

CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

CHAPTER 7.5. DEPARTMENT OF JUSTICE REGULATIONS FOR THE FAIR AND ACCURATE GOVERNANCE OF THE CALGANG DATABASE

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

In October 2017, Assembly Bill (AB) 90 (Stats. 2017, Ch. 695) assigned the Department responsibility for oversight of the CalGang database and defining the requirements under which the database shall operate, such as periodic record reviews. On October 22, 2020, the Department promulgated regulations required by AB 90 that governed the use, operation, and oversight of any shared gang database, including, among other things, establishing the requirements for entering and reviewing gang designations, the retention period for listed gangs, and the criteria for identifying gang members. For the CalGang database specifically, the Department developed and implemented standardized periodic training for all persons with access to the CalGang database, and requirements and procedures for periodic audits by law enforcement agencies and Department staff to ensure the accuracy, reliability, and proper use of the CalGang database.

Before October 15 of each year for the period covering the preceding year CalGang Node Agencies and User Agencies must report to the Department each time they did not attempt to provide notice pursuant to subdivision (c)(1) of Penal Code section 186.34 and article 7; did not provide notification to a juvenile, or parent or guardian of a juvenile, pursuant to subdivision (c)(1) of Penal Code section 186.34 and article 7; received an information request pursuant to subdivision (d)(1) of Penal Code section 186.34; received a request for removal of a record pursuant to subdivision (e) of Penal Code section 186.34; granted a request for removal of a record pursuant to Penal Code section 186.34; received service of a petition under Penal Code section 186.35 and the disposition of the petition; and the number of proxy queries conducted by a Node Agency or User Agency, and the name of each agency requesting the proxy query. (Cal. Code Regs., tit. 11, § 756.6, subd. (a).)

In addition to the reporting requirement above, CalGang Node Agencies and User Agencies must also submit a written attestation to the Department that its entries in the CalGang database comply with Department regulations. (Cal. Code Regs., tit. 11, § 756.1, subd. (b).) Currently, this annual attestation is due by October 15 of each year. The purpose of the annual attestation is to ensure Node Agency and User Agency accountability and accuracy of entries in the CalGang database.

This rulemaking would change the annual attestation due date from October 15 to January 1. The proposed regulations would balance the workload of the Department's CalGang Unit, as well as the workload of Node Agencies and User Agencies since Node Agencies and User Agencies currently have to report a significant amount of data to the Department by October 15.

The CalGang regulations also require that an audit be completed at each Node Agency and User Agency of all criminal street gangs they have entered in the CalGang database at least once every

three years. This purpose of the audit is to ensure that each designated gang is still active and that the entry complies with CalGang regulations. Node Agencies and User Agencies must document the results of the audit and submit the results to the Department on the CalGang Gang Audit form, California Justice Information Services (CJIS) 9005.

The proposed regulations would update the form CJIS 9005 to capture additional data pertinent to gangs that are in more than one Node.

BENEFITS ANTICIPATED FROM REGULATORY ACTION

The Department anticipates that these regulations would balance the workload of the Department's CalGang Unit, as well as Node Agencies and User Agencies who currently report a significant amount of data to the Department on October 15. Moving the annual attestation due date from October 15 to January 1 would balance their workload and allow participating law enforcement agencies a reasonable amount of time to review their CalGang entries and to route the attestation through their chain of command. The annual attestation requirement will continue to benefit the health and welfare of the public by ensuring Node Agency and User Agency accountability and accuracy of entries in the CalGang database.

The regulations would also ensure that Node Agencies and User Agencies conduct effective audits to determine whether gangs are appropriately designated in the CalGang database.

SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION

§ 755.8. Audits of Designated Criminal Street Gangs.

Subdivision (a) was amended to update the CalGang Gang Audit form, California Justice Information Services (CJIS) 9005, revision date. This amendment is necessary because the form was updated to capture additional data pertinent to gangs that are in more than one Node and to remove a data entry field for the Department that is no longer necessary. The form was additionally amended to make non-substantive changes to spacing, capitalization, and numbering.

In particular, form CJIS 9005 was amended to add the question: "Is the Gang a Local Gang?" The Department added this question based on findings in past audits. Due to the architecture of the CalGang database system, the same gang may need to be entered and documented in more than one Node by more than one User Agency. For example, a member of a local Los Angeles gang, who was been added to a Los Angeles Node of the CalGang database, may be prohibited from living in Los Angeles County and therefore moves to Riverside County. To add the gang member to a Riverside Node, the CalGang database system requires the Riverside User Agency to create the gang in their Node even though the gang may not be active in their region. During an audit of the Riverside Node, it might appear that the gang does not meet the definition of criminal street gang in Penal Code section 186.34, subdivision (a)(1), which requires a gang to have three or more members. But because the gang has been documented in two different Nodes, it would be permissible for the gang to stay in the Riverside Node with only one member as long the number of gang members in the second Los Angeles Node equals three or more. Adding this new field to the audit form will allow for effective and clear audits.

§ 756.1. Written Attestation by a Node Agency or User Agency.

Subdivision (b) was amended to change the due date of the annual attestation from October 15 to January 1. This amendment is necessary to balance the workload of the Department’s CalGang Unit, Node Agencies, and User Agencies by changing the annual attestation date from October 15 to January 1 since Node Agencies and User Agencies currently have a significant amount of data to report to the Department on October 15. Moving the annual attestation date from October 15 to January 1 would balance their workload and allow participating law enforcement agencies a reasonable amount of time to review their entries and to route the attestation through their chain of command. Additionally, this subdivision was amended to include the reporting period dates. This amendment is necessary for clarity purposes.

§ 756.6. Annual Reporting of Data to the Department.

Subdivision (c) was non-substantively amended to update the CalGang Misuse Investigation Reporting form, CJIS 9008, revision date. This amendment is necessary because the form was updated to remove the hyphen in the word “email” to make it consistent with other forms in the Department and delete an unnecessary space.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department concludes:

- (1) It is unlikely that the proposal would create or eliminate jobs within the state.
- (2) It is unlikely that the proposal would create new businesses or eliminate existing businesses within the state.
- (3) It is unlikely that the proposal would result in the expansion of businesses currently doing business within the state.

The Department makes these determinations on the basis that the CalGang regulations impose requirements on law enforcement agencies who choose to use the CalGang database as an enforcement tool, and do not impose requirements on private businesses. Also, the minor amendments to the CalGang regulations proposed by this action will not significantly add to or detract from existing obligations imposed by the regulations.

The Department also concludes that:

- (1) The proposal benefits the health and welfare of California residents by continuing to ensure Node Agency and User Agency accountability and accuracy of entries in the CalGang database.
- (2) The proposal would not benefit worker safety because it does not regulate working conditions.
- (3) The proposal would not benefit the state’s environment because it does not regulate environmental conditions.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR SIMILAR DOCUMENTS RELIED UPON

The Department did not rely on any technical, theoretical, or empirical studies, reports or similar documents in proposing these regulations.

EVIDENCE SUPPORTING DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the proposed action would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because it pertains only to Users of the CalGang database, not private businesses.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Department determines that these proposed regulations do not affect small businesses because they pertain only to Users of the CalGang database, not private businesses.

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION AND THE AGENCY'S REASON FOR REJECTING THOSE ALTERNATIVES

The Department finds that no alternatives were presented to, or considered by, the Department that would be more effective in carrying out the purpose of these proposed regulations or would be as effective and less burdensome to affected private persons than these proposed regulations.

Performance Standard as Alternative:

The proposed regulations impose procedures on law enforcement agencies who use the CalGang database. The procedures are necessary to ensure User accountability and accuracy of entries in the CalGang database.