that it would be appropriate to require a person to do so. Subdivision (a)(8) of section 752.4 limits the ability of law enforcement to use a single tattoo multiple times as more than one indicator of gang membership or association and prevents duplication and/or overuse of a single criterion; however, a single tattoo may still be used on subsequent occasions if it meets the elements set forth in subdivision (a)(8)(C) of section 752.4. Regarding the comment concerning Users knowing if a tattoo criterion has already been used, no change has been made in response to this comment because a User will know that a tattoo criterion has already been satisfied when they review a record or attempt to add a new tattoo into the CalGang database. Regarding the comment concerning the loss of intelligence, no change has been made in response to this comment as tattoo can still be documented as intelligence information and maintained in a hard copy intelligence file with the documenting agency, but cannot be entered into the CalGang database more than once unless as provided by subdivision (a)(8)(C) of section 752.4.</p>

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	8.4	<p>“Gang tattoos are still the best indicator of a subject’s gang affiliation. By permanently marking one’s body with a gang name or symbol, it demonstrates their dedication and loyalty to the gang. If someone has left the gang, or is not a member of a particular gang, displaying a gang tattoo could lead to that person being assaulted and/or killed by other members of a gang.”</p>	<p>No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.</p>
	12.09	<p>“[T]he most recent proposed regulations also allow law enforcement to rely on old tattoos, marks, scars, or brandings to establish current active gang membership, which should be prohibited. While the proposal only allows each individual marking to count once toward satisfying this criterion, it expressly allows law enforcement to re-use these markings once “the record of that person has since been purged from the CalGang database.” This means that once an individual has either won removal by proving to a court that they are not an active gang member or their record has aged out of the system after five (or three) years, law enforcement can once again rely upon markings that were either deemed non-dispositive of gang membership or are at least three to five years old to establish current membership. This is directly contrary to the statutory mandate which only allows inclusion based upon currently active gang status.</p>	<p>No change has been made in response to this comment because subdivision (c) of section 752.4 places a one year limitation on contacts, incidents and supporting source documents. Use of this criterion requires that the observation by the law enforcement officer be recent. Also, under subdivision (b) of section 752.2, the law enforcement officer must have reasonable suspicion that the tattoo demonstrates that the person is still an active gang member. Reasonable suspicion must be based on the totality of the circumstances, and satisfaction of the criteria may not, in and of itself, satisfy the reasonable suspicion requirement. Moreover, in most instances, it would be difficult, if not impossible, for an officer to determine when the individual obtained the marking.</p>

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		<p>While purging an individual’s record may, in some cases, render law enforcement unaware that a currently observed marking is old, the regulations should not explicitly permit reliance on such old markings to satisfy a criterion of active gang membership. Instead, the regulations should prohibit reliance on markings that are more than a year old. To allow otherwise is also inconsistent with the current regulation that the “required number of criteria shall occur within a one-year period” (emphasis added)—as a marking that was created over a year prior would necessarily not occur within a one-year period of any other currently observed criteria.”</p>	
	16.6	Remove this criterion.	<p>No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies</p>

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			<p>included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
<p>752.4(a)(8)(C), Criteria to be Designated as a Gang Member or Associate, "The law enforcement officer has observed the person having one or more tattoos, marks, scars, or brandings..."</p>	<p>14.14</p>	<p>This provision should be removed. "Tattoos are etched on a person's body and so openly displaying them is often unavoidable. Including language like "displaying" or "flashing" merely restates that the tattoo is visible, but in more prejudicial terms. The apparent justification for including § 752.4 (a) (8) (C) is that it describes instances when the suspect is displaying the tattoo "as a means of intimidation." However, officers cannot know the suspect's intent, and whether others are subjectively intimidated by a tattoo is not within the suspect's control."</p>	<p>No change has been made in response to this comment because the Department has considered the need to balance law enforcement's need for intelligence to solve crimes with protecting civil rights and privacy. Subdivision (a)(8) of section 752.4 limits the ability of law enforcement to use a single tattoo multiple times as more than one indicator of gang membership or association and prevents duplication and/or overuse of a single criterion; however, a single tattoo may still be used on subsequent occasions if it meets the elements set forth in subdivision (a)(8)(C) of</p>

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			<p>section 752.4. Furthermore, these regulations require supervisory reviews, audits, and attestations, which the Department believes will reduce and/or prevent any instances of data inaccuracy. The Department is dedicated to monitoring CalGang database entries and submitting future regulation packages to address overinclusion in the CalGang database.</p>
<p>752.4(e), Criteria to be Designated as a Gang Member or Associate</p>	<p>12.12, 14.27</p>	<p>These regulations should prohibit the use of social media posts as source documents because they are unreliable.</p>	<p>No change has been made in response to this comment because the Department believes that when social media is carefully evaluated by a law enforcement officer, it can be used as an indicator of active criminal street gang membership or association. Subdivision (e)(3) of section 752.2 requires this careful evaluation and includes a list of factors the law enforcement officer must take into consideration.</p>
	<p>12.13</p>	<p>“If the police may rely upon social media posts as source documents, the DOJ should address two issues: (1) the regulations do not require police to document any indicia of reliability that may be challenged; and (2) the regulations allow for friending, follows, retweets, reposts, etc. to indicate association, even though such trivial actions do not indicate a real relationship.”</p>	<p>No change has been made in response to this comment because under subdivision (b) of section 752.2, the law enforcement officer must have reasonable suspicion that a criterion present on social media, such as self-admission, a hand sign, or gang-related clothing, demonstrates that the person is an active gang member or associate. Reasonable suspicion must be based on the totality of the circumstances, and satisfaction of the criteria may not, in and of itself,</p>

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			<p>satisfy the reasonable suspicion requirement. If a social media post is used as a source document that a person is associating with a designated gang member or associate, the law enforcement officer must document the circumstances and the reason for believing that the association indicates gang affiliation. Incidental community interactions that are not criminal in nature may not be used. The Department is dedicated to monitoring CalGang database entries and the probative value of all the criteria and to submitting future regulation packages to address any overinclusion in the CalGang database.</p>
	14.29	<p>“§ 752.4 (e) (3) should be revised to state that no criterion shall be satisfied by posts on social media except photographs which were taken within the last year and the officer documents how they know the approximate date of the photograph.”</p>	<p>No change has been made in response to this comment because subdivision (c) of section 752.4 places a one year limitation on supporting source documents and subdivision (e)(2) requires the law enforcement officer to document “the date the photograph or video was observed... the date published and by whom, and the date created, if available.”</p>
	18.05, 20.07	<p>“Require that law enforcement face-to-face contact must be made with an individual in order to designate a person as a gang member, and remove social media, e-mails, photos and observations made through patrol or surveillance as point of contact. This better ensures that law</p>	<p>No change has been made in response to this comment as the Department believes this proposed requirement is contrary to the objective of an intelligence database and would require law enforcement to ignore plain evidence of gang membership, like a closed-circuit video of a person</p>

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		enforcement bias and/or inaccurate assessment of a situation or image is not leading to the designation of a person on a shared gang database. This would further require record gathering and transparency as outlined under AB 953 governing all law enforcement contact with civilians, and would further enable public officials and the larger community the data needed to monitor against unlawful or inaccurate gang allegations.”	being stabbed by a rival gang member while the gang name is shouted. In addition, these regulations require law enforcement to carefully evaluate the legitimacy and probative value of recordings and social media posts, and require that any recordings be lawfully obtained.
753, Requirements to Designate an Organization as a “Criminal Street Gang”	14.20, 14.21	“The regulations do not sufficiently address the frequently ambiguous relationships between a gang and its cliques. A clique must not be entered unless it independently meets the requirements to be entered as criminal street gang.”	No change has been made in response to this comment because there are no separate entry procedures for designating a “clique” in the CalGang database. If a “clique” or “sub-gang” exists, it would need to satisfy the requirements to be designated as a “criminal street gang” before being entered in the CalGang database under these regulations.
	16.8	“‘[I]ndividually’ should be stricken, it contradicts the language of ‘three or more.’ A criminal street gang if the term is accepted, can’t be an individual.”	No change has been made in response to this comment because this language is aligned with subdivision (a)(1) of Penal Code section 186.34. Furthermore, subdivision (a) of Penal Code section 186.34 requires the definition listed in subdivision (a)(1) to apply to Penal Code section 186.36 which requires these regulations.
753.6(c), Notifying a Person of	14.02	“All source documents and all recordings of contacts that lead to the creation of source documents must be	No change has been made in response to this comment. Penal Code section 186.34(c) and (d) require the release

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<p>Inclusion in the CalGang Database</p> <p>And</p> <p>754(c), An Agency’s Response to an Information Request</p>		<p>made available to anyone receiving notice they are the subject of a shared gang database record. Redactions may be made. Exceptions for people who are subjects of active investigations already exist. If, following a request by a person tracked in a shared gang database who is not subject to an active investigation, an agency chooses not to release even a redacted copy of a source document or a recording of a contact on which the source document is based, then that source document must be removed from the shared gang database.”</p>	<p>of a statement from the law enforcement agency regarding the basis of the designation. It does not require or authorize the release of source documents supporting the basis of the designation. Furthermore, on September 1, 2017, the Legislature deleted language in AB 90 that would have required production of source documents. No other language in the statute suggests the Legislature intended source documents be provided as part of a notice or a response to a request for information. See also Government Code section 6254(f) (exempting certain investigatory and intelligence information from disclosure under the Public Records Act). However, the Department has added language to require Node Agencies and User Agencies to identify the source documents in their possession and provide a description of how each source document supports any criteria in a notice or response to a request for information.</p>
<p>753.6(c)(1), Notifying a Person of Inclusion in the CalGang Database</p> <p>And</p> <p>754(b)(3), An Agency’s Response to an Information Request</p>	<p>1.2, 2.2, 19.2</p>	<p>“The regulations should also not undermine the process set forth by the Legislature to allow individuals added to the database to learn the basis of their designation and meaningfully challenge that designation in court. Agencies must be required to provide this information and be precluded from offering ‘secret’ evidence not previously disclosed in court.”</p>	<p>No change is needed in response to this comment as the Department has required a notice of inclusion to include “the basis for the designation” in this subdivision.</p>

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<p>753.6(c)(6), Notifying a Person of Inclusion in the CalGang Database</p> <p>And</p> <p>754(b)(8), An Agency’s Response to an Information Request</p>	<p>14.35</p>	<p>“The new language in § 753.6 (c) (6) refers to intervention or outreach services operated by a law enforcement agency. It is the consensus among interventionists that law enforcement can offer gang prevention services but not intervention or outreach services. Interventionists work with currently active gang members to mitigate violence and help individuals transition out of a gang. There would be an irreconcilable conflict between law enforcement officers’ duty to enforce the law and the duties of an interventionist. Furthermore, most gang intervention agencies do not want their names to appear on documents like these since it would imply a level of collaboration between interventionists and law enforcement that could be dangerous to the interventionists and counterproductive to public safety efforts. Therefore, this subparagraph should refer to an agency that operates ‘anti-gang services’ not ‘gang intervention or outreach services.’”</p>	<p>No change has been made in response to this comment because intervention and outreach are broad terms that can include activities by law enforcement agencies to steer at-risk youth to programs and services to avoid gang-involvement, illegal drug use, truancy and other delinquent behavior.</p>
<p>753.6(d)(1), Notifying a Person of Inclusion in the CalGang Database</p> <p>And</p> <p>754(c)(1), An Agency’s Response</p>	<p>12.15</p>	<p>“The December 31st Draft continues to include provisions allowing a law enforcement agency to present to a court, <i>in camera</i>, evidence relating to an individual’s inclusion in a gang database that has not been disclosed to the individual pursuant to the process of disclosure specified in Penal Code §§ 186.34(c)(1) and</p>	<p>No change has been made in response to this comment because these regulations do not govern the procedures of the court petition process created by Penal Code section 186.35 nor do these regulations govern what a court may or may not review. Such procedures are prepared by the judicial branch and described</p>

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to an Information Request		<p>(d)(1)(B)... [S]uch provisions appear to encourage non-disclosure of source documents to a person who may want to challenge their inclusion in a gang database and are inconsistent with the statutory scheme that limits both parties' Superior Court challenges to the evidentiary record created during the agency-level challenge. Additionally, the December 31st Draft has now made it optional for agencies to provide the documentary evidence supporting its designation in its notices of inclusion and responses to requests for information. This is again inconsistent with the statutory scheme requiring the production of evidence during the agency-level review. It is also inconsistent with the statutory language requiring agencies to provide 'information as to the basis for the designation for the purpose of contesting the designation.' Instead, the regulations should explicitly require agencies to provide the documentation supporting the designation in notices of inclusion and responses to requests for information. The DOJ justifies making this disclosure optional by stating that, 'the Department did not make this provision mandatory in the event that the law enforcement agency has confidential documents which it does not want to disclose.' However, the regulations already explicitly include provisions allowing an agency to withhold source</p>	<p>in California Rules of Court section 3.2300. Penal Code section 186.34(c) and (d) require the release of a statement from the law enforcement agency regarding the basis of the designation. It does not require or authorize the release of source documents supporting the basis of the designation. Furthermore, on September 1, 2017, the Legislature deleted language in AB 90 that would have required production of source documents. No other language in the statute suggests the Legislature intended source documents be provided as part of a notice or a response to a request for information. See also Government Code section 6254(f) (exempting certain investigatory and intelligence information from disclosure under the Public Records Act). However, the Department has added language to require Node Agencies and User Agencies to identify the source documents in their possession and provide a description of how each source document supports any criteria in a notice or response to a request for information.</p>

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		documentation if doing so ‘would compromise an active criminal investigation or the health or safety of a juvenile who is designated as a Gang Member or Associate.’ Even this regulatory provision is unnecessary given that the authorizing statute already limits the agency’s obligation to disclose under these same conditions. Thus these new provisions making disclosure of information optional merely authorize agencies to withhold this information as a matter of course and without any justification.”	
	14.36	“In order to provide explanatory guidance to agencies, § 753.6 (d) and § 754.4 (c) should also state that ‘Any documentation not included with this notice may be inadmissible in court if the suspect petitions the Superior Court for removal.’”	No change has been made in response to this comment because these regulations do not govern the procedures of the court petition process created by Penal Code section 186.35 nor do these regulations govern what a court may or may not review. Such procedures are prepared by the judicial branch and described in California Rules of Court section 3.2300.
754.2, An Agency’s Response to a Request for Removal	18.10, 20.08	“Require that body cam, dash cam, video and audio tape from interrogations be presented with evidence when a designation on the shared gang database is challenged.”	No change has been made in response to this comment. Nothing in statute requires evidence to be presented when responding to a request for removal. Penal Code section 186.34(c) and (d) require the release of a statement from the law enforcement agency regarding the basis of the designation. It does not require or authorize the release of

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			<p>source documents supporting the basis of the designation. Furthermore, on September 1, 2017, the Legislature deleted language in AB 90 that would have required production of source documents. No other language in the statute suggests the Legislature intended source documents be provided as part of a notice or a response to a request for information. See also Government Code section 6254(f) (exempting certain investigatory and intelligence information from disclosure under the Public Records Act). However, the Department has added language to require Node Agencies and User Agencies to identify the source documents in their possession and provide a description of how each source document supports any criteria in a notice or response to a request for information.</p>
<p>754.4, Retention Period for Adult Records</p> <p>And</p> <p>754.6, Retention Period for Juvenile Records</p>	<p>12.10</p>	<p>The retention periods are not evidence-based.</p>	<p>The Department acknowledges and considered the extant empirical research on gang involvement duration. Based, in part, on review of this research, the Department reduced the retention period for juveniles, as there was sufficient empirical evidence indicating that the vast majority of juveniles that admit to gang membership, admit involvement</p>

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			<p>for three years or less.^{6,7,8,9} While there was sufficient empirical evidence to inform juvenile retention periods, the empirical research on adults' gang involvement duration is limited and inconsistent. For example, in one study, adults reported leaving gangs after an average of over 11 years of membership, while another study conducted by the same author indicated that only 17% of youth and adults remain involved in gang activities for more than three years, illustrating the wide variability in reported gang membership duration among adults—dependent upon the adults sampled.^{10,11,12} It is also important to note that gang activity in the CalGang database is not recorded or paused while a person is incarcerated. In contrast to the other regulatory issues, there is considerable scholarly research on gang involvement while incarcerated. Incarceration has been shown to be a strong predictor for continued gang membership with nearly 75% of those incarcerated continuing gang</p>

⁶ Hill, Karl G., Christina Lui, and J. David Hawkins. *Early precursors of gang membership: A study of Seattle youth*. Washington, DC: US Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2001.

⁷ Thornberry, Terence P., David Huizinga, and Rolf Loeber. "The causes and correlates studies: Findings and policy implications." *Juv. Just.* 9 (2004): 3.

⁸ Laverso, John, and Ross L. Matsueda. "Gang Organization and Gang Identity: An Investigation of Enduring Gang Membership." *Journal of Quantitative Criminology* (2019): 1-33.

⁹ Melde, Chris, and Finn-Aage Esbensen. "The relative impact of gang status transitions: Identifying the mechanisms of change in delinquency." *Journal of Research in Crime and Delinquency* 51, no. 3 (2014): 349-376.

¹⁰ Decker and Pyrooz, "Leaving the Gang: Logging Off and Moving On," *Council on Foreign Relations*, (2011)

¹¹ Densley, James A., and David C. Pyrooz, "A signaling perspective on disengagement from gangs," *Justice Quarterly* 36, no. 1 (2019): 31-58.

¹² Pyrooz, David C. "'From your first cigarette to your last dyin'day': The patterning of gang membership in the life-course." *Journal of Quantitative Criminology* 30, no. 2 (2014): 349-372.

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			<p>membership behind bars and after release.¹³ A study conducted by the Urban Institute indicated that the average prison time served for non-violent crimes in California was 3.3 years, increasing to 8.2 years for violent offenders.¹⁴ Taken together with the scholarly literature on persistent gang membership in prison, it is likely that gang unit specialists and law enforcement agencies are losing data on gang members, especially violent offenders, while the gang members are incarcerated, due to the current five-year limitation on data retention.</p>
	12.11	<p>“The Department should set a three-criteria requirement to reset the retention period when the gang location and gang-clothing criteria are used together. We commend the DOJ for applying a two criteria requirement for the retention period to reset, as we had advised in our previous letters. In the newest set of proposed regulations, the DOJ proposed a three-criteria requirement for entry into the database when the gang-location and gang-clothing criteria are used together. This change is consistent with that provision.”</p>	<p>No change has been made in response to this comment because to the Department’s knowledge there is no empirical research to support or refute a particular number of criteria for entry. Until empirical research conducted by external researchers or the Department’s researchers can provide relevant data that conclusively demonstrates whether a particular number of criteria is probative of gang membership or association, the Department believes the requirements should remain.</p>

¹³ Pyrooz, David C., Nancy Gartner, and Molly Smith. "Consequences of incarceration for gang membership: A longitudinal study of serious offenders in Philadelphia and Phoenix." *Criminology* 55, no. 2 (2017): 273-306.

¹⁴ “A matter of time: The hidden story of rising time served,” Urban Institute, 2017, <https://apps.urban.org/features/long-prison-terms/trends.html>.

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	14.23	<p>“[T]hese proposed regulations also fail to distinguish between current and former gang members by using an unacceptable 5-year retention period for adults. The Department has simply ignored the empirical evidence that most gang members are involved for only a short period of time before leaving the gang. That this evidence comes primarily from studies of adolescents does not make it irrelevant.”</p>	<p>The Department acknowledges and considered the extant empirical research on gang involvement duration. Based, in part, on review of this research, the Department reduced the retention period for juveniles, as there was sufficient empirical evidence indicating that the vast majority of juveniles that admit to gang membership, admit involvement for three years or less.^{15,16,17,18} While there was sufficient empirical evidence to inform juvenile retention periods, the empirical research on adults’ gang involvement duration is limited and inconsistent. For example, in one study, adults reported leaving gangs after an average of over 11 years of membership, while another study conducted by the same author indicated that only 17% of youth and adults remain involved in gang activities for more than three years, illustrating the wide variability in reported gang membership duration among adults—dependent upon the adults sampled.^{19,20,21} It is also important to note that gang activity in</p>

¹⁵ Hill, Karl G., Christina Lui, and J. David Hawkins. *Early precursors of gang membership: A study of Seattle youth*. Washington, DC: US Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2001.

¹⁶ Thornberry, Terence P., David Huizinga, and Rolf Loeber. "The causes and correlates studies: Findings and policy implications." *Juv. Just.* 9 (2004): 3.

¹⁷ Laverso, John, and Ross L. Matsueda. "Gang Organization and Gang Identity: An Investigation of Enduring Gang Membership." *Journal of Quantitative Criminology* (2019): 1-33.

¹⁸ Melde, Chris, and Finn-Aage Esbensen. "The relative impact of gang status transitions: Identifying the mechanisms of change in delinquency." *Journal of Research in Crime and Delinquency* 51, no. 3 (2014): 349-376.

¹⁹ Decker and Pyrooz, "Leaving the Gang: Logging Off and Moving On," *Council on Foreign Relations*, (2011)

²⁰ Densley, James A., and David C. Pyrooz, "A signaling perspective on disengagement from gangs," *Justice Quarterly* 36, no. 1 (2019): 31-58.

²¹ Pyrooz, David C. "'From your first cigarette to your last dyin' day': The patterning of gang membership in the life-course." *Journal of Quantitative Criminology* 30, no. 2 (2014): 349-372.

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			<p>the CalGang database is not recorded or paused while a person is incarcerated. In contrast to the other regulatory issues, there is considerable scholarly research on gang involvement while incarcerated. Incarceration has been shown to be a strong predictor for continued gang membership with nearly 75% of those incarcerated continuing gang membership behind bars and after release.²² A study conducted by the Urban Institute indicated that the average prison time served for non-violent crimes in California was 3.3 years, increasing to 8.2 years for violent offenders.²³ Taken together with the scholarly literature on persistent gang membership in prison, it is likely that gang unit specialists and law enforcement agencies are losing data on gang members, especially violent offenders, while the gang members are incarcerated, due to the current five-year limitation on data retention.</p>
	14.26, 18.08, 20.10	Shorten the retention periods for adults and juveniles to two years.	No change has been made in response to this comment because while there was sufficient empirical evidence to inform juvenile retention periods, the empirical research on adults' gang involvement duration is limited and inconsistent. For example, in one

²² Pyrooz, David C., Nancy Gartner, and Molly Smith. "Consequences of incarceration for gang membership: A longitudinal study of serious offenders in Philadelphia and Phoenix." *Criminology* 55, no. 2 (2017): 273-306.

²³ "A matter of time: The hidden story of rising time served," Urban Institute, 2017, <https://apps.urban.org/features/long-prison-terms/trends.html>.

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			<p>study, adults reported leaving gangs after an average of over 11 years of membership, while another study conducted by the same author indicated that only 17% of youth and adults remain involved in gang activities for more than three years, illustrating the wide variability in reported gang membership duration among adults—dependent upon the adults sampled.^{24,25,26} It is also important to note that gang activity in the CalGang database is not recorded or paused while a person is incarcerated. In contrast to the other regulatory issues, there is considerable scholarly research on gang involvement while incarcerated. Incarceration has been shown to be a strong predictor for continued gang membership with nearly 75% of those incarcerated continuing gang membership behind bars and after release.²⁷ A study conducted by the Urban Institute indicated that the average prison time served for non-violent crimes in California was 3.3 years, increasing to 8.2 years for violent offenders.²⁸ Taken together with the scholarly literature on persistent gang membership in prison,</p>

²⁴ Decker and Pyrooz, “Leaving the Gang: Logging Off and Moving On,” *Council on Foreign Relations*, (2011)

²⁵ Densley, James A., and David C. Pyrooz, "A signaling perspective on disengagement from gangs," *Justice Quarterly* 36, no. 1 (2019): 31-58.

²⁶ Pyrooz, David C. "'From your first cigarette to your last dyin' day': The patterning of gang membership in the life-course." *Journal of Quantitative Criminology* 30, no. 2 (2014): 349-372.

²⁷ Pyrooz, David C., Nancy Gartner, and Molly Smith. "Consequences of incarceration for gang membership: A longitudinal study of serious offenders in Philadelphia and Phoenix." *Criminology* 55, no. 2 (2017): 273-306.

²⁸ “A matter of time: The hidden story of rising time served,” Urban Institute, 2017, <https://apps.urban.org/features/long-prison-terms/trends.html>.

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			<p>it is likely that gang unit specialists and law enforcement agencies are losing data on gang members, especially violent offenders, while the gang members are incarcerated, due to the current five-year limitation on data retention. The Department acknowledges and considered the extant empirical research on gang involvement duration. Based, in part, on review of this research, the Department reduced the retention period for juveniles, as there was sufficient empirical evidence indicating that the vast majority of juveniles that admit to gang membership, admit involvement for three years or less.^{29,30,31,32}</p>
	18.06, 20.09	<p>“Require that at least two of the remaining criteria for inclusion must be established in order to reset the retention period, rather than just one. In addition, remaining criteria used to establish a person’s re-designation as a gang member should be required to meet the standard of reasonable suspicion that they are engaged in criminal activity under the direction of a gang.”</p>	<p>No change has been made in response to this comment because subdivision (b) of sections 754.4 and 754.6 require two criteria and the reasonable suspicion requirement set forth in subdivision (b) of section 752.2 to remain satisfied in order to reset the retention period.</p>

²⁹ Hill, Karl G., Christina Lui, and J. David Hawkins. *Early precursors of gang membership: A study of Seattle youth*. Washington, DC: US Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2001.

³⁰ Thornberry, Terence P., David Huizinga, and Rolf Loeber. "The causes and correlates studies: Findings and policy implications." *Juv. Just.* 9 (2004): 3.

³¹ Leverso, John, and Ross L. Matsueda. "Gang Organization and Gang Identity: An Investigation of Enduring Gang Membership." *Journal of Quantitative Criminology* (2019): 1-33.

³² Melde, Chris, and Finn-Aage Esbensen. "The relative impact of gang status transitions: Identifying the mechanisms of change in delinquency." *Journal of Research in Crime and Delinquency* 51, no. 3 (2014): 349-376.

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	18.08, 20.10	“[A] person who has no system contact, as well as anyone with system contact in the past time period who has completed any court or system requirements – such as release from Probation or Parole – should have their name removed from CalGang and any other shared gang databases.”	No change has been made in response to this comment because subdivision (c) of section 754.2 requires an Agency to consider any evidence presented by a person requesting removal.
754.6, Retention Period for Juvenile Records	3.3	Achieving a high school diploma or a massive improvement in a juvenile’s grades and attendance should be cause for a purge after two years.	No change has been made in response to this comment as the Department has shortened the retention period for juveniles based on existing empirical research as described in the Addendum to Initial Statement of Reasons (AISOR) and will conduct additional research on adult retention periods to support a shorter retention period for adults. Furthermore, subdivision (c) of section 754.2 requires an Agency to consider any evidence presented by a person requesting removal.
	12.10	If the database must include youth, the shorter retention period should apply to those under 18 at the time of entry.	No change has been made in response to this comment as subdivisions (a) and (c) of section 754.6 already institute a shorter retention period for youths (those who are at least 13 but under 18); meaning if a person was entered at 14 years old and no other criteria were subsequently found they would purge three years later at age 17. If additional criteria were met at age 16, their record would be automatically set to purge at age 19 – three years later. If additional criteria

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			are found after they reach age 18, the adult retention period would then apply to their record.
	13.4	“[W]e remain concerned that... requiring a three-year data purge timeline (instead of five years for records related to adults) (proposed section 754.6(a)) will deprive law enforcement of potentially useful and vital information about juvenile gang members.”	No change has been made in response to this comment because the Department has shortened the retention period for juveniles based on existing empirical research as described in the AISOR.
Article 10, Audits	14.01	“The implication of [the LAPD] scandal is that there is a significantly greater need for robust oversight and auditing of shared gang databases than was apparent before this scandal came to light.... The current regulations are based on presumptions of individual and systemic integrity that have now proved false in a significant number of instances. As a result, it is apparent that review of written source documents alone is insufficient to ensure accurate information and compliance with these regulations. These regulations must require the review of recordings in conjunction with review of source documents, at least in some cases.”	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations. The proposed regulations aim to balance the protection of individuals’ rights, public safety, and the legitimate needs of law enforcement Users as required under AB 90. The proposed regulations establish rigorous guidelines for entering persons into the database, including requirements for supervisory review, accountability, auditing, and oversight. Since AB 90 allowed the improvement, maintenance, and development of the CalGang database and other shared gang databases, it indicates that state lawmakers viewed the databases as critical tools for fighting gang violence and crime.

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755.6, Peer Audits of Records in the CalGang Database	14.03	“A randomized, statistically significant number of recordings, audio and video, of contacts that lead to the creation of source documents must be reviewed and compared to source documents as part of the peer-auditing process. Review of recording in the following situations should be mandatory: (1) source documents that support the admission criterion, (2) source documents used to enter an individuals based on a single stop, and (3) individuals who request removal. The LAPD is already instituting a similar process.”	No change has been made in response to this comment as the Department already follows common auditing practices in which auditors review randomly-selected records from a proportionally-allocated, statistically-determined sample size and will determine whether Node Administrators follow similar practices when reviewing peer audits.
756, The Department’s Authority to Audit Node Agencies and User Agencies	14.04	“Department of Justice staff should audit a statistically significant number of source documents and the recordings on which source documents are based.”	No change has been made in response to this comment because section 756 provides the Department with the authority to conduct audits and receive access to each Node Agency and User Agency. The Department is committed to ensuring the reliability and validity of the CalGang database, as well as these regulations governing their use and oversight. As such, the Department intends to continue to review and participate in peer audits in addition to conducting the Department’s own audits.
756.2, Information Sharing	14.30	“The public and the GDTAC should be invited to collaborate with the Department’s Research Agency to design studies of the database to determine is accuracy and effectiveness.”	The Department accepts this comment in part as the Department values the input of all gang database stakeholders. As such, the gang-related research conducted by the Department will include data collection and input from various

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			<p>stakeholders through interviews, focus groups, surveys, and/or other methods. Stakeholders will be engaged in various aspects of the research process. Additionally, the Department’s Research Center may consult with external gang research experts on any research design, analysis, results, and/or interpretation of results.</p>
	14.37	<p>“Section 756.2 (d) seems to imply that requests for statistics can only go to node administrators. Requests for statewide statistics from the Department should also be permitted.”</p>	<p>No change has been made in response to this comment because the Department publishes an annual report on the CalGang database by February 15th each year which includes the information specified in subdivision (p) of Penal Code section 186.36. Prior to publishing the Attorney General’s Annual Report on CalGang, the Department conducts outreach to Node Administrators and User Agencies to collect the information for the report. Statistics requests for information outside of that made available in the annual report should be submitted directly to Node Administrators as the Department may not have this information available. Furthermore, to the extent that the Department would have any statistics information beyond what is published in the Attorney General’s Annual Report on CalGang, it should be requested through a research request pursuant to Penal Code section 13202.</p>

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Article 13, System Misuse and Enforcement of These Regulations	20.17	These regulations must require termination of access for any agency or individual that fails to use the system in a way that is accurate, upholds all these regulations, and/or follows the requirements for notification to individuals who are added to the database, for appeals and for removals.	No change has been made in response to this comment as this concern has already been addressed in Article 13 of these regulations.
General Recommendations	4.5	“The better approach would be to allow the California Department of Justice to complete the procedural changes drafted in the first regulations packages and up-grading of the existing CalGang system.”	The Department is moving forward with these regulations for the reasons stated in the ISOR, AISOR, and SAISOR.
	12.16	“The Gang Database Technical Advisory Committee should be asked to continue its oversight mission by allowing members to participate in California Gang Node Advisory Committee meetings.”	No comment has been made in response to this comment as the role of the Gang Database Technical Advisory Committee (GDTAC) is to assist the Department in promulgating regulations and developing and implementing standardized periodic training. Furthermore, several of the members who participated in GDTAC do not have a need to know and right to know in order to access the information contained in the CalGang database like those of the California Gang Node Advisory Committee (CGNAC) members who are CalGang database Users and/or Node Administrators. How CGNAC meetings are conducted are outside the scope of these regulations.

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	14.38	“We hope the Department will do significantly more than they have done in this draft of the proposed regulations to limit officer discretion and hold officer’s accountable.”	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.
	20.02	“Require that law enforcement contact adding a person or group of people to a shared gang database must require probable cause for the stop, not the weaker standard of reasonable suspicion.”	No change has been made in response to this comment as the proposed regulations are compliant with Code of Federal Regulations, Title 28, Part 23, which utilizes the reasonable suspicion standard.
General Opposition	4.1, 8.7, 9.5	General Opposition.	The Department is moving forward with these regulations for the reasons stated in the ISOR, AISOR, and SAISOR.
	4.2	“The proposed regulatory changes will leave law enforcement at a disadvantage in its mission to address criminal activity. These proposed regulatory changes will clearly add further regulations that are designed to prohibit and remove the basic tools used by law enforcement to protect citizens from criminal gangs.”	No change has been made in response to this comment because the Department has considered the need to balance law enforcement’s need for intelligence to solve crimes with protecting civil rights and privacy. This has resulted in added documentation requirements for law enforcement to ensure the accuracy and reliability of each criterion. Additionally, these documentation requirements are necessary for supervisory reviews and audits and the Department believes they will only serve to increase the accuracy of the CalGang database and reduce or prevent the likelihood of overinclusion.

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	4.4	“The proposed regulatory change will compromise undercover methods and techniques, informants and procedures.”	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.
	4.5	The proposed regulatory changes will have a financial impact on local communities and law enforcement agencies due to a lack of data. The denuding of CalGang will skew statistics regarding criminal gang activity and impact the solicitation of grants to address gang issues.	No change has been made in response to this comment because the Department believes these regulations will result in more reliable data and fewer errant entries in the CalGang database, which can then be used for planning purposes.
	6.4	“What I see is a continued erosion of a once beneficial database. The proposed changes are an additional roadblock that will slow or hamper investigations. In the end, it’s the community that suffers.”	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.
	9.1	“CPCA and our members remain concerned that the requirements contained in these proposed regulations adversely impact a critical investigative tool California law enforcement agencies rely on to combat gang crime.”	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.
	9.5	“These regulations prevent us from being proactive in preventing violence, theft, and drug or firearms trafficking that stem from known gangs. We hope you will reconsider the revisions made and will instead adopt regulations that will assist	No change has been made in response to this comment because the Department has considered the need to balance law enforcement’s need for intelligence to solve crimes with protecting civil rights and privacy. This has resulted in added documentation requirements for law

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		California’s law enforcement community...”	enforcement to ensure the accuracy and reliability of each criterion. Additionally, these documentation requirements are necessary for supervisory reviews and audits and the Department believes they will only serve to increase the accuracy of the CalGang database and reduce or prevent the likelihood of overinclusion.
	12.01	“The DOJ’s most recently proposed regulations reflect a dramatic turn from the improvements made in its draft published on July 31, 2019 (“July 31st Draft”). The draft regulations published on December 31, 2019 (“December 31st Draft”) once again reflect a significant inconsistency with the text and the purpose of the authorizing legislation and fail to sufficiently protect the public against overinclusion in shared gang databases, which was the intent of AB 90.”	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.
	13.2	“Unfortunately, the updated regulations maintain some of the provisions we raised concerns about and also create further challenges with the addition of new language.”	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.
	14.24	“Considering (1) that the current regulations allow for admissions of former gang membership to be used as a criterion for entry and (2) the retention period is still five years for	Regarding the comment concerning former gang membership admissions, no change has been made in response to this comment because only admissions of active membership or

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		<p>adults, it is likely that over half of the data in CalGang will describe former gang members who are no longer active. This is exactly what the Legislature sought to correct with these regulations and these regulations fail to accomplish that objective.”</p>	<p>association shall be accepted pursuant to subdivision (a)(1) of section 752.4. Regarding the comment concerning the retention periods, no change has been made in response to this comment because while there was sufficient empirical evidence to inform juvenile retention periods, the empirical research on adults’ gang involvement duration is limited and inconsistent. For example, in one study, adults reported leaving gangs after an average of over 11 years of membership, while another study conducted by the same author indicated that only 17% of youth and adults remain involved in gang activities for more than three years, illustrating the wide variability in reported gang membership duration among adults—dependent upon the adults sampled.^{33,34,35} It is also important to note that gang activity in the CalGang database is not recorded or paused while a person is incarcerated. In contrast to the other regulatory issues, there is considerable scholarly research on gang involvement while incarcerated. Incarceration has been shown to be a strong predictor for continued gang membership with nearly 75% of those incarcerated continuing gang membership behind bars and after</p>

³³ Decker and Pyrooz, “Leaving the Gang: Logging Off and Moving On,” *Council on Foreign Relations*, (2011)

³⁴ Densley, James A., and David C. Pyrooz, "A signaling perspective on disengagement from gangs," *Justice Quarterly* 36, no. 1 (2019): 31-58.

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			<p>release.³⁶ A study conducted by the Urban Institute indicated that the average prison time served for non-violent crimes in California was 3.3 years, increasing to 8.2 years for violent offenders.³⁷ Taken together with the scholarly literature on persistent gang membership in prison, it is likely that gang unit specialists and law enforcement agencies are losing data on gang members, especially violent offenders, while the gang members are incarcerated, due to the current five-year limitation on data retention. The Department acknowledges and considered the extant empirical research on gang involvement duration. Based, in part, on review of this research, the Department reduced the retention period for juveniles, as there was sufficient empirical evidence indicating that the vast majority of juveniles that admit to gang membership, admit involvement for three years or less.^{38,39,40,41}</p>

³⁶ Pyrooz, David C., Nancy Gartner, and Molly Smith. "Consequences of incarceration for gang membership: A longitudinal study of serious offenders in Philadelphia and Phoenix." *Criminology* 55, no. 2 (2017): 273-306.

³⁷ "A matter of time: The hidden story of rising time served," Urban Institute, 2017, <https://apps.urban.org/features/long-prison-terms/trends.html>.

³⁸ Hill, Karl G., Christina Lui, and J. David Hawkins. *Early precursors of gang membership: A study of Seattle youth*. Washington, DC: US Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2001.

³⁹ Thornberry, Terence P., David Huizinga, and Rolf Loeber. "The causes and correlates studies: Findings and policy implications." *Juv. Just.* 9 (2004): 3.

⁴⁰ Leverso, John, and Ross L. Matsueda. "Gang Organization and Gang Identity: An Investigation of Enduring Gang Membership." *Journal of Quantitative Criminology* (2019): 1-33.

⁴¹ Melde, Chris, and Finn-Aage Esbensen. "The relative impact of gang status transitions: Identifying the mechanisms of change in delinquency." *Journal of Research in Crime and Delinquency* 51, no. 3 (2014): 349-376.

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	18.01	<p>“While I commend the work your office has put into these draft regulations, I have serious concerns that they maintain - and codify - overly broad criteria that were the impetus for passage of AB 90. I strongly urge you to revise the proposed regulations to better reflect the intent of the legislation that authorizes them. While the newest proposed regulations attempt to address several recommendations I made in June of 2019, they are still not in alignment with the requirements of AB 90.”</p>	<p>No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the</p>

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			regulation are strong indicators of gang membership.
	18.11	“The proposed regulations will not sufficiently remedy the problem of individuals – specifically young men of color – from being inappropriately placed on the database because they offer few substantive improvements over the problematic criteria that they are supposed to replace. The recent scandal involving the Los Angeles Police Department, where officers fabricated information to be entered into CalGang Database in order to meet an informal quota of daily gang contacts, demonstrates the need for more robust oversight and accountability than is mandated by these regulations. For the reasons above, I ask that you honor the intent of AB 90 by making the changes I have recommended to the proposed regulations. Again, I thank you and your staff for your work.”	The proposed regulations aim to balance the protection of individuals’ rights, public safety, and the legitimate needs of law enforcement users as required under AB 90. The proposed regulations establish rigorous guidelines for entering persons into the database, including requirements for supervisory review, accountability, auditing, and oversight. Since AB 90 allowed the improvement, maintenance, and development of the CalGang database and other shared gang databases, it indicates that state lawmakers viewed the databases as critical tools for fighting gang violence and crime. No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.
General Support	13.1	“[W]e appreciate some of the changes made to the proposed regulations including restoring specified criteria that may be used to substantiate entry into CalGang and removing problematic limitations from other criteria.”	No change is needed in response to this comment.
	20.11	“We appreciate that the new regulations speak to our original recommendations on the need to protect people against the use of	No change is needed in response to this comment.

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		shared gang databases for the purpose of immigration enforcement, employment, housing and military recruitment, and support that inquiries on a person's inclusion on a shared gang database do not require an ID. We urge the Department to maintain these policies.”	