

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

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

The Department received written public comments on the proposed regulations until June 25, 2019. The Department also held public hearings on June 26, 2019 (Los Angeles) and June 27, 2019 (Sacramento). Oral comments on the proposed regulations were accepted at each of these hearings and transcribed by a certified court reporter. In response to those public comments, and to clarify the regulations as originally proposed, the Department modified the proposed regulations and published the revisions on July 31, 2019.

The Department received written public comments on the proposed regulations from July 31, 2019, to August 31, 2019. The Department reviewed all comments received during the public comment period. In response to these public comments, and to clarify the regulations as originally proposed, the Department has modified its proposed regulations, and has prepared this Second Addendum to Initial Statement of Reasons (Addendum).

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

**NECESSITY OF MODIFICATIONS TO PROPOSED REGULATIONS**

**§ 770. Title and Scope.**

**Subdivision (a).** This provision was amended to replace “January” with “July.” This amendment is necessary because this is the date the Department anticipates these regulations becoming effective.

**New Subdivision (b).** This provision was added to remove the first sentence of subdivision (a) of section 775.6 and add it to this section. This amendment is necessary to specify the limitation of the records and information contained within a shared gang database at the beginning of these regulations.

**New Subdivision (c).** This provision was added to specify the uses of a shared gang database and the information contained therein. This provision is necessary because a shared gang database is an intelligence database so it is important to specify that “[i]nformation from a shared gang database shall not be accessed or used for any reason other than criminal investigative purposes, as permitted under this chapter, and shall not be used for the purposes of documenting immigration status or any other unlawful purpose.” The Department specifically excluded using information from a shared gang database for purposes of documenting immigration status to align with subdivision (k)(8) of Penal Code section 186.36. Additionally, it is necessary to

specify that memorandums of understanding will include this restriction so that agencies are aware before attempting to access or use information in a shared gang database. This provision also specifies “adopted pursuant to section 770.4 of this chapter” after “memorandum of understanding” to clarify that the Department is only referring to memorandums of understanding adopted pursuant to these regulations. This amendment is necessary to prevent the misinterpretation that the Department intended for these regulations to govern any memorandum of understanding made outside of these regulations.

**New Subdivision (d).** This provision was amended replace “[a] shared gang database shall not be used when making street-level determinations on who to stop and detain” with “[t]he mere fact of a person’s designation in a shared gang database, by itself, shall not be used to (1) justify searching, detaining, or arresting any person, or (2) support issuance of, or application for, a subpoena, warrant, or similar instrument in a criminal proceeding.” This amendment is necessary to place a limitation on the use of a shared gang database and provide stronger protections for the public than the previous language. Furthermore, the previous language only prevented stopping and detaining people and did not include searches or arrests, nor did it prevent the issuance or application for a subpoena or warrant. Additionally, the previous language did not specify that a person’s designation in a shared gang database does not constitute reasonable suspicion or probable cause in and of itself.

**New Subdivision (e).** This provision was added to specify the limitations of these regulations regarding presenting a person’s designation in a shared gang database during any court proceedings. This provision is necessary to specify that it is not the Department’s intent that these regulations allow a person’s designation in a shared gang database, by itself, to be used as evidence or probative of any other matter in a criminal proceeding, with sentencing used as an example.

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

**Subdivision (b).** This provision was amended to add “as defined in Penal Code section 186.3(a)(3), only.” This amendment is necessary to clarify that these regulations are referring to the term that is defined in statute.

**Subdivision (c).** This provision was amended to add “or designated criminal street gangs” after “records.” This amendment is necessary because “record” is used throughout these regulations to refer to a person who is designated in a shared gang database and not a criminal street gang; however, audits will also be conducted on designated criminal street gangs. This provision was also amended to replace “as well as” with “or.” This amendment is necessary because it was the Department’s intent that the audits definition be versatile to cover the maintenance of records or designated criminal street gangs, or a sample of randomly-selected records or designated criminal street gangs and not to require that both of these examinations be conducted at the same time. This provision was additionally amended to add “objective” before “examination of a sample.” This amendment is necessary for consistency purposes and to stipulate that the examination of a sample of randomly-selected records or designated criminal street gangs must be objective.

**Subdivision (k).** This provision was amended to replace “those offenses committed in a manner described in subdivision (b)(1) of Penal Code section 186.22” with “other offense that is a felony” and require that reasonable suspicion exists “that the offense was committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members.” This amendment is necessary because subdivision (b)(1) of Penal Code section 186.22 describes enhancements of punishment; therefore, describing the offenses captured in that clause is more accurate and better for reader understanding. This amendment is also necessary to draw a nexus between these offenses and gang activity. This provision was additionally amended to remove “either.” This amendment was made because this is a list of offenses so the use of “either” is unnecessary and not grammatically correct.

**New Subdivision (l).** This provision was added to establish that an “organization” means an organization, association or group of people. This provision is necessary to align with subdivision (a)(1) of Penal Code section 186.34 which defines a criminal street as an “ongoing organization, association, or group...”

**New Subdivision (m).** This provision was added to establish that an “outreach worker” means a person who would reasonably be able to demonstrate they are employed by, or have a paid or unpaid internship with, an agency or non-profit organization that provides one or more gang prevention, intervention, and/or community outreach programs. This provision is necessary because the term is used in subdivision (a)(4)(A) of section 752.4 as an example of an individual who will not be considered a Gang Member or Associate unless reasonable suspicion exists that they contribute to, or are participating in, the criminal street gang’s illegal activities. Furthermore, outreach workers are individuals who, because of their work, may be present at gang-related addresses or associate with gang members without contributing to, or participating in, the criminal street gang’s illegal activities.

**New Subdivision (n).** This provision was added to establish that “publish” means to share, post, or repost on the internet including, but not limited to, through a social media account. This provision is necessary because the term is used in subdivision (e) of section 752.4 relating to a photograph or video being utilized as a source document. This definition includes uploading, sharing, posting, or reposting on the internet to encompass the different ways a person may view a photograph or video online, including through a social media account. Furthermore, this provision is necessary because there are various ways that a photograph or video can be discovered or obtained and this definition aids in capturing those circumstances.

**Subdivision (o) (formerly subdivision (l)).** This provision was amended to add “or designated criminal street gang” after “record.” This amendment is necessary because “record” is used throughout these regulations to refer to a person who is designated in a shared gang database and not a designated criminal street gang; however, designated criminal street gangs may also be purged from a shared gang database.

**Subdivision (q) (formerly subdivision (n)).** This provision was amended to replace “particular person” with “Gang Member or Associate within a designated criminal street gang.” This

amendment is necessary because a person may have more than one record in a shared gang database if the person is designated as a Gang Member or Associate under different criminal street gangs. The previous language implied that all information pertaining to a particular person would be one single record; however, as the CalGang database is not currently architected this way, future shared gang databases may not be architected this way either.

**New Subdivision (r).** This provision was added to establish that “reliable source” means someone who provides information that the officer reasonably believes is trustworthy based on the totality of circumstances such as, but not limited to, the following factors: (1) basis of knowledge; (2) past or present indications of veracity; and (3) past or present indications of reliability. This provision was previously removed because subdivision (b)(3) of section 771.6 was removed in response to the comments received during the 45-day public comment period. However, in response to the comments received during the 30-day public comment period requesting that this criterion be added, the Department has included a new modified version of former subdivision (b)(3) of section 771.6 and this definition is necessary to clarify the new subdivision (a)(3) of section 771.8. Furthermore, this definition is necessary because Assembly Bill (AB) 90 required the Department to purge any information that was entered into the CalGang database if it was provided by an untested informant (Pen. Code, § 186.36, subd. (r)(1)). The Legislature did not require the Department to remove information from the CalGang database that was provided by a reliable informant. The Department defined reliable source so that User Agencies could use this definition any time they believe that a person meets the criterion provided in subdivision (a)(3) of section 771.8. The definition for reliable source uses factors from *Alabama v. White* (1990) 496 U.S. 325, a case which set forth the “test” for determining whether reasonable suspicion exists based on an informant’s statements to the police. This definition was additionally amended to add “past or present indications of” before “veracity” and “reliability.” This amendment is necessary to ensure that the law enforcement officer consider the person’s past and present indications of veracity and reliability in deciding whether that person is a reliable source.

**Subdivision (t) (formerly subdivision (p)).** This provision was amended to add “also” before “a need to know.” This amendment is necessary because an Agency or a person must have both a right to know and a need to know before access to a shared gang database may be granted.

**Subdivision (v) (formerly subdivision (r)).** This provision was amended to add “of lawfully obtained information” after “documentation.” This amendment was made in response to a public comment stating that source documents should have to be lawfully obtained. This amendment is necessary to ensure that information that is not lawfully obtained is not permitted to be used as a source document. This provision was additionally nonsubstantively amended to change “criterion” to “criteria.” This amendment is necessary to correct a grammatical error.

**New Subdivision (x).** This provision was added to establish that “symbol” as it applies to a criminal street gang, means a criminal street gang’s name, initials, numerical representation, slogan, picture, character, or any other adaptation or representation used by that criminal street gang. This provision is necessary because the term is used in sections 771.8, 772.4, and 772.6, which describe the criteria used for designating persons in a shared gang database as Gang Members or Associates or organizations as criminal street gangs.

**Subdivision (aa) (formerly subdivision (v)).** This provision was amended to remove “or ‘account misuse.’” This amendment is necessary because “account misuse” is no longer used in these regulations. This provision was also nonsubstantively amended to change “misuse” to “use” after “unauthorized access or” to be grammatically correct. This provision was additionally amended to add “in violation of these regulations.” This amendment is necessary because to clarify that this term is referring actions that are made in violation of these regulations.

**Subdivision (cc) (formerly subdivision (y)).** This provision was amended to replace “a law enforcement agency” with “an Agency.” This amendment is necessary because “Agency” is defined in these regulations to include “any law enforcement agency...”

#### **§ 770.4. Access to a Shared Gang Database.**

**Subdivision (b).** This provision was nonsubstantively amended to remove “in subdivision (x) of section 770.2” because this language was deemed unnecessary.

**Former Subdivision (e)(4)(A).** This provision was removed because not all point of contacts have a need to know and right to know. This amendment is necessary because there are situations in which a point of contact may not be a User of a shared gang database. An example of this would be a person who is an administrative assistant that facilitates training requests and retrieval of source documents but contacts Users to make any updates or changes to a shared gang database and does not actually access the database directly. In this example, the person would not have a right to know and need to know, and therefore would not meet the definition of User, as this provision previously required.

**Subdivision (e)(5).** This provision was amended to add “(s)” after “classification” and “rank.” This amendment is necessary to allow for people with different classifications and ranks to perform the supervisory review process. Without this amendment, multiple people would have been able to perform the supervisory review process but the previous language would have required all reviewers within an Agency to have the same classification and rank. This provision was additionally amended to require the Agency to “describe the organizational structure and process through which the supervisory review process required by sections 772.2 and 772.8 will occur.” This amendment was made to require the Agency to report their intended supervisory review process along with their written request. This amendment is necessary so that the Department and/or the System Administrator may determine if the Agency’s planned implementation of the supervisory review process required by sections 772.2 and 772.8 is meets the requirements of the regulations.

**Subdivision (e)(5)(A).** This provision was amended to prevent a User from an out-of-state agency or a federal agency from editing any record or designated criminal street gang in a shared gang database. This amendment is necessary because these regulations pertain to shared gang databases operated and maintained in California: therefore, individuals from agencies outside of California should not have the ability to edit any records or designated criminal street gangs

contained within a shared gang database governed under these regulations. This provision was additionally amended to add “or designated criminal street gangs.” This amendment is necessary because “record” is used throughout these regulations to refer to a person who is designated in a shared gang database and not a designated criminal street gang.

**Subdivision (f)(1).** This provision was amended to replace “[t]he System Administrator shall review a request received from an out-of-state agency or a federal agency” with “[f]or requests submitted by an out-of-state agency or a federal agency, only the System Administrator has the authority to approve those requests.” This provision was also amended to replace “and it” with “[s]uch memorandum.” These amendments were made to clarify the approval process for out-of-state agencies and federal agencies. This provision was additionally amended to add “and provided to the Department upon request.” This amendment is necessary because the Department needs to be able to review memorandums of understanding entered into by System Administrators in order to oversee the enforcement of these regulations.

**Former Subdivision (g).** This provision was removed because the amendments made to subdivision (c) of section 770.6 made this provision unnecessary.

**Former Subdivision (h).** This provision was removed and relocated to subdivision (e) of section 770.6 for better flow and reader understanding. This amendment was made because it is related to accounts and account statuses, not conditions of access as specified in this section.

**Subdivision (i).** This provision was amended to replace “without requesting access” with “from a User.” This amendment is necessary to clarify that a Non-User may request information directly from a User, at which point the User would then conduct a proxy query pursuant to section 770.8.

## **§ 770.6. Shared Gang Database User Terms and Account Security.**

**Subdivision (a).** This provision was added to explain the process for searching for information contained in a shared gang database and to establish a requirement that a reason shall be documented for each query. This provision is necessary because the regulations did not previously explain how a User may search for information in a shared gang database. Additionally, it is necessary to require a User to document a reason for conducting each query to ensure that a need to know and right to know exist and to provide a field on which the Department and/or the System Administrator may conduct audits.

**New Subdivision (b).** This provision was added to incorporate the language from the former subdivision (b). This amendment is necessary for better flow and reader understanding. This provision was additionally amended to replace “its legality, relevance, accuracy, timeliness, and completeness” with “ensuring compliance with these regulations.” This amendment is necessary because “compliance with these regulations” is all-encompassing. This provision was also amended to add a statement that queries and entries in a shared gang database shall create a detailed activity log which may be audited by the Department and/or the System Administrator. This amendment is necessary to require any new shared gang databases to have a feature in

which all queries and entries create a detailed activity log. Additionally, this amendment is necessary to ensure that Users and User Agencies are aware that their account use may be monitored to allow the Department and/or the System Administrator to ensure compliance with these regulations.

**Former subdivision (b).** This provision was removed and incorporated into to the new subdivision (b). This amendment is necessary for better flow and reader understanding.

**Subdivision (d) (formerly subdivision (c)).** This provision was amended to incorporate the information contained in the former subdivision (d) and to add the requirement for a System Administrator to suspend and/or revoke an account “if account privileges are no longer applicable to a User’s employment duties, the User’s level of access has been changed, and/or the User is separating or has separated from employment.” These amendments are necessary for better flow and reader understanding. Additionally, the same timeframes and requirements for Users who separated from employment should also apply to Users who have a change in employment duties or level of access. This provision was also amended to add Users who are separating from employment. This amendment is necessary for situations when the User Agency knows in advance that a User will be separating from employment.

**Subdivision (d)(1) (formerly subdivision (c)(1)).** This provision was amended to incorporate the information contained in former subdivision (d). This amendment was made to add the requirement for a User Agency to inform its System Administrator, or the Department if the System Administrator is unavailable, to suspend and/or revoke an account if there is a change in a User’s employment duties and/or level of access to the requirement to suspend and/or revoke an account if a User is separating, or has separated, from employment. These amendments are necessary because the same notification process for Users who are separating, or have separated, from employment should also apply to Users who have a change in employment duties or level of access. This provision was also nonsubstantively amended to replace “from” with “of.” This amendment is necessary to encompass User Agencies that know in advance of the date of the change in a User’s employment duties, level of access, and/or separation. Without this amendment, the notification requirement would only apply to changes that have already occurred.

**Subdivision (d)(2) (formerly subdivision (c)(2)).** This provision was amended to add “System Administrator’s Designee” to the list of people who may suspend and/or revoke a User’s account and to change the timeframe from 10 calendar days, to seven calendar days. These amendments are necessary because there may be times when the System Administrator is unavailable to suspend and/or revoke accounts. Due to this addition of the System Administrator’s Designee being able to perform these duties, the Department believed it was feasible to reduce the timeframe for suspending and/or revoking accounts down to seven calendar days. This provision was additionally amended to incorporate the information contained in former subdivision (d). This amendment was made to add the requirement to suspend and/or revoke an account “if account privileges are no longer applicable to a User’s employment duties” and/or if “the User’s level of access has been changed” to the requirement to suspend and/or revoke an account if a User is separating, or has separated, from employment within seven calendar days of receiving the notice. This amendment is necessary because the same timeframe for suspending and/or

revoking an account for Users who are separating, or have separated, from employment should also apply to Users who have a change in employment duties or level of access.

**Former Subdivision (d).** This provision was removed and incorporated into subdivisions (c), (c)(1), and (c)(2). This amendment is necessary in order to provide clarity and to provide the same timeframes and requirements as the accounts of Users separated from employment.

**Former Subdivision (e).** This provision was removed because the Department determined that it was duplicative of other subdivisions included in section 776.4 and 776.6. Additionally, language from the second sentence of this provision was incorporated into subdivision (d)(2) of section 776.4. This amendment is necessary because the sentence more accurately reflects the consequences of system misuse than user terms and account security.

**Former Subdivision (e)(1).** This provision was removed and the reference to “sharing passwords” in this provision was added to the list of actions that a User shall not perform in subdivision (b)(4) of section 776.4. This amendment is necessary for better flow and reader understanding and because this language pertained to system misuse.

**Former Subdivision (e)(2).** This provision was removed because the Department determined that it was duplicative of subdivision (d) of section 776.4.

**Subdivision (e) (formerly subdivision (f)).** This provision was amended to remove “[i]f reinstatement is not timely requested, access to the User account shall be revoked” with [u]pon reinstatement, the User shall take a recertification exam. This provision was additionally amended to add “[i]f the User’s account has been inactive for one year or more, the User shall be retrained before their account can be reinstated.” This amendment is necessary protect the privacy rights of the individuals designated in a shared gang database by requiring Users whose access has been suspended to certify that they are still knowledgeable of the laws and policies governing shared gang databases. Additionally, it is necessary to require Users to be retrained if their account has been inactive for one year or more to ensure that Users are familiar with the shared gang database functions; criteria that qualifies individuals for designation in the system and the associated meanings of same; policies, procedures, regulations, and best practices regarding its use; security and information dissemination requirements, and consequences for misuse.

**New Subdivision (f).** This provision was removed from subdivision (h) of section 770.4 and relocated to this subdivision for better flow and reader understanding. This amendment was made because it is related to accounts as discussed in this section, not conditions of access as specified in section 770.4.

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

**Subdivision (a).** This provision was amended to add “other” before person. This amendment is necessary to clarify that the User shall not permit any person other than themselves to access their account. This provision was also amended to replace “his or her” with “their.” This



amendment is necessary to ensure that these regulations are gender-inclusive. This provision was additionally amended to replace “the” with “a” before “shared gang database” and add “conduct a search for” before “a Non-User.” These amendments were made to clarify that a this provision applies to any shared gang database and that a proxy query is done when a User conducts a search for a Non-User.

**Subdivision (a)(1).** This provision was amended to remove “physical” before “copy.” This amendment is necessary to allow for electronic and physical copies to be maintained on file by the User. Without this amendment, electronic copies would not have been acceptable. This provision was also amended to require that Users “provide the Department a copy of each completed form or a copy of each proxy query request, within 30 calendar days of conducting a proxy query.” This amendment is necessary because with the exception of the CalGang database, the Department does not maintain any shared gang databases and will not have direct access to view the proxy queries that are conducted. The Department chose a 30 calendar-day timeframe because it allows the Non-User 10 working days to send the form if a proxy query is conducted pursuant to subdivision (a)(3), an additional five more days of mailing time if the form is mailed, then an additional five days for the User to follow up with the Non-User if a form is not received, and then additional time for the User to send the form to the Department.

**Subdivision (a)(3)(B)(1).** This provision was amended to replace “[t]he shared gang database shall only be used for criminal investigations or for the lawful prevention of criminal gang activity” with “[i]nformation from the shared gang database shall not be accessed or used for any reason other than investigative purposes and shall not be used for the purposes of documenting immigration status or any other unlawful purpose.” This amendment is necessary so the Non-User being read this statement is aware of the access and use restrictions for information from the shared gang database. This provision was nonsubstantively amended to remove “[i]n addition” before “the database.” This amendment is necessary because this phrase was unnecessary. This provision was also amended to add “California” before “state.” This amendment was made in response to a public comment stating that an out-of-state agency may misinterpret “state” as meaning their state. This amendment is necessary to clarify that only California state statute or regulation, not any other state statute or regulation, could require records contained in a gang database to be disclosed for purposes of enforcing federal immigration law. This provision was additionally amended to replace “[t]his restriction does not pertain to any information that is” with “[n]otwithstanding, this restriction does not prohibit the exchange of any information.” This amendment is necessary for better flow and reader understanding.

**Subdivision (a)(3)(E).** This provision was amended to add a list of actions that would be applicable in the event a User conducted a proxy query and a signed form was not received within 15 working days of the query. This amendment is necessary so that instead of requiring the User’s access to be suspended and/or revoked as this provision previously specified, this option may be used at the System Administrator’s discretion. The Department has determined that 15 working days is a reasonable amount of time before the User should follow up with the Non-User to account for five days of mailing time coupled with the 10 days the Non-User is already provided to send the signed form.

**Subdivision (a)(3)(E)(1).** This provision was amended to move language from subdivision (a)(3)(E) to this provision to create a list of actions that would be applicable in the event a User conducted a proxy query and a signed form was not received within 15 working days of the query. This provision was additionally amended to require the User to follow up with the Non-User if a signed form was not received within 15 working days of conducting the proxy query and to enable the System Administrator to suspend and/or revoke the User's access unless the User can demonstrate that they followed up with the Non-User if a signed form was not received within 15 working days of conducting the proxy query. These amendments are necessary for accountability and enforcement of these regulations. The Department has determined that 15 working days is a reasonable amount of time before the User should follow up with the Non-User to account for 5 days of mailing time coupled with the 10 days the Non-User is already provided to send the signed form.

**New Subdivision (a)(3)(E)(2).** This provision was added to require a notation be made in the shared gang database when a Non-User does not send a signed copy of the form. This provision further requires future proxy query requests made by the non-compliant Non-User and the Non-User's agency to be denied "until a signed form is received by the original User for the non-compliant Non-User." This provision is necessary to ensure accountability by the Non-User requesting the proxy query. This provision is also necessary to ensure that the Non-User and the Non-User's agency cannot continue to receive the results of proxy queries until the violation is resolved.

**Subdivision (b)(1).** This provision was amended to specify that the System Administrator shall suspend and/or revoke the access of a User and/or User Agency that allows more than 12 queries to be conducted by the same Non-User in a year. This amendment is necessary to hold the Users and Agencies accountable for complying with subdivision (b).

## **§ 771. User Training.**

**Subdivision (b)(1).** This provision was amended to replace "for" with "of." This amendment is necessary to be grammatically correct.

**Subdivision (b)(12).** This provision was amended to add "and inclusion in a shared gang database" before "on community members." This amendment was made in response to a public comment stating that the impact of designation in the database should be included as a training topic. This amendment is necessary because data collection is not the only topic that will impact community members. The Department believes it is important to train that inclusion in an intelligence database can have real and perceived impacts and both are crucial to understand in order to build trust in the law enforcement community.

**New Subdivision (d).** This provision was added to specify that the Department and/or the System Administrator may conduct on-site visits to ensure compliance with the training mandate set forth in this section. This provision is necessary to ensure that Users and User Agencies are aware of how the Department and/or the System Administrator can ensure compliance with this section. Additionally, it is necessary to specify that the Department and/or the System

Administrator may conduct classroom observation and review of training records to ensure that User Agencies grant the Department and/or System Administrator access to their facilities.

**New Subdivision (e).** This provision was added to require the System Administrator to “keep records of all Users who have completed the training requirement set forth in this section” and “provide copies to the Department upon request.” This provision is necessary for the Department’s auditing purposes so that the Department may verify that Users have received training prior to receiving access to a shared gang database.

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

**Subdivision (b).** This provision was amended to replace “24” with “12.” This amendment was made to require a recertification exam every 12 months after the date of initial certification or recertification. This amendment was necessary to ensure that Users are properly trained on a regular basis. Furthermore, the Department increased the frequency of recertification exams because these regulations are implementing many new changes and it is necessary to ensure that Users understand the length of these changes. Delaying recertification could result in noncompliance with these regulations and improperly trained Users, resulting in unreliable information in a shared gang database.

#### **§ 771.4. Requirements to Become an Approve Instructor.**

**Subdivision (c).** This provision was amended to replace “shall” with “may” and to add “at the discretion of the Department and/or the System Administrator.” This amendment is necessary because the Department does not want to require instructors to be subject to annual recertification training unless it is necessary. If there are no system changes or updates, new mandates, regulations, or other concerns from the Department and/or the System Administrator, then it may be unnecessary to subject the instructor to recertification training.

#### **Article 5. Designating a Person in a Shared Gang Database and Adding Information to a Person’s Record**

This article title was amended to replace “Criteria for Designation in a Shared Gang Database” with “Designating a Person in a Shared Gang Database and Adding Information to a Person’s Record.” This amendment is necessary because the Department restructured this article for better flow and reader understanding. Additionally, the Department moved the information pertaining to the designation of an organization in a shared gang database to a new article, Article 6.

#### **New § 771.6. Minimum Age of Entry and Requirements to Enter a Person into a Shared Gang Database.**

This section was removed from former section 771.8 and relocated to section 771.6 for better flow and reader understanding. This amendment is necessary because it makes more sense to read the requirements for entry before reading the criteria that are used to fulfill those requirements.

**New Subdivision (a).** This provision was removed from former section 771.8 and relocated to this subdivision for better flow and reader understanding. This amendment is necessary because it makes more sense to read the requirements for entry before reading the criteria that are used to fulfill those requirements. No changes were made to the contents of this provision.

**New Subdivision (b).** This provision was removed from former section 771.8 and relocated to this subdivision for better flow and reader understanding. This amendment is necessary because this provision was previously listed under the section title “Criteria to be Designated...,” however it is not a criterion, rather a requirement to enter a person into a shared gang database. This provision was amended to replace “officer” with “agency” before “having reasonable suspicion.” This amendment was made to ensure that the final determination as to the satisfaction of the reasonable suspicion requirement is made by the agency through the supervisory review required in section 772.2. This provision was also amended to remove “may” before “participate” and before “willfully promote.” Additionally, this provision was amended to add “actively” before “participate.” This provision was also nonsubstantively amended to change “participate,” “promote,” “further,” and “assist” to active tense. These amendments were made in response to public comments. These amendments are necessary because the removal of “may” and the addition of “actively” better reflects the language in subdivision (a) of Code of Federal Regulations, Title 28, section 23.20 relating to the operating principles of criminal intelligence systems.

This provision was additionally amended to specify that “[r]easonable suspicion shall be based on the totality of circumstances, but considering only the information documented by the law enforcement officer(s) to demonstrate the satisfaction of each criterion and any other legally obtained information that supports or undermines the existence of each criterion.” This amendment is necessary because the supervisory review shall determine if this requirement is satisfied and the criteria should be evaluated in their totality along with the documentation that the law enforcement officer(s) provided for the satisfaction of each criterion and any legally obtained information that supports or undermines the existence of each criterion.

**New Subdivision (c).** This provision was removed from subdivision (b) of former section 771.8 and relocated to this subdivision for better flow and reader understanding. This provision was amended to add “[s]ubject to subdivisions (a), (b), and (d)” before “a person” and “only” before “entered.” These amendments are necessary to clarify that a person may be entered only when all subdivisions in this section are satisfied. This amendment is necessary because it makes more sense to read the requirements for entry before reading the criteria that are used to fulfill those requirements. This provision was also amended to require that the two criteria be unique. This amendment is necessary because to help ensure that reasonable suspicion exists before designating a person as a gang member or associate.

**New Subdivision (c)(1).** This provision was added to require the satisfaction of three unique criteria when subdivision (a)(6) and (a)(7) of section 771.8 are used together. This provision is necessary because these two criteria have raised the most concerns from the public throughout the public comment periods; therefore, the Department has added an additional level of protection by requiring one additional unique criterion if these two criteria are used in combination with each other.

**New Subdivision (c)(2).** This provision was removed from subdivision (c) of section 771.8 and incorporated into this subdivision for better flow and reader understanding. This amendment is necessary because this provision specifies restrictions for the required number of criteria. This provision was additionally amended to add a one-year timeframe for the required number of criteria to be satisfied. This amendment is necessary because the Department conducted research to analyze the duration between the satisfaction of the first and second criterion for records entered into the CalGang database in the last five years and 96% of records had a zero day duration between the satisfaction of the first and second criterion. Less than 1% of records had more than one year between the observation of the first and second criterion. The maximum duration between observations of criteria was about three years. Subdivision (h) of the Code of Federal Regulations, Title 28, section 23.20 limits the retention period for maintaining information in an intelligence database to five years; however, the Department has concluded that reducing the allowable duration between observed criteria from five years to one year will address over-inclusivity in a shared gang database and likely only result in minimal data loss.

**New Subdivision (c)(3).** This provision was added to allow law enforcement to utilize a system feature in a shared gang database to indicate whether the law enforcement officer suspects that the designated person is a non-member gang associate. This provision is necessary because, although a person will be designated as a Gang Member or Associate, allowing law enforcement the ability to indicate suspected non-member gang associates in the database will aid in creating a more accurate intelligence database, assist law enforcement with solving crimes, and provide more data that will aid in further development of these regulations. While the criteria to be designated in the system is the same, the Department believes that it is important for law enforcement to have a way to differentiate from those that they believe are not full members yet. Some criminal street gangs have a high threshold for entry or require specific crimes to be committed in order to be initiated into the gang. A law enforcement officer investigating a suspected gang-initiation crime could utilize this system feature to sort through designated individuals whom they suspect have not yet been initiated in the gang and may be committing crimes to become an official member. Additionally, this feature could be useful when an officer is trying to determine if they could recruit a designated person to be a confidential informant. The ability to indicate suspected non-member gang associates would be useful to examine a person's level or status in the gang, as well as their embeddedness.

**New Subdivision (d).** This provision was added to require the supervisory review process to occur prior to entering a person in a shared gang database. This provision is necessary because this section did not previously specify that the supervisory review process described in section 772.2 must occur prior to entering a person in a shared gang database. Although section 772.8 (formerly 772.4) states that all criminal street gang intelligence data shall be reviewed prior to

any entry, the Department felt it was necessary to explicitly require this supervisory process to occur in this section as it details the requirements to enter a person into a shared gang database.

**§ 771.8. (Formerly 771.6) Criteria to be Designated as a Gang Member or Associate.**

**Former Subdivision (a).** This provision was removed from this section and added to subdivision (b) of section 752.2 (formerly 752.4). This amendment is necessary for better flow and reader understanding. Additionally, this provision was previously listed under the section title “Criteria to be Designated...;” however, it is not a criterion, rather a requirement to enter a person into a shared gang database.

**Subdivision (a) (formerly subdivision (b)).** This provision was amended to remove “[i]n addition to satisfying the requirement of subdivision (a).” This amendment is necessary because subdivision (a) was removed from this section so this language was no longer relevant.

**Subdivision (a)(1) (formerly subdivision (b)(1)).** This provision was amended to remove “currently” before “active.” This amendment was made in response to a public comment stating that the term “currently-active” was confusing. This amendment is necessary for clarification. Additionally, it is necessary to keep the term “active” because active membership or association is aligned with the language in subdivision (a) of Penal Code section 186.22. As such, only admissions of active membership or association shall be included. This provision was also nonsubstantively amended to replace “a” with “an” before “active.” This amendment is necessary to be grammatically correct. This provision was additionally amended to replace “Gang Member or Associate” with “member or associate of an active criminal street gang.” This amendment is necessary because the defined term “Gang Member or Associate” means a person who satisfies the requirements to be entered; however, a person would not be admitting to meeting the requirements for entry, rather they would be admitting to being a member or associate of an active criminal street gang.

Furthermore, the Department amended this provision to remove “the admitting person’s demeanor; and whether the admitting person appeared to be under the influence of drugs or alcohol” and to add “the wording of the admission;” and “whether the person was arrested during the contact for violating subdivision (f) of Penal Code section 647 or subdivision (a) of Health and Safety Code section 11550” to the list of things that the law enforcement officer shall document. These amendments were made in order to remove the subjectivity of the previous language and to better demonstrate whether the admission was made under circumstances that do not undercut truthfulness to ensure that a supervisory review and/or audit is able to determine whether this criterion has been satisfied. The previous language of “the admitting person’s demeanor” could have been misinterpreted to mean the admitting person’s mood. Additionally, the previous language of “whether the admitting person appeared to be under the influence of drugs or alcohol” was also very subjective and relied on the officer’s interpretation of a person’s appearance rather than an actual test of alcohol or drugs in the person’s system. It is necessary to document “the wording of the admission” to ensure that a supervisory review and/or audit is able to determine whether this criterion has been satisfied or determine if the person’s statement was misinterpreted to be an admission. It is necessary to document an arrest for violating subdivision

(f) of Penal Code section 647 or subdivision (a) of Health and Safety Code section 11550 because these violations are related to public intoxication and being under the influence of a controlled substance. An admission that occurred as part of an arrests for either these two violations would demonstrate that the admission may have been made involuntarily or by an incompetent person.

**New Subdivision (a)(1)(A).** This provision was added to ensure that this criterion is satisfied only if the law enforcement officer reasonably believes that the admission was made by a voluntary and competent person. This provision was added in response to public comments expressing that a person may admit to being a gang member in the presence of others to avoid being rejected by the group, out of fear, or for safety. This provision is necessary because the law enforcement officer and the supervisory review must consider whether there is an objectively reasonable basis to believe that the person’s admission was voluntary and competent.

**New Subdivision (a)(1)(B).** This provision was added to provide that a person admitting to living in, or associating within, a certain neighborhood does not satisfy this criterion unless they specifically admit to being an active member or associate of an active criminal street gang. This provision is necessary to protect a person’s status as living in or being from a specific neighborhood from being misinterpreted as an indication that they are affiliated with, or from, a criminal street gang known to claim that neighborhood as their territory or have a high presence in that neighborhood.

**New Subdivision (a)(1)(C).** This provision was added to ensure that this criterion is not satisfied solely by social media posts unless there is strong indicia of reliability. An example of this is a clearly identifiable video of the person proclaiming their gang membership. This provision is necessary to ensure law enforcement officers carefully evaluate whether a social media post is reliable, given the nature of that medium.

**Subdivision (a)(2) (formerly subdivision (b)(2)).** This provision was amended to add “as defined in these regulations” after “an offense consistent with gang activity.” This amendment is necessary to reflect that this phrase is not open to interpretation by the law enforcement officer, but rather is a defined term in these regulations. This provision was additionally amended to add a documentation requirement for the law enforcement officer to describe how the facts and circumstances of the offense are consistent with gang activity. This amendment is necessary to draw a nexus between the arrest and gang activity.

**Subdivision (a)(2)(A) (formerly subdivision (b)(2)(A)).** This provision was amended to add a notify warrant, warrant of arrest, and juvenile detention report to the list of items on which an arrest shall be documented to qualify for entry into a shared gang database. This amendment is necessary because this subdivision previously limited arrest documentation to an arrest or crime report. Without this amendment, notify warrants, warrants of arrest, and juvenile detention reports would not be included as documentation of an arrest, leaving law enforcement officers unable to use those arrests to satisfy this criterion.

**New Subdivision (a)(3).** This provision was added to specify that a reliable source identifying an individual as a gang member or gang associate can be used as a criterion for entry into a

shared gang database. This provision is necessary because case law from *Alabama v. White* (1990) 496 U.S. 325 provides a definition for reliable source that is restrictive enough to ensure that a source is, in fact, reliable enough for the source's identification to be treated as truthful. This provision was previously removed from the criteria section in response to the comments received during the 45-day public comment period. However, in response to the comments received during the 30-day public comment period requesting that this criterion be added, the Department has included a new modified version and added additional requirements that were not previously included, in an effort to ensure the accuracy and reliability of this criterion. Absent applicable empirical research that conclusively demonstrates that this criterion is not probative of gang membership or association, the Department looked to the experience of law enforcement to determine whether this criterion should remain until additional empirical research conducted by the Department's Research Center or external gang researchers indicates otherwise. The law enforcement officials with whom the Department engaged asserted that, based on their extensive knowledge of and history with gang members, this criterion can be a strong indicator of gang membership. The Department shall consider any future empirical research by the Department's Research Center and external gang researchers to determine whether this criterion, or any other criteria described herein, should remain in these regulations.

This provision now requires that the opinion of the reliable source be based "solely on information that would support criteria set forth herein." Additionally, the law enforcement officer is required 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." It is necessary to document "the specific information that serves as the basis for the opinion of the reliable source" so that a law enforcement officer will carefully consider the rationale of the reliable source and to ensure that a supervisory review and/or audit is able to determine whether this criterion has been satisfied. It is necessary to document "why the information provided by the source is consistent with the criteria set forth herein" to ensure that belief that a person is a gang member or associate is based only on criteria that the Department considers indicative of gang membership or association. It is necessary to document the "reason(s) that the reliable source has been deemed reliable" to ensure that a supervisory review and/or audit is able to determine whether this criterion has been satisfied.

**New Subdivision (a)(3)(A).** This provision was added to specify that "[t]he satisfaction of this criterion shall not be based on an individual's jail classification." This provision is necessary to exclude jail classification because AB 90 required the Department to purge any criteria that was entered into the CalGang database if it was based on a jail classification and the Department believes that the same should apply to any future shared gang databases (Pen. Code, § 186.36, subd. (r)(1)).

**New Subdivision (a)(3)(B).** This provision was added to specify that "[f]or purposes of this subdivision, a reliable source shall not be a person who is under 18 years of age, a rival gang member, an untested informant, or the law enforcement officer conducting the interview or completing the source document." It is necessary to exclude a person under 18 years of age because the opinion of a minor could be easily influenced or manipulated. It is necessary to exclude a rival gang member because they may have a vendetta, and therefore would not be



considered reliable. It is necessary to exclude an “untested informant” because AB 90 required the Department to purge any information that was entered into the CalGang database if it was provided by an untested informant (Pen. Code, § 186.36, subd. (r)(1)). It is necessary to exclude the law enforcement officer conducting the interview and the law enforcement completing the source document to prevent a possible conflict of interest and misuse of this criterion. Without this exclusion, an officer could witness the satisfaction of another criterion and then also attempt to list themselves as a reliable source having witnessed the satisfaction of this criterion.

**New Subdivision (a)(4).** This provision was added to establish that a person observed associating with person(s) who are already entered, or are in the process of being entered, into a shared gang database can be used as a criterion for entry into a shared gang database when the circumstances of the observed association indicate gang affiliation. This provision was previously removed from the criteria section in response to the comments received during the 45-day public comment period. However, in response to the comments received during the 30-day public comment period requesting that this criterion be added, the Department has included a new modified version and added additional requirements that were not previously included, in an effort to ensure the accuracy and reliability of this criterion. Absent applicable empirical research that conclusively demonstrates that this criterion is not probative of gang membership or association, the Department looked to the experience of law enforcement to determine whether this criterion should remain until additional empirical research conducted by the Department’s Research Center or external gang researchers indicates otherwise. The law enforcement officials with whom the Department engaged asserted that, based on their extensive knowledge of and history with gang members, this criterion can be a strong indicator of gang membership. The Department shall consider any future empirical research by the Department’s Research Center and external gang researchers to determine whether this criterion, or any other criteria described herein, should remain in these regulations.

This provision now requires the law enforcement officer to observe the person. This amendment is necessary to ensure that the observation is based on a firsthand observation by the law enforcement officer documenting this criterion. This language prevents a reliable source from being overused to satisfy both subdivision (a)(3) and this subdivision at the same time. This provision now requires the law enforcement officer to “document the circumstances of the association; the person(s) present who are already entered, or are in the process of being entered into a shared gang database; and the reason for believing that the association indicates gang affiliation.” It is necessary to document “the circumstances of the association” to ensure that the context of the association is provided for consideration during the supervisory review and/or audit process(es). It is necessary to document who the person was seen associating with who is entered, or in the process of being entered into a shared gang database to ensure a note or connection can be made in a shared gang database. It is necessary to document “the reason for believing that the association indicates gang affiliation” to require the law enforcement officer to provide an explanation as to why they believe the association was gang-related and to ensure that a supervisory review and/or audit is able to determine whether this criterion has been satisfied.

**New Subdivision (a)(4)(A).** This provision was added to specify that no person shall be considered for designation as a Gang Member or Associate under this criterion without “reasonable suspicion that they contribute to, or are participating in, the criminal street gang’s

illegal activities.” This provision is necessary because the Department received many public comments concerning how this criterion could affect family members and outreach workers who would likely be seen with persons designated as a Gang Member or Associate or persons meeting the requirements to be designated as a Gang Member or Associate. The Department wanted to clarify that no person would satisfy this criterion unless “there is reasonable suspicion that they contribute to or are participating in the criminal street gang’s illegal activities” and this includes family members and outreach workers.

**New Subdivision (a)(4)(B).** This provision was added to specify that this criterion shall not be satisfied by incidental community interactions that are not criminal in nature. This provision is necessary to help ensure that persons are not mistakenly identified as gang members or associate merely by coming into contact with a gang member or associate in the community.

**Subdivision (a)(5) (formerly subdivision (b)(3)).** This provision was amended to add “law enforcement officer has observed the” before “the person.” This amendment is necessary to ensure that the observation is based on a firsthand observation by the law enforcement officer documenting this criterion. This language prevents a reliable source from being overused to satisfy both subdivision (a)(3) and this subdivision at the same time. This provision was also amended to remove “accessories.” This amendment is necessary because items of clothing has been added back in as a criterion in subdivision (a)(7). This provision was additionally amended to add a documentation requirement for “the specific symbol(s) and/or hand sign(s) and basis for believing that they are tied to an active criminal street gang.” This amendment is necessary to ensure that a supervisory review and/or audit is able to determine whether this criterion has been satisfied.

**Former Subdivision (b)(3)(A).** This provision was removed because items of clothing were added back in as a criterion in subdivision (b)(7). This amendment is necessary because this provision was no longer applicable to subdivision (a)(5).

**New Subdivision (a)(6).** This provision was added to establish that a person observed at one or more gang-related addresses can be used as a criterion for entry into a shared gang database and to require the law enforcement officer to document pertinent information regarding the encounter(s). This provision was previously removed from the criteria section in response to the comments received during the 45-day public comment period. However, in response to the comments received during the 30-day public comment period requesting that this criterion be added, the Department has included a new modified version and added additional requirements that were not previously included, in an effort to ensure the accuracy and reliability of this criterion. Absent applicable empirical research that conclusively demonstrates that this criterion is not probative of gang membership or association, the Department looked to the experience of law enforcement to determine whether this criterion should remain until additional empirical research conducted by the Department’s Research Center or external gang researchers indicates otherwise. The law enforcement officials with whom the Department engaged asserted that, based on their extensive knowledge of and history with gang members, this criterion can be a strong indicator of gang membership. The Department shall consider any future empirical research by the Department’s Research Center and external gang researchers to determine whether this criterion, or any other criteria described herein, should remain in these regulations.

This provision now requires the law enforcement officer to observe the person. This amendment is necessary to ensure that the observation is based on a firsthand observation by the law enforcement officer documenting this criterion. This language prevents a reliable source from being overused to satisfy both subdivision (a)(3) and this subdivision at the same time. This provision no longer references gang-related locations because of the various public comments stating that locations were vague or overbroad. This provision now requires that the law enforcement officer “articulate justification for how the address(es) are gang-related.” This added documentation is necessary to ensure that a supervisory review and/or audit is able to determine whether this criterion has been satisfied. The Department also provided examples of how a law enforcement officer could justify an address as being gang-related including graffiti by the related criminal street gang and crime by that criminal street gang at the address. These examples are necessary because they provide very specific, common examples of how an address could be claimed by a gang.

**New Subdivision (a)(6)(A).** This provision was added to specify when this criterion shall not be satisfied. This provision is necessary because a residential address of a person already entered in a shared gang database should not encompass other individuals living at or visiting that address.

**New Subdivision (a)(6)(B).** This provision was added to specify when this criterion shall not be satisfied. This provision is necessary because the use of entire neighborhoods and schools would be over inclusive and inappropriate.

**New Subdivision (a)(7).** This provision was added to establish that a person observed wearing one or more items of clothing and/or colors that a law enforcement officer believes is tied to a specific and active criminal street gang can be used as a criterion for entry into the a shared gang database and require the law enforcement officer to document pertinent information regarding the encounter(s). This provision was previously removed from the criteria section in response to the comments received during the 45-day public comment period. However, in response to the comments received during the 30-day public comment period requesting that this criterion be added, the Department has included a new modified version and added additional requirements that were not previously included, in an effort to ensure the accuracy and reliability of this criterion. Absent applicable empirical research that conclusively demonstrates that this criterion is not probative of gang membership or association, the Department looked to the experience of law enforcement to determine whether this criterion should remain until additional empirical research conducted by the Department’s Research Center or external gang researchers indicates otherwise. The law enforcement officials with whom the Department engaged asserted that, based on their extensive knowledge of and history with gang members, this criterion can be a strong indicator of gang membership. The Department shall consider any future empirical research by the Department’s Research Center and external gang researchers to determine whether this criterion, or any other criteria described herein, should remain in these regulations.

This provision now requires the law enforcement officer to observe the person. This amendment is necessary to ensure that the observation is based on a firsthand observation by the law enforcement officer documenting this criterion. This language prevents a reliable source from being overused to satisfy both subdivision (a)(3) and this subdivision at the same time. This

provision no longer references style of dress or accessory because of the various public comments stating that these terms were too broad. This provision now requires the law enforcement officer to “document the specific clothing and/or colors, and the basis for believing that the person is wearing the clothing and/or colors to express gang membership or association.” It is necessary to document “the specific clothing and/or colors” to ensure that a supervisory review and/or audit is able to determine whether this criterion has been satisfied. It is necessary to document “the basis for believing that the person is wearing the clothing and/or colors to express gang membership or association” to require the law enforcement officer to provide an explanation as to why they believe the item(s) of clothing and/or colors are gang-related and how the person is wearing the clothing and/or colors to express gang membership or association. Furthermore, this documentation will ensure that a supervisory review and/or audit is able to determine whether this criterion has been satisfied.

**New Subdivision (a)(7)(A).** This provision was added to specify when this criterion shall not be satisfied. This provision is necessary because wearing clothing and/or colors that are of general interest to a neighborhood or locality may not reliably indicate gang membership, especially if the person is wearing a local sports team hat, clothing, or colors.

**Subdivision (a)(8) (formerly subdivision (b)(4)).** This provision was amended nonsubstantively to add “s” after “branding.” This amendment is necessary to correct a typo. This provision was also amended to require the law enforcement officer to observe the person. This amendment is necessary to prevent observations made from someone other than law enforcement being used to satisfy this criterion. Observations made by persons other than law enforcement, assuming they meet the requirements, would satisfy subdivision (a)(3). Furthermore, this language prevents a reliable source from being overused to satisfy subdivision (a)(3) and this subdivision at the same time. This provision was additionally amended to require the law enforcement officer to document “the basis for believing that they are tied to an active criminal street gang.” It is necessary to document “the basis for believing that they are tied to an active criminal street gang” to ensure that a supervisory review and/or audit is able to determine whether this criterion has been satisfied.

**New Subdivision (a)(8)(A).** This provision was removed from subdivision (a) of section 772 and relocated to this subdivision for better flow and reader understanding. This amendment is necessary because this provision relates specifically to the rules and restrictions of documenting a tattoo, mark, scar, or branding to satisfy subdivision (a)(8) of section 771.8.

**New Subdivision (a)(8)(B).** This provision was removed from subdivision (b) of section 772 and relocated to this subdivision for better flow and reader understanding. This amendment is necessary because this provision relates specifically to the rules and restrictions of documenting a tattoo, mark, scar, or branding to satisfy subdivision (a)(8) of section 771.8.

**New Subdivision (a)(8)(C).** This provision was removed from subdivision (c) of section 772 and relocated to this subdivision for better flow and reader understanding. This amendment is necessary because this provision relates specifically to the rules and restrictions of documenting a tattoo, mark, scar, or branding to satisfy subdivision (a)(8) of section 771.8.

**New Subdivision (b).** This provision was added to require the means by which the law enforcement officer observed the satisfaction of a criterion to be documented. It is necessary to document “the means by which their observation was made” for auditing purposes and so that there is a record of whether the observation was made in person, in writing, on a video or audio recording, over the internet, or through other means.

**Former Subdivision (c).** This provision was removed and incorporated into the new subdivision (c)(2) of section 752.4 for better flow and reader understanding.

**Subdivision (c) (formerly subdivision (d)).** This provision was amended to add “[w]hen designating a person as a Gang Member or Associate.” This amendment is necessary to clarify that this requirement only applies when designating a person in a shared gang database and does not pertain to the adding of information to a person’s record once they have been designated as a Gang Member or Associate. This provision was also amended to replace “satisfied if it occurred more than five years prior to entry in the CalGang database” with “based on the contact(s), incident(s), and/or supporting source documents that are more than one year old.” This amendment was made to clarify that the information supporting the satisfaction of a criterion cannot be more than one year old. This amendment is necessary because the Department conducted research to analyze the duration between the satisfaction of the first and second criterion for records entered into the CalGang database in the last five years and 96% of records had a zero day duration between the satisfaction of the first and second criterion. Less than 1% of records had more than one year between the observation of the first and second criterion. The maximum duration between observations of criteria was about three years. Subdivision (h) of the Code of Federal Regulations, Title 28, section 23.20 limits the retention period for maintaining information in an intelligence database to five years; however, the Department has concluded that reducing the allowable duration between observed criteria from five years to one year will address over-inclusivity in a shared gang database and likely only result in minimal data loss.

**New Subdivision (e).** This provision was added to remove subdivision (b) from section 774.6 (formerly 755) and relocate it to this subdivision for better flow and reader understanding. This amendment is necessary because this subdivision pertains to the satisfaction of a criteria listed in section 771.8. This provision was also amended to add “and videos” after “photographs.” This amendment is necessary because the Department believes it is crucial to permit videos as source documents due to the fact that closed circuit camera footage is a valuable intelligence tool. This provision was additionally amended to replace “with” with “as” before “source documents.” This amendment is necessary because the Department recognizes that photographs and videos are crucial intelligence gathering tools to law enforcement and shall be considered a source document which requires that they have to be retained and maintained as long as the record in the shared gang database that they support.

**New Subdivision (e)(1).** This provision was added in response to a public comment requesting that recordings of law enforcement officer contacts be made and maintained. Although the Department does not believe it is feasible to require all law enforcement agencies that use a shared gang database to have body cameras, it is reasonable to request that the law enforcement officers indicate whether a recording of their contact with a person is available. Not all agencies

have the same procedures for recording police contacts; however, it will be useful for the Department to know if an audio or video recording of the contact exists so that the Department can request it while conducting an audit. This provision also requires the law enforcement officer to document if the contact was recorded by law enforcement. This documentation requirement will inform the Department whether the recording was obtained from a person or entity outside of law enforcement, or made by law enforcement. This provision is necessary for the Department's auditing purposes and to provide additional transparency.

**New Subdivision (e)(2).** This provision was added to require the documentation of a photograph or video being used as a source document. It is necessary to document "the date the photograph or video was observed by the law enforcement officer" because a photograph or video may be observed online and taken down at a later date. It is necessary to document "the date published and by whom" to ensure the law enforcement officer evaluates how reliable the photograph or video is. Furthermore, the Department has added "published" because there may be circumstances where an old photograph or video is shared or reposted. Publishing an older photograph or video may still be a reliable indicator of that person's current status when taken into consideration with other factors. For example, a person may have an older picture of themselves at gang meetup, dressed in gang colors and flashing a gang sign and, yet make it their recent profile picture, indicating that they may be associated with the gang. In contrast, a friend publishing a ten year-old photograph of another person throwing gang signs would not be reliable in indicating that person's current gang affiliation as the person themselves is not sharing the photograph. It is necessary to document "the date created, if available" because some photographs and videos may have a date stamp and this date would be especially important if the photo is never published as the law enforcement officer would need to know if the photograph satisfies subdivision (c) of this section.

**New Subdivision (e)(3).** This provision was added to require social media to be carefully evaluated by the law enforcement officer and to provide specific examples of what the law enforcement officer shall take into consideration. This provision is necessary because it is important for the law enforcement officer to consider the circumstances surrounding a photograph, video, or other posting through social media, given the nature of the medium. Additionally, the Department wants to address concerns about social media accounts being hacked and false information being published.

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

This section and its provisions were removed from section 771.8 and relocated to section 771.6 for better flow and reader understanding. This amendment is necessary because it makes more sense to read the requirements for entry before reading the criteria that are used to fulfill those requirements.

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

This section and its provisions were removed and relocated to subdivision (a)(8)(A), (a)(8)(B), and (a)(8)(C) of section 771.8. This amendment is necessary because this provision relates specifically to the rules and restrictions of documenting a tattoo, mark, scar, or branding to satisfy subdivision (a)(8) of section 771.8.

#### **New § 772. Adding Information to a Person’s Record.**

**New Subdivision (a).** This provision was added to explain how additional information may be added to a persons’ record in a shared gang database and to provide specific examples of the types of information that may be added. This provision is necessary because information that was obtained legally may be added to a person’s record after they have been designated as a Gang Member or Associate in a shared gang database. The Department specified that information regarding the satisfaction of a criterion that has occurred prior to, or after, entry in a shared gang database may be added to a shared gang database because this additional information assists law enforcement with investigations and the lawful prevention of gang activity.

**New Subdivision (b).** This provision was added to specify that any additional information entered must undergo the supervisory review process prescribed in section 772.2. This provision is necessary to ensure that additional entries do not bypass the supervisory review process and to ensure that no intelligence data is entered into a shared gang database if it was obtained in violation of any applicable federal, state, or local law, policy, or ordinance.

**New Subdivision (c).** This provision was added to prevent additional entries from resetting the retention period of a record unless required by section 773.8 or 774. This provision is necessary because some information that is added to a record in a shared gang database may not be indicative of gang membership or association as to warrant a retention period being reset, such as the entry of a vehicle license plate number.

#### **New § 772.2. Supervisory Review Process of Intelligence Data.**

**New Subdivision (a).** This provision was added to require User agencies to conduct a supervisory review of all related intelligence data prior to entry into 773.8 or 774 database, as required in subdivisions (k)(3) and (l)(8) of Penal Code section 186.36. This provision is necessary to require an additional level of review in order to protect the safety of the public and the integrity of the system by ensuring that information meets the threshold for inclusion in a shared gang database and was obtained in a manner consistent with applicable law, policy, and ordinance. This requirement is consistent with the Department’s *Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities* (November 2007) page 7. This provision also specifies that the intelligence data be “meaningfully reviewed and approved.” This language is necessary because the Department wants to ensure that each agency evaluates and scrutinizes the intelligence data and does not just provide a quick signature without evaluating all of the documentation. This provision also provides guidance as to how a User Agency shall conduct their supervisory review. This

language is necessary because each organizational structure may vary, however, User Agencies should try to obtain first-level supervisor approval and gang lieutenant approval whenever possible.

**New Subdivision (b).** This provision was added to require that the supervisory review include a determination of whether the proposed entry and underlying documentation complies with these regulations, whether the reasonable suspicion requirement was satisfied, and whether intelligence data was obtained in violation of any applicable federal, state, or local law, policy, or ordinance and prohibit the entry of any data that was. This provision is necessary to ensure the accuracy and integrity of shared gang databases. This requirement is consistent with the Department's *Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities* (November 2007) page 7.

**New Subdivision (b)(1).** This provision was added to specify that the supervisory review shall determine whether the intelligence data that was collected satisfies the minimum age and entry requirements set forth in section 771.6. This provision is necessary because, without this addition there was no requirement for a supervisory review to determine if the requirements for designation were satisfied for a person.

**New Subdivision (b)(2).** This provision was added to specify that the supervisory review may review additional legally obtained information and/or supporting documentation to add to the person's record in a shared gang database. This provision is necessary to allow law enforcement officers to build criminal intelligence on a person designated as a Gang Member or Associate after the requirements for entry have been satisfied.

### **New Article 6. Designating an Organization as a Criminal Street Gang in a Shared Gang Database and Adding Information to a Designated Criminal Street Gang**

This new article was created because the Department restructured Article 5 for better flow and reader understanding. This amendment is necessary so that the rules for designating a person in a shared gang database and the rules for designating an organization as a criminal street gang in a shared gang database are clear and distinct from each other.

#### **§ 772.4. (Formerly 772.2) Requirements to Designate an Organization as a "Criminal Street Gang."**

This article title was amended to replace "Criteria for an Organization to be Designated" with "Requirements to Designate an Organization." This amendment is necessary because this section does not include criteria, but rather includes the rules and requirements for an organization to be designated as a criminal street gang. Additionally, this section title is better aligned with the language used in the title of section 771.6.

**Subdivision (a)(2).** This provision was amended to remove "association or" before "organization." This amendment is necessary because the Department added a new defined term



for “organization” in subdivision (l) of section 770.2. This provision was also amended to replace “criteria” with “requirements” and “Article 5” with “subdivision (c) of section 771.6.” These amendments are necessary to clarify that it is not sufficient for a person to only meet criteria in order to be designated as a Gang Member or Associate, but rather the specific requirements to be designated as a Gang Member or Associate which are set forth in subdivision (c) of section 771.6 must be satisfied. This provision was additionally nonsubstantively amended to replace “classified as a criminal street gang and be entered as such into the shared gang database” with “designated as a criminal street gang in the shared gang database.” This amendment is necessary for consistency with the verbiage used throughout these regulations. Finally, this provision was nonsubstantively amended to replace “[o]nce” with “if” before “the System Administrator approves the request.” This amendment is necessary because “[o]nce” implied that all request will be approved and that is not the Department’s intent.

**Subdivision (a)(3).** This provision was amended to remove “association or” before “organization.” This amendment is necessary because the Department added a new defined term for “organization” in subdivision (l) of section 770.2.

**Subdivision (a)(4).** This provision was amended to remove “association or” before “organization.” This amendment is necessary because the Department added a new defined term for “organization” in subdivision (l) of section 770.2. This provision was also amended to remove “have” before “collectively” and to add “engage in or have” before “engaged in.” This amendment was made to better reflect the language in subdivision (a)(1) of Penal Code section 186.34. This amendment is necessary to include members who currently engage in a pattern of definable criminal activity in addition to members who have engaged in a pattern of definable criminal activity. This provision was additionally amended to replace “an offense” with “any offense(s).” This amendment is necessary because members of an organization may be arrested for more than one offense. Additionally, this provision was amended to remove “[t]he User Agency shall document the reasonable suspicion stemming from this definable criminal activity.” This amendment is necessary because this requirement is already covered in subdivision (a)(1), making this language duplicative. Furthermore, this provision was amended to remove “reasonably” before “believes.” This amendment is necessary because the word “reasonably” does not add anything to this provision because subdivision (a)(1) already requires reasonable suspicion and thus, it may cause confusion.

The Department additionally amended this provision to restructure the last sentence. This amendment was made because the sentence previously required that crimes be documented only if members of the organization have been arrested; however, it is necessary to first document the crimes and then document if any person(s) were arrested for those crimes. This amendment is necessary because crimes do not always lead to arrests and it is pertinent to have the crimes committed by members of the organization maintained on file, as those contribute to the reasonable suspicion for designation as a criminal street gang. Without this amendment, valuable information would be lost and only crimes that lead to an arrest would be required to be documented.

**New Subdivision (a)(5).** This provision was added to reflect the definition of “criminal street gang” in subdivision (a)(1) of Penal Code section 186.34. This provision is necessary because

these regulations did not previously include the requirement that the organization need to have one of its primary activities be the commission of crimes enumerated in “paragraphs (1) to (25), inclusive, and paragraphs (31) to (33), inclusive, of subdivision (e) of Section 186.22.” Without this provision, these regulations would not have accurately reflected the definition of a “criminal street gang” provided by subdivision (a)(1) of Penal Code section 186.34. Additionally, this provision requires that the User Agency document the specified crimes and then document if any person(s) were arrested for those crimes. This provision is necessary because crimes do not always lead to arrests and it is pertinent to have the crimes committed by members of the organization maintained on file as those contribute to the reasonable suspicion for designation as a criminal street gang.

**Subdivision (b).** This provision was amended to require the supervisory review process to occur prior to entering a new criminal street gang into a shared gang database. This amendment is necessary because this section did not previously specify that the supervisory review process described in section 772.8 must occur prior to entering a new criminal street gang in a shared gang database. Although section 772.8 (formerly 772.4) states that all criminal street gang intelligence data shall be reviewed prior to any entry, the Department felt it was necessary to explicitly require this supervisory process to occur in this section as this section details the requirements to enter new criminal street gang into a shared gang database. This provision was additionally amended to replace “shall” with “may” before “only be added.” This amendment is necessary because of the supervisory review process requirement that was added. The Department does not wish to require every gang that undergoes the supervisory review process to be added; however, it is a condition of entry for those criminal street gangs that are approved for entry.

**Subdivision (c).** This provision was amended to remove “[t]he record for” before “a criminal street gang.” This amendment is necessary because “record” is used throughout these regulations to refer to a person who is designated in a shared gang database, not a criminal street gang. This provision was also amended to remove “as long as the organization meets the criteria set forth in this section or” before “until an audit.” This amendment was made because the Department does not know if a shared gang database will be capable of auto-purging criminal street gang records as the CalGang database is not currently capable of this feature. This amendment is necessary to make it clear that a criminal street gang will be removed from a shared gang database if an audit determines that the record should be purged for violating these regulations. This provision was additionally amended to replace “record” with “designated criminal street gang” before “shall be purged.” This amendment is necessary because “record” is used throughout these regulations to refer to a person who is designated in a shared gang database, not a criminal street gang. The Department also amended this provision to add “or 775.2” after “section 774.8.” This amendment is necessary because section 775.2 details audits of criminal street gangs.

#### **New § 772.6. Adding Information to a Designated Criminal Street Gang.**

**New Subdivision (a).** This provision was added to explain how additional information may be added to a criminal street gang in a shared gang database and to provide specific examples of the

types of information that may be added. This provision is necessary because information that was obtained legally may be added to a criminal street gang after it has been designated in a shared gang database. The Department specified that “known gang addresses; associated cliques; history of the gang; common signs, symbols, and/or names; and criminal predicate crimes” because law enforcement officers need to update criminal street gangs in a shared gang database to have current information as the criminal street gangs evolve to ensure the accuracy and reliability of shared gang databases.

**New Subdivision (b).** This provision was added to specify that any additional information entered must undergo the supervisory review process prescribed in section 772.8. This provision is necessary to ensure that additional entries do not bypass the supervisory review process and no intelligence data is entered into a shared gang database if it was obtained in violation of any applicable federal, state, or local law, policy, or ordinance.

### **Former Article 6. Supervisory Review and Deleting Unsupported Records**

This article title was removed and a new Article 6 title was created. This amendment was made because the Department restructured this article for better flow and reader understanding. Additionally, the Department moved the information pertaining to deleting unsupported records to the new section 774.8 in Article 10.

### **§ 772.8. (Formerly 772.4) Supervisory Review Process of Criminal Street Gang Intelligence Data.**

This section title was amended to add “of Criminal Street Gang Intelligence Data.” This amendment is necessary because there are now two separate articles for designating a person in a shared gang database and designating a criminal street gang in the intelligence database. Furthermore, the supervisory review process differs for the review of a criminal street gang as the supervisory review shall determine whether the organization satisfies the requirements to be designated as a criminal street gang.

**Subdivision (a).** This provision was amended to require all related criminal street gang intelligence data to be meaningfully reviewed and approved prior to entry in a shared gang database. This amendment is necessary because the Department wants to ensure that each agency evaluates and scrutinizes the intelligence data and does not just provide a quick signature without evaluating all of the documentation. This provision was also amended to provide guidance as to how a User Agency shall conduct their supervisory review. This amendment is necessary because each organizational structure may vary; however, User Agencies should try to obtain first-level supervisor approval and gang lieutenant, or equivalent, approval whenever possible.

**Subdivision (b).** This provision was nonsubstantively amended to add “supervisory” before “review.” This amendment is necessary to specify that the Department is referring to the supervisory review process required by this section. This provision was also amended to require

the supervisory review to include a determination of whether the proposed entry and underlying documentation complies with these regulations and whether the reasonable suspicion requirement was satisfied. This amendment is necessary to ensure the accuracy and integrity of a shared gang database. This provision was additionally nonsubstantively amended to replace “the” with “any” before “criminal street gang intelligence data.” This amendment is necessary because the supervisory review would review any criminal street gang intelligence data not a specific set of data.

**New Subdivision (b)(1).** This provision was added to specify that the supervisory review shall determine whether the criminal street gang intelligence data that was collected satisfies the requirements for entry set forth in section 772.4. This provision is necessary because, without this addition, there was no requirement for a supervisory review to determine if the requirements for designation were satisfied for an organization.

**New Subdivision (b)(2).** This provision was added to specify that the supervisory review may review additional legally obtained information and/or supporting documentation to add to the designated criminal street gang in a shared gang database. This provision is necessary to allow law enforcement officers to build criminal intelligence on a designated criminal street gang after the requirements for entry have been satisfied.

#### **Former § 772.6. A User Agency’s Discretion to Delete Unsupported Records.**

This section and its provisions were removed and relocated to Article 10, section 774.8, for better flow and reader understanding. This amendment is necessary because this provision better relates to performing audits than it does the supervisory review process.

#### **§ 773. (Formerly 772.8) Notifying a Person of Inclusion in a Shared Gang Database.**

**Subdivision (b).** This provision was amended to add “[a]n Agency shall not require a person to appear in-person at the Agency to retrieve their notice of inclusion.” This amendment is necessary as the Department does not want to impose any undue burden on someone designated in the database. This is important because the Department strongly supports the ability to contest a designation in a shared gang database.

**Subdivision (c)(1).** This provision was amended to add “the basis for the designation” as a requirement to include in the notice of inclusion. The Department previously removed this language and replaced it with “[t]he criteria supporting the person’s designation...” in an effort to clarify the meaning of this phrase. This new amendment was made in response to a public comment contesting the Department’s language and stating that subdivision (c)(1) of Penal Code section 186.34 requires the “basis for the designation” be included in the notice. Additionally, this amendment is necessary to include in the regulations so that a written notice includes both the criteria and the information as to why that criteria was satisfied.

**Subdivision (c)(2).** This provision was amended to add “[t]o the extent possible” before “the date(s).” This amendment was made to encourage law enforcement officers to document as much information as possible pertaining to the date(s) of the contacts or observations. This amendment is necessary to ensure that law enforcement can still maintain investigative integrity and safety while providing as much transparency as possible. Without this amendment, law enforcement officers would have been required to disclose the date(s) of the contacts or observations which could have jeopardized the safety of undercover officers and confidential informants. This provision was additionally amended to require the time(s) and location(s) of the contacts to be disclosed in the written notice. This amendment was made in response to a public comment requesting more information to be included about the contacts and/or observations. This amendment is necessary to provide the designated person as much information as possible about their inclusion in a shared gang database and how they satisfied the criteria to be included as long as it does not jeopardize a case, confidential informant, or officer safety.

**New Subdivision (c)(6).** This provision was added to require User Agencies to provide juveniles with the contact information for a gang intervention or outreach service if the User Agency operates one. This provision is necessary because juveniles may not be able to obtain this information on their own or know how to handle their designation as a Gang Member or Associate. Additionally, this information will be provided in the notice to the parent or guardian who may also need help with handling their juvenile’s designation as a Gang Member or Associate.

**New Subdivision (c)(7).** This provision and its subsection were added to require User Agencies to provide a statement that a person is not required to report their inclusion in a shared gang database if questioned by a government official or entity. This provision is necessary to inform persons who are designated in the database that, if they are asked if they have ever been an associate or member of a gang, they are not obligated or required by these regulations to tell a government official or entity that they have been designated as a Gang Member or Associate in a shared gang database. Furthermore, this provision is necessary to clarify that a person should not feel obligated to disclose their designation in a shared gang database. This is necessary to reduce any impact that could result from disclosing one’s inclusion due to a lack of understanding of its purpose.

**New Subdivision (d).** This provision was added in response to a public comment. This provision is necessary to allow User Agencies issuing a notice to include “the documentation supporting the criteria that were satisfied for designation.” It is beneficial to all parties for law enforcement to include the supporting documentation for the criteria that were satisfied for a person’s designation because of limitations placed in subdivision (c) of Penal Code section 186.35; however, 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.

**Subdivision (e) (formerly subdivision (d)).** This provision was amended to replace “[e]ach record” with “[t]he documentation.” This amendment is necessary because “record” is a defined term and was not used correctly in this context.

**§ 773.2. (Formerly 773) Information Requests and Verifying the Identity of the Requesting Party.**

**Subdivision (a)(1).** This provision was amended nonsubstantively to replace “individual” with “person.” This amendment is necessary for consistency with the verbiage used throughout these regulations.

**Subdivision (b).** This provision was amended to replace “his or her” with “their.” This amendment was made to ensure that these regulations are gender-inclusive. This provision was also amended to add “a social security number” to the list of items that an Agency shall not have the authority to request from a person to satisfy its written verification of identity requirement. This amendment is necessary to prevent Agencies from seeking the immigration status of a person when verifying if an information request is made by an authorized person.

**§ 773.4. (Formerly 773.2) An Agency’s Response to an Information Request.**

**New Subdivision (a).** This provision was removed from subdivision (b) and relocated to this subdivision for better flow and reader understanding. This amendment is necessary because this provision is the first logical step an Agency would take before preparing their written response. This provision was additionally amended to change “the User Agency that created the entry” to “each User Agency that has created an entry.” This amendment is necessary because multiple User Agencies may be able to contribute to one record so it is important to identify whether the dissemination of the requested information would compromise an active criminal investigation by any of the User Agencies that have contributed to the record or the health or safety of a juvenile that has been designated as a Gang Member or Associate.

**Subdivision (b)(3) (formerly subdivision (a)(3)).** This provision was amended to add “the basis for the designation” as a requirement to include in the notice of inclusion. The Department previously removed this language and replaced it with “[t]he criteria supporting the person’s designation...” in an effort to clarify the meaning of this phrase. This new amendment was made in response to a public comment contesting the Department’s language and stating that subdivision (c)(1) of Penal Code section 186.34 requires the “basis for the designation” be included in the notice. Additionally, this amendment is necessary to include in the regulations so that a response to an information request includes both the criteria and the information as to why that criteria were satisfied.

**Subdivision (b)(4) (formerly subdivision (a)(4)).** This provision was amended to add “[t]o the extent possible” before “the date(s).” This amendment was made to encourage law enforcement officers to document as much information as possible pertaining to the date(s) of the contacts or observations. This amendment is necessary to ensure that law enforcement can still maintain investigative integrity and safety while still providing as much transparency as possible. Without this amendment, law enforcement officers would have been required to disclose the date(s) of the contacts or observations which could have jeopardized the safety of undercover officers and confidential informants. This provision was additionally amended to require the time(s) and

location(s) of the contacts to be disclosed in the written notice. This amendment was made in response to a public comment requesting more information to be included about the contacts and/or observations. This amendment is necessary to provide the designated person as much information as possible about their inclusion in a shared gang database and how they satisfied the criteria to be included.

**New Subdivision (b)(8).** This provision was added to require User Agencies to provide juveniles with the contact information for a gang intervention or outreach service if the User Agency operates one. This provision is necessary because juveniles may not be able to obtain this information on their own or know how to handle their designation as a Gang Member or Associate. Additionally, this information would be provided in the notice to the parent or guardian who may also need help with handling their juvenile's designation as a Gang Member or Associate.

**New Subdivision (b)(9).** This provision and its subsection were added to require User Agencies to provide a statement that a person is not required to report their inclusion in a shared gang database if questioned by a government official or entity. This provision is necessary to inform persons who are designated in the database that, if they are asked if they have ever been an associate or member of a gang, they are not obligated or required by these regulations to tell a government official or entity that they have been designated as a Gang Member or Associate in a shared gang database. Furthermore, this provision is necessary to clarify that a person should not feel obligated to disclose their designation in a shared gang database. This is necessary to reduce any impact that could result from disclosing one's inclusion due to a lack of understanding of its purpose.

**New Subdivision (c).** This provision was added in response to a public comment. This provision is necessary to allow User Agencies issuing a notice to include "the documentation supporting the criteria that were satisfied for designation." It is beneficial to all parties for law enforcement to include the supporting documentation for the criteria that were satisfied for a person's designation because of limitations placed in subdivision (c) of Penal Code section 186.35; however, 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.

**Former subdivision (b).** This provision was removed and added to subdivision (a). This amendment was made for better flow and reader understanding. This amendment is necessary because this provision is the first logical step an Agency would take before preparing their written response.

#### **§ 773.6. (Formerly 773.4) An Agency's Response to a Request for Removal.**

**Subdivision (a).** This provision was nonsubstantively amended to restructure the second sentence. This amendment was made for better flow and reader understanding.

### **Article 9. Retention Periods**

This article title was amended to remove “of Records, Purging, and Source Documents.” This amendment is necessary because this article also captures the retention periods for notices of inclusion, information requests, and responses to information requests; therefore, the Department shortened the title to be broader and capture all of the retention periods that are detailed in this article.

#### **§ 773.8. (Formerly 773.6) Retention Period for Adult Records.**

**Subdivision (b).** This provision was amended to require the reasonable suspicion requirement set forth in subdivision (b) of section 771.6 to be satisfied to reset the retention period. This amendment is necessary to ensure that reasonable suspicion continues to exist for a person to remain designated as a Gang Member or Associate. This provision was additionally amended to specify that the retention period will be reset to begin on the date the second criterion is satisfied instead of the date the second criterion is entered. This amendment is necessary in the event there is a delay in entering the second criterion into the shared gang database.

**New Subdivision (b)(1).** This provision was added to specify that, in order to reset the retention period, the two additional criteria shall be different from each other but do not need to differ from the initial designation criteria. This provision is necessary to ensure that the duplication of a criterion does not reset the retention period.

**New Subdivision (b)(2).** This provision was added to require a one-year timeframe for the two additional criteria to reset the retention period to be satisfied. This amendment is necessary because the Department conducted research to analyze the duration between the satisfaction of the first and second criterion for records entered into the CalGang database in the last five years and 96% of records had a zero day duration between the satisfaction of the first and second criterion. Less than 1% of records had more than one year between the observation of the first and second criterion. The maximum duration between observations of criteria was about three years. Subdivision (h) of the Code of Federal Regulations, Title 28, section 23.20 limits the retention period for maintaining information in an intelligence database to five years; however, the Department has concluded that reducing the allowable duration between observed criteria from five years to one year will address over-inclusivity in a shared gang database and likely only result in minimal data loss.

**New Subdivision (c).** This provision was added to specify that an upcoming purge date for a person’s record shall not be used in determining whether to stop or contact the designated person. This provision is necessary to prevent law enforcement from stopping or contacting a designated person to collect data based on the fact their record is about to purge from a shared gang database.

#### **§ 774. (Formerly 773.8) Retention Period for Juvenile Records.**



**Subdivision (b).** This provision was amended to require the reasonable suspicion requirement set forth in subdivision (b) of section 771.6 to be satisfied to reset the retention period. This amendment is necessary to ensure that reasonable suspicion continues to exist for a person to remain designated as a Gang Member or Associate. This provision was additionally amended to specify that the retention period will be reset to begin on the date the second criterion is satisfied instead of the date the second criterion is entered. This amendment is necessary in the event there is a delay in entering the second criterion into the shared gang database.

**New Subdivision (b)(1).** This provision was added to specify that, in order to reset the retention period, the two additional criteria shall be different from each other but do not need to differ from the initial designation criteria. This provision is necessary to ensure that the duplication of a criterion does not reset the retention period.

**New Subdivision (b)(2).** This provision was added to require a one-year timeframe for the two additional criteria to reset the retention period to be satisfied. This amendment is necessary because the Department conducted research to analyze the duration between the satisfaction of the first and second criterion for records entered into the CalGang database in the last five years and 96% of records had a zero day duration between the satisfaction of the first and second criterion. Less than 1% of records had more than one year between the observation of the first and second criterion. The maximum duration between observations of criteria was about three years. Subdivision (h) of the Code of Federal Regulations, Title 28, section 23.20 limits the retention period for maintaining information in an intelligence database to five years; however, the Department has concluded that reducing the allowable duration between observed criteria from five years to one year will address over-inclusivity in a shared gang database and likely only result in minimal data loss.

**Subdivision (c).** This provision was amended to remove “after the person reaches 18 years of age.” This amendment was made in response to public comments stating that this provision was confusing. This amendment was necessary to clarify the Department’s intent that a juvenile who becomes an adult and who satisfies the designation requirements again pursuant to section 771.6 will have a five year retention period for their record pursuant to section 773.6. This provision was also amended to require the reasonable suspicion requirement set forth in subdivision (b) of section 771.6 to be satisfied to reset the retention period. This amendment is necessary to ensure that reasonable suspicion continues to exist for a person to remain designated as a Gang Member or Associate. This provision was additionally amended to specify that the retention period will be reset to begin on the date the second criterion is satisfied instead of the date the second criterion is entered. This amendment is necessary in the event there is a delay in entering the second criterion into the shared gang database.

**New Subdivision (c)(1).** This provision was added to specify that, in order to reset the retention period, the two additional criteria shall be different from each other but do not need to differ from the initial designation criteria. This provision is necessary to ensure that the duplication of a criterion does not reset the retention period.

**New Subdivision (c)(2).** This provision was added to require a one-year timeframe for the two additional criteria to reset the retention period to be satisfied. This amendment is necessary

because the Department conducted research to analyze the duration between the satisfaction of the first and second criterion for records entered into the CalGang database in the last five years and 96% of records had a zero day duration between the satisfaction of the first and second criterion. Less than 1% of records had more than one year between the observation of the first and second criterion. The maximum duration between observations of criteria was about three years. The Code of Federal Regulations, Title 28, Part 23 provides a five year maximum of maintaining information in an intelligence database; however, the Department has concluded that reducing the allowable duration between observed criteria from five years to one year will address over-inclusivity in a shared gang database and likely only result in minimal data loss.

**New Subdivision (d).** This provision was added to specify that an upcoming purge date for a person's record shall not be used in determining whether to stop or contact the designated person. This provision is necessary to prevent law enforcement from stopping or contacting a designated person to collect data based on the fact their record is about to purge from a shared gang database.

#### **§ 774.6. (Formerly 774.4) Retention Period for Source Documents.**

This section title was amended to add "Retention Period for" before "Source Documents." This amendment is necessary because subdivision (b) and its subsection were removed and this section now only discusses the retention period for source documents.

**Former Subdivision (b).** This provision was removed and added to subdivision (f) of section 771.8 for better flow and reader understanding. This amendment is necessary because this subdivision pertains to the satisfaction of a criterion listed in section 771.8.

**Former Subdivision (b)(1).** This provision was removed because the amendments made to subdivision (f) of section 771.8 made this provision unnecessary.

**Subdivision (b)(2) (formerly subdivision (c)(2)).** This provision was nonsubstantively amended to add an "s" after "requirement." This amendment is necessary because section 771.6 has multiple requirements.

#### **New § 774.8. A User Agency's Discretion to Perform Self-Audits.**

This section was removed from former section 772.6 and relocated to Article 10 for better flow and reader understanding. This amendment is necessary because this provision better relates to performing audits than it does the supervisory review process.

**New Subdivision (a).** This provision was added to specify that a User Agency may conduct its own audits and shall report the results to the Department in writing within 30 calendar days of the date each audit is concluded. This provision is necessary because the Department would like to encourage a User Agency to conduct its own audits outside of the prescribed audits process in sections 775 and 775.2. The notification requirement is necessary to ensure that the Department

is able to keep a record of any audits conducted outside of the prescribed audits in sections 775 and 775.2.

**New Subdivision (b).** This provision was removed from former subdivision (a) of former section 772.6 and incorporated into this provision. This provision was amended to require a User Agency to delete entries under the circumstances in subdivisions (b)(1) through (b)(3) rather than allowing the User Agency to do so at its discretion. This amendment is necessary because the reasons listed in subdivisions (b)(1) through (b)(3) should not have been discretionary as this provision previously detailed. If this provision was not amended, a User Agency would have had the option to leave records in a shared gang database with missing or incomplete supporting documents; records that were not in compliance with Article 9; and/or records that included intelligence obtained in violation of applicable federal, state, or local law, policy, or ordinance.

**New Subdivision (b)(1).** This provision was removed from subdivision (a)(1) of former section 772.6 and relocated to this subdivision for better flow and reader understanding. This amendment is necessary because it better relates to performing audits than it does the supervisory review process. No changes were made to the contents of this provision.

**New Subdivision (b)(2).** This provision was removed from subdivision (a)(2) of former section 772.6 and relocated to this subdivision for better flow and reader understanding. This amendment is necessary because it better relates to performing audits than it does the supervisory review process. This provision was additionally amended to replace “Article 9” with “these regulations.” This amendment is necessary because a record or subsequent criteria should be in compliance with all of these regulations and not only Article 9.

**New Subdivision (b)(3).** This provision was removed from subdivision (a)(3) of former section 772.6 and relocated to this subdivision for better flow and reader understanding. This amendment is necessary because it better relates to performing audits than it does the supervisory review process. No changes were made to the contents of this provision.

**New Subdivision (c).** This provision was amended to allow User Agencies to delete entries for any reason not stated in subdivision (b). This amendment is necessary because the Department wanted the reasons stated in subdivision (b) to trigger mandatory removal of records. This provision was previously discretionary; however, with the amendments to subdivision (b), it was necessary to make this a new subdivision.

**New Subdivision (d).** This provision was removed from subdivision (b) of former section 772.6 and relocated to this subdivision for better flow and reader understanding. This amendment is necessary because it better relates to performing audits than it does the supervisory review process. No changes were made to the contents of this provision.

## **§ 775. (Formerly 774.6) Audits of Records in a Shared Gang Database.**

**Subdivision (a).** This provision was amended to add “unless such record(s) and/or criteria were created prior to July 1, 2020 and were in compliance with entry requirements at the time of entry” after “completion of the audit.” This amendment is necessary because this is the date the Department anticipates these regulations becoming effective and records that were created before this date do not have to satisfy the same requirements that are set forth in subdivision (c) of section 771.6.

**Subdivision (b).** This provision was amended to add “records created prior to July 1, 2020.” This amendment is necessary because this is the date the Department anticipates these regulations becoming effective and records that were created before this date do not have to satisfy the same requirements that are set forth in subdivision (c) of section 771.6. Furthermore, this amendment is necessary to comply with subdivision (s)(2) of Penal Code section 186.32 which states, “[t]he [D]epartment shall not use regulations developed pursuant to this section to invalidate data entries entered prior to the adoption of those regulations.”

**New Subdivision (b)(2).** This provision was added to specify that all records created prior to July 1, 2020 must have a purge date of “not more than five years from the date of the satisfaction of the most recent criterion, unless the retention period was reset pursuant to section 774.” This provision is necessary because these regulations implement shorter retention periods for juvenile records that are created on or after July 1, 2020.

**New Subdivision (c).** This provision was added to specify that all records created after July 1, 2020 have different Peer Audit requirements than the records created before July 1, 2020. This provision is necessary to comply with subdivision (s)(2) of Penal Code section 186.32 which states, “[t]he [D]epartment shall not use regulations developed pursuant to this section to invalidate data entries entered prior to the adoption of those regulations.”

**New Subdivision (c)(1).** This provision was added to specify that Peer Audits shall ensure that reasonable suspicion exists as set forth in subdivision (b) of section 771.6. This provision is necessary to ensure compliance with these regulations.

**Subdivision (c)(3) (formerly subdivision (b)(3)).** This provision was amended to remove “audited.” This amendment was made for consistency with subdivision (b)(1). This provision was also amended to replace “that was created on or after January 1, 2020, adheres to these regulations” with “satisfies the requirements set forth in subdivision (c) of section 771.6.” This amendment is necessary because records added to a shared gang database after July 1, 2020 have to meet the new requirements for designation set forth in subdivision (c) of section 771.6.

**Former Subdivision (c).** This provision was removed because the addition of section 774.8 made this provision unnecessary.

**Subdivision (d).** This provision was amended to remove “or any User Agency” after “by the System Administrator.” This amendment is necessary because the addition of section 774.8 made this provision unnecessary.

## **§ 775.2. (Formerly 774.8) Audits of Designated Criminal Street Gangs.**

This section title was amended to add “Designated” before “Criminal Street Gangs.” This amendment is necessary because this section refers to audits of criminal street gangs that are designated in a shared gang database.

**Subdivision (a).** This provision was amended to require that an audit is completed by System Administrators of all criminal street gangs designated in a shared gang database at least once every three years from the date the criminal street gang was designated in a shared gang database or from the last time an audit was conducted by the Department, the System Administrator, or a User Agency. This amendment is necessary to ensure that each designated criminal street gang is still active, that reasonable suspicion exists for the criminal street gang to continue being designated as such in a shared gang database, and that the criminal street gang satisfies the requirements to be designated as a criminal street gang set forth in section 772.4. This provision was additionally amended to require the System Administrator to report the results of each audit to the Department within 30 calendar days of completion of the audit. This amendment is necessary because the Department needs to ensure that all criminal street gangs in a shared gang database satisfy the definition of a criminal street gang as set forth in subdivision (a)(1) of Penal Code section 186.34. The Department provided the System Administrators a maximum of 30 calendar days to submit the results to the Department because the Department acknowledges that the System Administrators may be preoccupied with cases and other pressing tasks and may be unable to notify the Department immediately of the results of each audit. The Department determined that 30 calendar days, if not sooner, is a reasonable length of time to expect a System Administrator to report the results of each audit.

**Former Subdivision (b).** This provision was removed because the Department determined it was duplicative of the new subdivision (b)(2).

**Former Subdivision (c).** This provision was removed and incorporated into the new subdivision (c). This amendment is necessary because the Department developed a list of the reasons that a criminal street gang shall be purged.

**Subdivision (b) (formerly subdivision (d)).** This provision was amended to add “designated” before “criminal street gang. This amendment is necessary because this provision is referring to audits criminal street gangs that are designated in a shared gang database.

**New Subdivision (b)(1).** This provision was added to specify that audits shall ensure that reasonable suspicion was present at the time of the gang’s initial designation if the criminal street gang was entered into the shared gang database after July 1, 2020. This provision is necessary because the State Auditor’s 2016 audit of the CalGang database found that some agencies were not able to provide the documentation to demonstrate that reasonable suspicion was present at the time of the criminal street gang’s initial designation.

**Subdivision (b)(2) (formerly subdivision (d)(1)).** This provision was amended to replace the three person requirement with “[t]he organization satisfies the requirements to be designated as a criminal street gang as set forth in section 772.4.” This amendment is necessary because the

Department does not want audits to only evaluate the number of persons designated as a Gang Member or Associate, but rather whether the designated criminal street gang satisfies all of the requirements set forth in section 772.4. The Department specified “if the criminal street gang was entered into the shared gang database on or after July 1, 2020” because this is the date the Department anticipates these regulations becoming effective.

**New Subdivision (c).** This provision was added to specify the reasons that a designated criminal street gang shall be purged along with its corresponding records from a shared gang database. It is necessary to purge a designated criminal street gang if an audit is not completed within three years from the last audit, within three years from the original designation in the shared gang database, or if the Department does not receive the results of an audit conducted pursuant to this section from a System Administrator because there would be no assurance that the designated criminal street gang is still active and satisfies the requirements set forth in section 772.4. It is necessary to purge a criminal street gang if the audit finds that the criminal street gang does not satisfy all of the requirements in subdivision (b) because this would prove that the designated criminal street gang either does not satisfy the definition of a criminal street gang as set forth in subdivision (a)(1) of Penal Code section 186.34 and/or reasonable suspicion does not exist for that criminal street gang’s initial, or continuing designation in a shared gang database.

**Former Subdivision (e).** This provision was removed because the amendments made to subdivision (a) of this section made this provision unnecessary.

**New Subdivision (d).** This provision was added to clarify that if a designated criminal street gang is being purged from the shared gang database, only the records associated with that designated criminal street gang being purged shall be removed from the shared gang database. This provision is necessary because there may be a case where a person has more than one record in the shared gang database and not all records for that person will be purged as a result of the designated criminal street gang being purged.

**New Subdivision (f).** This provision was added to specify the Department’s role in shared gang database audits. This is necessary to ensure compliance with these regulations.

#### **§ 775.6. (Formerly 775.2) Information Sharing and Disclosures.**

**Subdivision (a).** This provision was amended to remove the first sentence and relocate it to subdivision (b) of section 770. This amendment is necessary to specify the limitation of the records and information contained within a shared gang database at the beginning of these regulations. This provision was also amended to add a reference to section 773. This amendment is necessary because section 773 details notifying a person of inclusion in a shared gang database, which pertains to the release of information.

**Former Subdivision (c).** This provision and its subsections were removed and incorporated into subdivision (c) of section 776.4. Subdivisions (c)(1) and (c)(2) were added to the list of circumstances in subdivision (c) of section 776.4 under which the records in a shared gang database shall not be disclosed or released under. These amendments were made for better flow

and reader understanding. These amendments are necessary because this provision detailed the reasons that shared gang database records shall not be disclosed rather than the reasons for which information may be shared.

**New Subdivision (d).** This provision was added to specify where requests for statistics may be submitted. This provision is necessary because the Department does not maintain shared gang databases; therefore, requests for statistics shall be submitted to the System Administrator, not the Department.

**Former Subdivision (e).** This provision was removed and relocated to subdivision (c) of section 770. This amendment is necessary to specify the limitation of the records and information contained within a shared gang database at the beginning of these regulations.

#### **§ 775.8. (Formerly 7575.4) Sharing Information through Printing and Other Mediums.**

**Subdivision (d).** This provision was amended to add “in a manner consistent with the Agency’s confidential destruction process” after “destroyed.” This amendment is necessary because this provision did not previously specify that the Department intended for documents to undergo the Agency’s confidential destruction process and this could have led to printed documents simply being recycled or shredded and contributed to unauthorized access of these documents.

**Subdivision (f).** This provision was amended to replace “may take any or all of the actions provided in” with “shall take action pursuant to.” This amendment is necessary because section 776.6 was amended to include required actions for the Department to take, or instruct the System Administrator to take.

#### **Article 12. Equipment Security and Inspection and the Reporting of Missing Equipment**

This article title was amended to replace “System Security, Inspection, and Missing Equipment” with “Equipment Security and Inspection and the Reporting of Missing Equipment.” This amendment is necessary for better flow and because the section pertaining to system misuse was moved to Article 13; therefore, this article now only pertains to shared gang database equipment.

#### **New Article 13. System Misuse and Enforcement of these Regulations**

This new article was created because the Department restructured Article 12 for better flow and reader understanding. This amendment is necessary so that the information pertaining to equipment and the information pertaining to system misuse and enforcement of these regulations are clear and distinct from each other.

#### **§ 776.4. (Formerly 776) System Misuse.**

**Subdivision (a).** This provision was amended to add a list of the types of information that shall be specifically excluded from a shared gang database. This provision is necessary as the Department wanted to ensure an equitable balance between the civil rights and liberties of Californians and the needs of law enforcements by clearly specifying the information that shall not be included in a shared gang database.

**New Subdivision (b).** This provision was added to specify that “[a] User shall not conduct a query without a right to know and need to know” and is followed by a list of the actions that a User shall not perform. This provision is necessary because it pertains to system misuse and includes all of the variations of system misuse in one location, rather than scattered across different sections of these regulations. This amendment will ensure that readers have an easy-to-read list of the actions that a User shall not perform.

**New Subdivision (b)(1).** This provision was added to provide a specific example of system misuse. This provision is necessary to prevent a User from querying themselves, a family member, or a friend because it would be a conflict of interest.

**New Subdivision (b)(2).** This provision was added to provide a specific example of system misuse. This provision is necessary to prevent a User from querying a high profile individual in the media for unauthorized purposes as Users should always have a need to know and right to know to conduct the query in order to comply with these regulations.

**New Subdivision (b)(3).** This provision was added to provide a specific example of system misuse. This provision is necessary because although the User conducting the query may have a right to know and need to know, the other person to whom they are providing information may not and would then be using this information for unauthorized purposes. It is necessary to include this provision so that the User conducting a query verifies that any person they provide information to has a right to know and need to know and is using the information for authorized purposes.

**New Subdivision (b)(4).** This provision was added to incorporate the reference to “sharing passwords” that was removed from subdivision (e)(1) of section 770.6 and to provide a specific example of system misuse. This amendment was made for better flow and reader understanding. This provision is necessary because the language in subdivision (e)(1) of section 770.6 previously pertained to system misuse. This amendment will ensure that readers have an easy-to-read list of the actions that a User shall not perform.

**New Subdivision (c).** This provision was removed from subdivision (c) of section 775.6 (formerly 775.2) and incorporated into this section. This amendment was made for better flow and reader understanding. This amendment is necessary because provision (c) of section 775.6 (formerly 775.2) detailed the reasons that shared gang database records shall not be disclosed rather than the reasons for which information may be shared. Additionally, by adding this provision to this section, the Department is able to include all of the variations of system misuse in one location, rather than scattered across different sections of these regulations. This amendment will ensure that readers have an easy-to-read list of the circumstances under which shared gang database records shall not be disclosed or released.



**New Subdivision (c)(1).** This provision was removed from subdivision (c)(1) of section 775.6 (formerly 775.2) and incorporated into this section. This amendment was made for better flow and reader understanding. This amendment is necessary because subdivision (c) of section 775.6 (formerly 775.2) detailed the reasons that shared gang database records shall not be disclosed rather than the reasons for which information may be shared. Additionally, by adding this provision to this section, the Department is able to include all of the variations of system misuse in one location, rather than scattered across different sections of these regulations. This amendment will ensure that readers have an easy-to-read list of the circumstances under which shared gang database records shall not be disclosed or released.

**New Subdivision (c)(2).** This provision was removed from subdivision (c)(2) of section 775.6 (formerly 775.2) and incorporated into this section. This amendment was made for better flow and reader understanding. This amendment is necessary because subdivision (c) of section 775.6 (formerly 775.2) detailed the reasons that shared gang database records shall not be disclosed rather than the reasons for which information may be shared. Additionally, by adding this provision to this section, the Department is able to include all of the variations of system misuse in one location, rather than scattered across different sections of these regulations. This amendment will ensure that readers have an easy-to-read list of the circumstances under which shared gang database records shall not be disclosed or released.

**New Subdivision (c)(3).** This provision was added to provide a specific example of system misuse. This provision was added to prevent records in the shared gang database from being disclosed “[f]or non-criminal internal affairs investigations.” This provision is necessary because a detective conducting internal affairs investigations does not have a need to know and right to know shared gang database intelligence information.

**New Subdivision (c)(4).** This provision was added to provide a specific example of system misuse. This provision was added to prevent records in a shared gang database from being released “[t]o members of the general public or media.” This provision is necessary because the general public and media do not have a need to know and right to know shared gang database intelligence information.

**New Subdivision (c)(5).** This provision was added to provide a specific example of system misuse. This provision was added to prevent records in a shared gang database from being disclosed “[t]o another person who does not have a right to know and need to know.” This provision is necessary because unlike subdivision (b)(3), which prohibits a User from sharing information for unauthorized purposes, this provision prohibits any person or Non-User from sharing records to another person who does not possess a right to know and need to know.

**New Subdivision (c)(6).** This provision was added to specify that shared gang database records shall not be disclosed or released “[i]n any official reports.” This provision was added because the Department felt it was necessary to ensure that shared gang databases are only used for criminal investigative purposes.

**Subdivision (d).** This provision was amended to remove the investigation requirement and add this to subdivision (d)(1). This amendment is necessary for clarity purposes, better flow, and reader understanding. The Department’s intent is that violations are first reported to the System Administrator and the Department, and then investigated. Without this amendment, the language was interpreted as the investigation occurring before the violation was reported the Department. This provision was also nonsubstantively amended to replace “business” with “working.” This amendment was made for consistency with the verbiage used throughout these regulations.

**New Subdivision (d)(1).** This provision was added to require any violations of these regulations to be investigated by the head of the User Agency or their designee and to require the results of the investigation and any corrective actions taken to be reported to the System Administrator and the Department. This provision is necessary so that entries of irrelevant, inaccurate, untimely, and/or incomplete information are investigated. Furthermore, this provision requires the head of the User Agency or their designee to conduct the investigation and “review the Agency’s internal processes and documentation to determine the absence or presence of negligence on the part of the User(s).” This language is necessary to specify the responsibility of the User Agency in conducting investigations of violations and system misuse.

**Subdivision (d)(2) (formerly subdivision (b)).** This provision was amended to add a requirement that User accounts which are suspended for providing unauthorized access to a shared gang database or for providing information from the database for unauthorized purposes may only be reinstated at the direction of the System Administrator or the System Administrator’s Designee. This amendment is necessary because User Agencies should not be able to reinstate accounts for these types of violations until the investigation has been completed and the System Administrator and the Department have had the opportunity to review the results and/or corrective actions to determine whether the problem has been resolved to the Department’s satisfaction.

**New Subdivision (d)(3).** This provision was added to require the head of the User Agency or their designee to “forward the results of the investigation and any corrective actions taken to the System Administrator and the Department.” This provision is necessary because the regulations did not previously specify that the results of the investigation and corrective actions needed to be reported to the System Administrator and the Department. This reporting requirement is pertinent to keep the System Administrator and the Department informed and so that the Department can further enforce these regulations by taking action pursuant to section 776.6 “[i]f the reported results and/or corrective actions do not resolve the problem to the satisfaction of the Department” as stated in this section. Additionally, ensuring that the System Administrator and Department are aware of any misuse will give insight into additional or updated training that may need to be provided to all Users to prevent future occurrences.

**New Subdivision (e).** This provision and its subsections were added to require each the System Administrator to report any instances of misuse and the results of misuse investigations to the Department. This provision is necessary to ensure that the Department has a detailed summary of all instances of shared gang database system misuse for the preceding 12 calendar months.

## **Former Article 13. Enforcement of these Regulations by the Department**

This article title was removed and a new Article 13 title was created. This amendment was made because the Department restructured this article for better flow and reader understanding. Additionally, the Department combined the information pertaining to system misuse and enforcement of these regulations into one article, Article 13.

### **§ 776.6. (Formerly 776.2) Enforcement of these Regulations.**

This article title was amended to remove “by the Department.” This amendment is necessary because this section was amended to include actions that the Department shall take or instruct the System Administrator to take and actions that the Department may take, or instruct the System Administrator to take.

**Subdivision (a).** This provision was amended to add “[t]he Department is responsible for overseeing system discipline and conformity with these regulations.” This amendment is necessary to specify the Department’s role in enforcing these regulations. This provision was also amended to replace “any section of these regulations is violated, or if any other form of system misuse occurs that” with “a User or User Agency.” This amendment was made to ensure that the Department can enforce these regulations in relation to Users and User Agencies. This provision was additionally amended to replace “state or federal law” with “any law governing shared gang databases.” This amendment is necessary for consistency with verbiage used throughout these regulations.

This provision was additionally amended to require the Department to take, or instruct a System Administrator to take, one or more of the corrective actions set forth in subparagraph (1) in addition to allowing the Department to enforce a violation of any law governing shared gang databases, including these regulations, through one of the three methods provided in subdivision (u) of Penal Code section 186.36. This amendment is necessary because, although subdivision (u) of Penal Code section 186.36 provides actions the Department may take to enforce these regulations, the Department wishes to require one or more corrective actions be taken whenever any law governing shared gang databases, including these regulations, is violated.

**New Subdivision (a)(1).** This provision and its subsections were added to provide a list of required corrective actions for the Department to take one or more of, or instruct the System Administrator to take, if a User or User Agency violates any law governing shared gang databases, including these regulations. These provisions are necessary to guarantee that at a minimum, one corrective action is taken if a User or User Agency violates any law governing shared gang databases, including these regulations. Without these corrective actions, the only actions the Department may take are those listed in subdivision (u) of Penal Code section 186.36; however, those actions are not required to be taken.

**New Subdivision (a)(2).** This provision was added to list the three methods provided in subdivision (u) of Penal Code section 186.36 through which the Department may enforce a violation of any law governing shared gang databases, including these regulations.

**Former Subdivision (c).** This provision was removed and the first sentence was incorporated into subdivision (a)(1)(E). This amendment is necessary for better flow and reader understanding. The second sentence regarding “misuse” was unnecessary as “system misuse” is already defined in subdivision (aa) of section 770.2.

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

1. Cal. Dept. of Justice, Executive Summary: Duration between Observation of CalGang Criteria, (Oct. 24, 2019).
2. Cal. Dept. of Justice, Executive Summary: CalGang Criteria Hypotheticals, (Oct. 16, 2019).
3. Cal. Dept. of Justice, Executive Summary: Number of Criteria Required for Entry into CalGang, (Oct. 24, 2019).